IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PETITION OF CLA PROPERTIES, LLC.	**Supreme Court No.** 80427 District Court No. A793188
SHAWN BIDSAL, an individual Appellant, vs. CLA PROPERTIES, LLC, a California limited liability company, Respondent.	**DOCKETING STATEMENT**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: XXXI
   County: Clark Judge: The Honorable Joanna S. Kishner
   District Court Docket No.: A-19-795188-P

2. **Attorney filing this docket statement:**

   Attorney: James E. Shapiro, Esq. Telephone: (702) 318-5033
   Firm: SMITH & SHAPIRO, PLLC
   Address: 3333 E. Serene Ave., Suite 130, Henderson, NV 89074
   Clients: Appellant, Shawn Bidsal

   If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

   Attorney: Louis E. Garfinkel, Esq. Telephone: (702) 735-0451
   Firm: LEVINE & GARFINKEL
   Address: 1671 W. Horizon Ridge Pkwy., Suite 230, Henderson, NV 89012
   Clients: Respondent, CLA Properties, LLC

   Attorney: Rodney T. Lewin, Esq. Telephone: (310) 659-6771
   Firm: LAW OFFICES OF RODNEY T. LEWIN, APC
   Address: 8665 Wilshire Boulevard, Suite 210, Beverly Hills, CA 90211-2931
   Clients: Respondent, CLA Properties, LLC

4. **Nature of disposition below (check all that apply):**

□ Judgment after bench trial
□ Judgment after jury verdict
□ Summary judgment
□ Default judgment
□ Grant/Denial of NRCP 60(b) relief
□ Grant/Denial of injunction
□ Grant/Denial of declaratory relief
□ Review of agency determination
□ Dismissal
  □ Lack of jurisdiction
  □ Failure to state a claim
  □ Failure to prosecute
  □ Other (specify): _____
□ Divorce decree:
  □ Original □ Modification
■ Other disposition (specify): Petition for Confirmation of Arbitration Award Confirmed

5. **Does this appeal raise issues concerning any of the following:** No.

□ Child custody
□ Venue
□ Adoption

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: None.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Name: Bidsal v. CLA Properties, LLC
Number: 2:19-cv-00605-APG-BNW
Court: United States District Court, District of Nevada
Date of Disposition: June 24, 2019

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Nature of the action: The underlying dispute revolves around the attempted break-up of a limited liability company, Green Valley Commerce, LLC ("Green Valley"), by its members, under the buy-sell provisions of Green Valley's operating agreement (the "OPAG"). On September 26, 2017, Respondent, CLA, PROPERTIES, LLC ("CLAP"), filed a Demand for Arbitration, which ultimately resulted in a Final Award being entered on April 5, 2019, in JAMS Arbitration No. 1260004569 (the "Arbitration Award"). On April 9, 2019, Appellant SHAWN BIDSAL ("Bidsal") filed a Motion to Vacate Arbitration Award in the United States District Court for the District of Nevada (the "Federal Case"). The Federal Case was dismissed for lack of subject matter jurisdiction on June 24, 2019. On May 21, 2019, CLAP filed a Petition for Confirmation of Arbitration Award and Entry of Judgment in the Eighth Judicial District Court, in and for, Clark County, Nevada. On July 15, 2019, Bidsal filed his Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award.

Result below: On December 6, 2019, the district court entered its Order Granting Petition for Conformation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award (the "District Court's Order"), wherein the district court upheld and confirmed the Arbitration Award. The Notice of Entry of the District Court's Order was filed December 16, 2019. Appellant Bidsal is appealing the District Court's Order.

9. **Issues on appeal.** State specifically all issue(s) in this appeal (attach separate sheets as necessary):

(1) Whether the District Court erred in confirming the arbitration award.

(2) Whether the District Court erred in declining to vacate the arbitration award.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: N/A.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130? N/A.

12. **Other issues.** Does this appeal involve any of the following issues?

    □ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

    □ An issue arising under the United States and/or Nevada Constitutions

    ■ A substantial issue of first impression

    ■ An issue of public policy

    □ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

    □ A ballot question

    If so, explain: This appeal involves the important questions of when an arbitration award can be set aside for manifest disregard of the applicable law—including for making remedies not contemplated in the parties' agreement and, without finding the contract ambiguous, by referring to matters outside the contract rather than by applying the unambiguous contract.

13. **Assignment to the Court of Appeals or Retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance: This matter presumptively retained by the Supreme Court under NRAP 17(a)(11) and (12). Appellant believes the

Supreme Court should retain the case due to the amount in controversy and the presence of issues of first impression.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A.

Was it a bench or jury trial? N/A.

15. Judicial disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation on this cross-appeal? If so, which Justice? No .

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:** December 6, 2019.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A.

17. **Date written notice of entry of judgment or order served** December 16, 2019.

Was service by:

□ Delivery

■ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

□ NRCP 50(b) Date of filing: _____

□ NRCP 52(b) Date of filing: _____

□ NRCP 59 Date of filing: _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____.

(b) Date written notice of entry of order resolving motion served _____.

Was service by:

□ Delivery

□ Mail

19. **Date notice of appeal was filed** January 9, 2020.

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A.

20. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:** NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

■ NRAP 3A(b)(1)
□ NRAP 3A(b)(2)
□ NRAP 3A(b)(3)
□ Default judgment
□ Other (specify): _____

□ NRS 38.205
□ NRS 233B.150
□ NRS 703.376

Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) provides the basis for this appeal because on December 6, 2019, the District Court entered a final judgment, via the Order Granting CLA's Petition to Confirm the Arbitration Award and Denying Bidsal's Counterpetition to Vacate the Arbitration Award, thus entering a final judgment on the competing petitions commenced in the court in which the judgment was rendered.

22. **List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Petitioner: CLA Properties, LLC

Respondent: Shawn Bidsal

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: N/A.

23. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

Appellant's claims against Respondent: To Vacate the Arbitration Decision: That the original arbitrator's decision was replete with factual and legal errors and thus should be vacated and remanded to a new arbitration. The District Court ruled against Appellant and in favor of Respondent on this petition on December 6, 2019.

Respondent's counterclaims against Appellant: To Confirm the Arbitration Decision: That the original arbitration decision should stand and be confirmed. The District Court ruled in favor of Respondent on this petition on December 6, 2019.

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

■ Yes

□ No

25. **If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below: N/A.

(b) Specify the parties remaining below: N/A.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

□ Yes

□ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

□ Yes

□ No

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):** N/A.

27. **Attach copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)

- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Shawn Bidsal
Name of appellant

February 25, 2020
Date

Clark County, Nevada
State and County where signed

James E. Shapiro, Esq.
Name of counsel of record

Signature of counsel of record

INDEX OF EXHIBITS

[1] At the February 18, 2020, hearing on Appellant's Motion for Stay Pending Appeal, the District Court granted the Motion. However, as of the date the Docketing Statement was filed, the District Court had not yet entered a written order.

CERTIFICATE OF SERVICE

I certify that on the 25th day of February, 2020, I served a copy of this completed docketing statement upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address(es):

Louis E. Garfinkel, Esq.
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Las Vegas, NV 89169
Attorneys for Shawn Bidsal

Dated this 25th day of February, 2020.

Jennifer Bidwell, an employee of
Smith & Shapiro, PLLC

EXHIBIT 1

EXHIBIT 1

PTNC
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Attorneys for Petitioner CLA Properties, LLC

CASE NO: A-19-795188-P
Department 27

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES LLC, a limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No.: Dept. No.: **PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT** **HEARING REQUESTED**

Petitioner, CLA Properties LLC ("CLA"), hereby petitions this Court for an order confirming the Arbitration award entered on April 5, 2019 (the "Award"), in JAMS Arbitration Number 1260004569, in favor of CLA and against Respondent, Shawn Bidsal ("Bidsal"). A copy of the Award is attached hereto as Exhibit "1".

DATED this 21st day of May, 2019.

LEVINE & GARFINKEL

By: _____

Louis E. Garfinkel, Esq.
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Attorneys for Petitioner CLA Properties, LLC

MEMORANDUM OF POINTS AND AUTHORITIEIS IN SUPPORT OF PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT

I. PARTIES AND JURISDICTION

1. Petitioner CLA is a California limited liability company. The Managing Member of CLA is Benjamin Golshani who is a resident of the State of California.

2. Respondent Bidsal is an individual who is a resident of the State of California.

3. Petitioner CLA and Respondent Bidsal are members of the Green Valley Commerce, LLC ("Green Valley"), a Nevada limited liability company.

4. Petitioner CLA and Respondent Bidsal are parties to a certain Operating Agreement of Green Valley which has an effective date of June 15, 2011 (the "Operating Agreement"). A true and correct copy of the Operating Agreement is attached as Exhibit "2".

6. A dispute regarding which member is entitled to buy out the other's interest in Green Valley arose and was not resolved by the members. The dispute was then made the subject of arbitration held in Las Vegas, Nevada.

Article III, Section 14.1 of the Operating Agreement of Green Valley is entitled "Dispute Resolution" and contains an arbitration provision whereby the parties agreed the dispute would be resolved exclusively by arbitration. Section 14.1 states in pertinent part:

> The representative shall promptly meet in good faith effort to resolve the dispute. If the representatives do not agree upon a decision within thirty (30) calendar days after reference of the matter to them, any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transaction arising hereunder shall be settled exclusively by arbitration in the City of Las Vegas, Nevada. Such arbitration shall be administered by JAMS in accordance with its then prevailing expedited rules, by one independent and impartial arbitrator selected in accordance with such rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1, *et seq.* . . . The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction. The decision of the arbitrator shall be in writing and shall set forth findings of fact and conclusions of law to the extent applicable.

See, Exhibit "2", pp. 7-8.

7. This Court has jurisdiction pursuant to NRS 38.244(2) which states "An

agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award . . . ." Pursuant to the Operating Agreement, the parties agreed to arbitrate any dispute in Las Vegas, Nevada.

8. Venue is proper pursuant to NRS 38.246 because the parties agreed to arbitrate their dispute in Las Vegas, Nevada and the arbitration occurred in Las Vegas, Nevada.

9. Stephen E. Haberfeld was appointed Arbitrator in JAMS Arbitration Number 1260004569.

10. On April 5, 2019, Arbitrator Stephen Haberfeld entered the Award, a copy of which is attached as Exhibit "1". Respondent Bidsal has refused and failed to comply with the Arbitrator's Award.

11. Pursuant to the Operating Agreement and the Federal Arbitration Act which governs the Arbitration, Respondent CLA is entitled to obtain immediate and summary confirmation of the Award.

II. LEGAL ANALYSIS

12. Petitioner CLA is entitled to obtain an immediate and summary confirmation of the Award. Section 14.1 of the Operating Agreement of Green Valley states as follows: "The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction."

13. Pursuant to Section 14.1 of the Operating Agreement of Green Valley, the Arbitration is to be governed by the Federal Arbitration Act, 9 U.S.C.§ 1, *et seq.*

14. The Federal Arbitration Act provides that the court shall confirm the award unless the award is vacated, modified, or corrected as provided under the Federal Arbitration Act. 9 U.S.C. § 9.

15. None of the grounds available for vacating, modifying or correcting the Award are applicable.

16. Therefore, pursuant to 9 U.S.C.§ 9, Petitioner CLA requests that this Court confirm and recognize the Award and enter Judgment in favor of Petitioner CLA and against

Respondent Bidsal consistent with the Award.

17. Under the terms of the Award, Petitioner CLA is entitled to the following relief:

a. Within ten (10) days of the issuance of the Award, Bidsal shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute any and all documents necessary or appropriate to effectuate such sale and transfer.

b. As the prevailing party on the merits, CLA shall recover from Bidsal the sum and amount of $298,256.00, as and for contractual attorneys' fees and costs reasonably incurred in connection with the arbitration.

c. Bidsal shall take nothing by his Counterclaim.

17. By reason of the foregoing, the Court should issue a judgment confirming the Award and direct that Judgment be entered thereon.

18. Following the Award, Bidsal not only refused to comply with it, but he insisted upon CLA's obtaining a court order affirming the award, and more than that, improperly filed a federal court proceeding seeking to vacate the Award. As a result, CLA has incurred additional attorneys' fees and costs.

WHEREFORE, Petitioner, CLA Properties LLC, respectfully requests that this Court:

1. Issue an Order pursuant to the Operating Agreement and 9 U.S.C. § 9 confirming the Award and enter a Judgment in favor of Petitioner CLA Properties LLC and against Respondent Shawn Bidsal in accordance with the Award, confirming that Bidsal shall take nothing by his Counterclaim and ordering Bidsal to:

a. Within ten (10) days of the Judgment, (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the

contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.

b. Pay CLA as the prevailing party on the merits, CLA shall recover from Bidsal the sum and amount of $298,256.00 plus interest from April 5, 2019 at the legal rate, and as and for contractual attorneys' fees and costs reasonably incurred in connection with this Arbitration.

3. Award Petitioner CLA Properties LLC its attorneys' fees and costs incurred of this action and to oppose motion to vacate in federal court.

4. Grant Petitioner CLA Properties LLC such other and further relief as the Court deems just and proper.

DATED this 21st day of May, 2019.

LEVINE & GARFINKEL

By: _____

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Attorneys for Petitioner CLA Properties, LLC

EXHIBIT "1"

EXHIBIT "1"

JAMS ARBITRATION NO. 1260004569

CLA PROPERTIES, LLC,
Claimant and Counter-Respondent,

vs.

SHAWN BIDSAL,
Respondent and Counterclaimant.

FINAL AWARD

THE UNDERSIGNED ARBITRATOR, having been duly designated to be the Arbitrator in accordance with the arbitration provision of Article III, Section 14.1 of the Operating Agreement, dated June 15, 2011, of Green Valley Commerce, LLC, a Nevada LLC ("Green Valley"), based on careful consideration of the evidence adduced during and following the May 8-9, 2018 evidentiary sessions of the Merits Hearing of the Arbitration Hearing of this arbitration, applicable law, the written submissions of the parties, and good cause appearing, makes the following findings of fact, conclusions of law and determinations ("determinations") and this Final Award ("Award"), as follows.

DETERMINATIONS

1. The determinations in this Award are the determinations by the Arbitrator, which the Arbitrator has determined to be true, correct, necessary and/or appropriate for purposes of this Award. To the extent that the Arbitrator's determinations differ from any party's positions, that is the result of determinations as to relevance, burden of proof considerations, the weighing of the evidence, etc.

To the extent, if any, that any determinations set forth in this Award are inconsistent or otherwise at variance with any prior determination in the Interim Award, Merits Order No. 1 or any prior order or ruling of the Arbitrator, the determination(s) in this Award shall govern and prevail in each and every such instance.

/////

I
JURISDICTION, PARTIES, AND MERITS ORDER NO. 1

2. Pursuant to Rule 11(b) of the JAMS Comprehensive Arbitration Rules and Procedures --- which govern this arbitration and which Rules the Arbitrator has the authority and discretion to exercise, as here[1] --- the Arbitrator has the jurisdiction and has exercised his jurisdiction to determine his arbitral jurisdiction, which has been determined to be as follows:

The Arbitrator has and has had continuing jurisdiction over the subject matter and over the parties to the arbitration, who/which are Claimant and Counter- Respondent CLA Properties, LLC, a California limited liability company ("CLA") and Respondent and Counterclaimant Sharam Bidsal, also known as Shawn Bidsal, an individual. ("Mr. Bidsal').

CLA has been represented by the Law Offices of Rodney T. Lewin and Rodney T. Lewin, Esq. and Richard D. Agay, Esq. of that firm, whose address is 8665 Wilshire Blvd., Ste. 210, Beverly Hills, CA 90211-2931, and Levine, Garfinkel & Eckersely and Louis E. Garfinkel, Esq. of that firm, whose address is 1671 W. Horizon Ridge Pkwy, Ste. 220, Henderson, NV 89012.

Mr. Bidsal has been represented by Smith & Shapiro, PLLC and James E. Shapiro, Esq. of that firm, whose address is 2222 E. Seren Ave., Ste. 130, Henderson, NV 89074, and Goodkin & Lynch, LLP and Daniel L. Goodkin, Esq. of that firm, whose address is 1800 Century Park East, 10th Fl., Los Angeles, CA 90067.

On October 10, 2018, the Arbitrator rendered and JAMS issued Merits Order No. 1, and on February 22, 2019, the Arbitrator rendered and JAMS issued the Interim Award in this arbitration. The Interim Award and Merits Order No. 1 contained the Arbitrator's determinations and written decision as to relief to be granted and denied, based on the evidence adduced evidentiary sessions of the Merits Hearing of the Arbitration Hearing held on May 8-9, 2018,[2]

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[1] JAMS Comprehensive Arbitration Rule 11(b) provides as follows:
"Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. Unless the relevant law requires otherwise, the Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter."

[2] The evidentiary sessions of the Merits Hearing were held in Las Vegas, Nevada, at the insistence of Mr. Bidsal, notwithstanding that the individual principals (including Mr. Bidsal), CLA's lead counsel and the Arbitrator are residents of Southern California.

applicable law, and extensive post-evidentiary submissions of the parties. One of the determinations was and remains that CLA is the prevailing party in this arbitration.

March 7, 2019 is hereby declared to be the date for last briefs in this arbitration and the date as of which the Arbitrator hereby declares the Arbitration Hearing (including the Merits Hearing thereof) closed. See JAMS Comprehensive Arbitration Rule 24(h).

The Arbitrator shall continue to maintain jurisdiction over the parties concerning the subject matter of this arbitration until the last day permitted by law and JAMS Comprehensive Arbitration Rules & Procedures.

II
FACTUAL CONTEXT

3. CLA and Mr. Bidsal are the sole members of Green Valley, LLC, a Nevada limited liability company ("Green Valley"), which owns and manages real property in Las Vegas, Nevada. At all relevant times, CLA and Mr. Bidsal have each owned a 50% Membership interest in Green Valley. CLA is wholly and solely owned by its principal, Benjamin Golshani ("Mr. Golshani").

4. Mr. Golshani on behalf of CLA and Mr. Bidsal executed an Operating Agreement for Green Valley, dated June 15, 2011. Exhibit 29. Section 4 of Article V of that Operating Agreement, captioned "Purchase or Sell Rights among Members" ("Section 4"), contains provisions permitting one member of Green Valley to initiate the purchase or sale of one member's interest by the other. Those Section 4 provisions were referred to by the parties and their joint attorney, David LeGrand, as "forced buy/sell" and "Dutch auction," whereby one of the members (designated as the "Offering Member") can offer to buy out the interest of the other based upon a valuation of the fair market value of the LLC set by the Offering Member in the offer. The other member (designated as the "Remaining Member") is then given the option to either buy or sell using the Offering Member's valuation, or the Remaining Member can demand an appraisal.

On July 7, 2017, Mr. Bidsal sent CLA a Section 4 written offer to buy CLA's 50% Green Valley membership interest, based on a "best estimate" valuation of $5 million. On August 3, 2017 --- via timely Section 4 notice, in response to Mr. Bidsal's July 7 offer --- CLA elected to buy rather than sell a 50% Green Valley membership interest --- i.e., Mr. Bidsal's --- based upon Mr. Bidsal's $5 million valuation, and thus without a requested appraisal. On August 7, 2017

--- response to CLA's election --- Mr. Bidsal refused to sell his Green Valley membership interest to CLA based on his $5 million valuation, and "invoke[d] his right to establish the FMV by appraisal,"[3] "in accordance with Article V, Section 4 of the Company's Operating Agreement."

III
"CORE" ARBITRATION ISSUE

5. While this arbitration --- as briefed, tried, argued and resolved as a business/legal dispute thusly involving "pure" issues of contractual interpretation --- is also, significantly, a contentious, intra-familial dispute. Messrs. Bidsal and Golshani are first cousins, as well as each effectively owning 50% Membership Interests in Green Valley.

6. Mr. Bidsal contended that if CLA elected to buy his 50% Membership Interest rather than sell, Mr. Bidsal had the right to demand that the "FMV" portion of the Section 4 formula for determining price must be determined by an appraisal. CLA contended upon its election to purchase rather than sell, it has the right to purchase Mr. Bidsal's fifty percent (50%) Membership based upon the valuation made by Mr. Bidsal, as the Offering Member, and that the FMV portion of the Section 4 formula to determine price must be the same amount as set forth in Mr. Bidsal's offer, i.e. $5 million, and that Mr. Bidsal should be ordered to transfer his Membership Interest based thereupon.

6. Thus, the "core" of the parties' dispute is whether or not Mr. Bidsal contractually agreed to sell, and can be legally compelled to sell, his 50% Membership Interest in Green Valley to CLA at a price computed via a contractual formula not in dispute, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 written offer to purchase CLA's 50% Membership Interest in Green Valley --- without regard to a formal appraisal of Green Valley, which Mr. Bidsal has contended that the parties agreed that he had a contractual right to demand as a "counteroffered seller" under Section 4.2 of the Green Valley Operating Agreement.

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[3] The formula in Section 4 for determining price is stated twice, once if sale is by Remaining Member and once if sale is by Offering member. But whether the membership interest is sold by the Remaining Member or by the Offering Member, the formula for determining the price is the same, except that the identity of the selling Member, Remaining Member or Offering Member, is included: "(FMV - COP) x 0.5 plus capital contribution of the [selling] Member at the time of purchasing the property minus prorated liabilities."

7. Despite conflicting testimony and impeachment on cross-examination on both sides,[4] the evidence presented during the evidentiary sessions materially assisted the Arbitrator in reaching the interpretative determinations set forth in this Award concerning the pivotal "buy-sell" provisions set forth in Section 4.2 of the Green Valley Operating Agreement --- which, as a result of collective drafting over a six-month period, was not a model of clarity, which precluded the granting of both sides' Rule 18 cross-motions, based on Section 4.2.

8. The "forced buy-sell" agreement, or so-called "Dutch auction," is common among partners in business entities like partnerships, joint ventures, LLC's, close corporations --- a primary purpose of which is to impose fairness and discipline among partners considering maneuvering, via pre-agreed procedures and consequences. If not careful and fair, the Dutch auction imposes a risk of one "overplaying one's hand" --- such that an intended buyer might end up becoming an unintended seller, at a price below, possibly well below, the price at which the partner was motivated to buy the same Membership Interest, under the "buy-sell" procedures which he/she/it initiated. If the provisions work, as intended, the result might not be expertly authoritative or precise, but nevertheless a form of cost-effective "rough justice," when one partner "pulls the trigger" on separation, by initiating Section 4.2 procedures.

9. As amplified below, the parties' dispute and this arbitration have been a result and expression of "seller's remorse" by Mr. Bidsal --- after having initiated Section 4.2 procedures, of which he was the principal draftsman,[5] in the belief that, after the completion of those procedures, he would be the buyer of the other 50% Membership Interest in Green Valley, based on his "best estimate of the [then] current fair market value of the Company," for calculation of the buy-out price, using the formula set out in Section 4.2.

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[4] Neither of the parties' Rule 18 positions that Section 4.2 of the Green Valley Operating Agreement unambiguously supported the asserting side's position on contractual interpretation was sustained after briefing and argument during an in-person hearing on the parties' cross-motions. The Rule 18 denials and the inability of the parties to reach requisite stipulations, following the Rule 18 hearing, required the in-person evidentiary sessions of the Merits Hearing --- which sessions were held on May 8-9, 2018 in Las Vegas, Nevada. The evidence adduced during those evidentiary sessions corroborated the Arbitrator's experience that trial of issues raised earlier in Rule 18 motions — including via cross-examination of witnesses, which the Arbitrator regards as an engine of truth — often results in the emergence of new and/or changed facts and circumstances which bear on resolution of what were Rule 18 issues.

[5] While not dispositive, per se, the Arbitrator has materially determined that Mr. Bidsal controlled the final drafting of the Green Valley Commerce, LLC Operating Agreement, and thus should be deemed the principal drafter of Section 4.2 of that agreement.

10. As also amplified below, CLA Properties is the prevailing party on the merits of the parties' contentions in this Merits Hearing, based on the Arbitrator's principal contractual interpretation determinations that:

A. The clear, specific and express "specific intent" language of the last paragraph of Section 4.2 prevails over any earlier ambiguities about the contracting parties' Section 4.2 rights and obligations.

B. Mr. Bidsal's testimony, arguments and position in support of his having contractual appraisal rights appear to be "outcome determinative" in his favor. That is, they do not, as they apparently cannot, be logically applied in all instances contemplated by the Section 4.2 "buy-sell" provision, beyond the situation in which he was placed by Mr. Golshani's August 3, 2017 Section 4.2 response --- specifically, for example, in instances in which CLA either would have (1) timely accepted Mr. Bidsal's July 7, 2017 Section 4.2 offer to buy CLA's 50% Membership Interest in Green Valley or (2) deliberately, inadvertently or otherwise failed to timely or otherwise properly respond to that offer within the 30-day time limit set under Section 4.2. CLA's testimony, arguments and position in support of its contractual interpretation of the operative provisions of Section 4.2 not only are based on and consistent with the Section 4.2's "specific intent" language, they can be logically applied in all instances contemplated by the Section 4.2 "buy-sell" provision --- including beyond the situation created by the July 7/August 3 Section 4.2 written offer/response of the parties, which gave rise to the parties' dispute and this arbitration.

C. Mr. Bidsal contractually agreed to sell and can be legally compelled to sell and transfer his fifty percent (50%) Membership Interest in Green Valley to CLA at a price computed via the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 offer.

11. In a dispute between litigating partners or other parties, the testimony of third-party witnesses becomes important. That is especially so, when the third-party witness is unbiased and the drafting lawyer was jointly representing the contracting parties in connection with the preparation of the underlying contract in suit. David LeGrand was that lawyer, and the substance of his testimony is essentially the same as, and thus corroborates, CLA's contentions, supported by the testimony of CLA's principal, Mr. Golshani. Mr. LeGrand was not shown to be biased for or against either side in this matter. On cross-examination and on redirect, Mr. LeGrand testified that he had performed legal work for Mr. Golshani for a number of years, including during August 2017, but not recently, and that he had been asked to do legal work by

Mr. Bidsal within about six months of his testimony, and shortly prior to his deposition in connection with this arbitration, but that Mr. LeGrand was too busy to take on Mr. Bidsal's legal work.

12. A portion of Mr. LeGrand's deposition testimony --- which was read into the evidentiary session record, during Mr. LeGrand's hearing testimony on May 9, 2018 --- was that, at Mr. Golshani's instance, Messrs. Bidsal and Golshani agreed to a "forced buy-sell" in lieu of a right of first refusal for inclusion in the Green Valley Operating Agreement. Although he attempted to take back or resist his prior use of the word "forced" at hearing, Mr. LeGrand understood "buy-sell" to mean that an offeree partner, presented with an offer under the "buy-sell" provision of the LLC Operating Agreement, has (A) the option to buy or sell at the price offered by the other/offeror member and (B) the contractual right to compel performance of that option, including at the price stated in offeror member's offer. That testimony is consistent with the "specific intent" language of Section 4.2 which Mr. LeGrand specially drafted, and which reads as follows:

> "The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) and according to the procedure set forth in Section 4. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interest to the [R]emaining Member(s)."

13. That "specific intent" language is express, specific and could not be more clear as to these parties' objectively manifested "specific intent" to be so bound. Under governing Nevada law,[6] the purpose of contract interpretation "is to discern the intent of the contracting parties." American First Federal Credit Union v. Soro, 359 P.3d 105, 106 (Nev. 2015), quoting and citing Davis v. Beling, 279 P.3d 501, 515 (Nev. 2011). Because the evidence is that both Messrs. Bidsal and Golshani were each very interested in changing drafts over a six-month period of what became the Section 4.2 "buy-sell" provision, each of them must have closely read that section, including the "specific intent" last sentence of that section of the Green Valley Operating Agreement. Accordingly, any prior, contemporaneous or other ambiguity as to Remaining Member CLA's Section 4.2 "buy-sell" options and Offering Member Bidsal's obligation to sell his 50% Membership Interest to CLA "at the same offered price" as presented in his July 7, 2017 offer, as a result of CLA's August 3, 2017 response to Mr. Bidsal's

[6] Article X (d) of the Green Valley Operating Agreement provides that Nevada law shall apply to the interpretation and enforcement of the contract.

July 7 offer, must give way to that objectively manifested specific intent of the parties.

14. When directed to that "specific intent" provision of Section 4.2, during hearing, Mr. LeGrand was asked and answered, as follows:

> "Q And does that -- does that language reflect your -- your then understanding of what the intent of this provision was?
> "A Yes.
> "Q And that was your understanding of what Mr. Golshani and Mr. Bidsal had wanted you to put in?
> "A Yes.
> "Q And it was your understanding that they had both --- that was what they both had agreed to, right?
> "A Yes.
> *** ***
> "Q But the reason you put -- the reason that you put down a -- the reason you inserted the specific intent of the parties was to make sure there was no question about what the intent of the parties was, right?
> "A That was what I intend when I put language like 'specific intent,' yes."
>
> 5/9/2018 Hrg.Tr., at pp. 295:19-296:5, 297:4-10.

15. It appears that in this case, Mr. Bidsal attempted to find a contractual "out" to regain lost leverage to either buy or sell a 50% membership interest in Green Valley at a price and/or on terms less favorable than he originally envisaged, when he made his July 7, 2017 offer, but more favorable than CLA's August 3, 2017 acceptance of Mr. Bidsal's company valuation price and CLA's "standing on the contract" to buy, rather than sell, based on Mr. Bidsal's market valuation figure --- which interpretation and position the Arbitrator has determined have been proved correct by a preponderance of the evidence, after hearing, and according to law.

16. What Mr. Bidsal seems to have settled on for negotiation and arbitration was ignoring, disregarding and, it appeared at hearing, resisting strict application of the "specific intent" language quoted and discussed above. Under resumed cross-examination by CLA's counsel on May 9, 2018 --- while acknowledging that CLA/Mr. Golshani was a Section 4.2 "Remaining Member" in respect to Mr. Bidsal's July 7, 2017 offer to buy CLA's 50% Membership Interest in Green Valley for $5 million, which truly represented Mr. Bidsal's best estimate of the value of the Company, when he made his offer, and as he so

expressly stated in his offer --- Mr. Bidsal (A) repeatedly refused to acknowledge that CLA had and duly exercised a Section 4.2 option, alternatively to either sell or buy a 50% Membership Interest in Green Valley based on Mr. Bidsal's offering $5 million as the value of the LLC, and (B) insisted, rather, that (1) CLA's August 3, 2017 response to Mr. Bidsal's July 7, 2017 offer constituted a "counteroffer," and that (2) as a contractual and apparently legal consequence of Mr. Bidsal having been made the recipient of a "counteroffer," he became entitled, as a seller, now, to Section 4.2 optional appraisal rights to determine Green Valley's fair market value or "FMV." Hrg. Tr. at pp. 339:14 -340:10.

17. What Mr. Bidsal apparently found and settled on was a drafting ambiguity in Section 4 of the Green Valley Operating Agreement --- i.e., "FMV," which ambiguity the Arbitrator has determined somehow found its way into Section 4.2 late in the process --- and using that ambiguity to argue that "FMV" could only mean third-party expert-appraised fair market value was required in the circumstances. Under Section 4.2 of the Green Valley Operating Agreement, the "Remaining Member" (CLA) has the option to sell or buy "the [50%] Membership Interest" put in issue by the Offering Member, "based upon the same fair market value (FMV)" set forth in the Offering Member's Section 4.2-compliant offer --- which valuation of the Company the Offering Member "thinks is the fair market value" of the Company. Mr. Bidsal used that ambiguity as his justification for refusing to perform as a compelled seller under the Section 4.2 "buy-sell." contending that Section 4 should be interpreted in his favor because Mr. Golshani was its draftsman. While Mr. Golshani had some role in what became Section 4, based on the evidence the Arbitrator finds that Mr. Bidsal controlled the final drafting of the Green Valley Commerce, LLC Operating Agreement, and had the last and final say on what the language was before signing the Operating Agreement, and is deemed to be the principal drafter of Section 4.2 of that agreement and therefore bears the burden of risk of ambiguity or inconsistency within the disputed provision. However, the determinations and award contained herein are based upon the testimony and exhibits introduced at the hearing in this matter, and the determination of draftsman is not dispositive. For the reasons set out herein the determinations and award would be made even if Mr. Bidsal's contention that Mr. Golshani was the draftsman of Section 4 were correct.

18. Beyond the parties' signed, closely read, express Section 4.2 specific intent, per se, there is an unanswered logical flaw in Bidsal's position --- which the Arbitrator has determined to be "outcome determinative." That is, Mr. Bidsal's position might be plausible in the situation in which he has found himself on August 3 --- after and in light of CLA's written response to his July 7 offer --- but it does not and cannot work in all "buy-sell" contingencies contemplated by Section 4.2, given that section's formula, specific intent

language and all other language in that section, without Mr. Bidsal sub silentio conceding the correctness of CLA's internally consistent position which "works" in all contemplated Section 4.2 "buy-sell" contingencies.

A. Specifically, without that important concession, Mr. Bidsal would be unable to assign a "FMV" value to the Section 4.2 formula in contingencies in which CLA accepted or deliberately or inadvertently failed to respond to Mr. Bidsal's July 7 offer timely, properly or at all.

B. Under the parties' agreed formula for arriving at the "buyout" price, as set forth immediately above the "specific intent" provision of Section 4.2 --- regardless of who is the buyer --- the buy-out price could not be computed, and Mr. Bidsal's contemplated transaction be completed or performed or enforced, without $5 million being "FMV" in the formula, if CLA, via Mr. Golshani, accepted or ignored the Offering Member's Section 4.2 offer.

19. If that is so, and the Arbitrator finds it is, then, logically as well as fairly under Section 4.2 --- which is an agreed fairness provision of the parties --- then $5 million is the "FMV" for the same buy-out formula, if CLA, as here, opted to buy rather than sell a 50% Membership Interest in Green Valley, LLC, without invoking its optional appraisal rights. Absent a demand by the Remaining Member, Section 4 of the Operating Agreement for Green Valley Commerce, LLC does not require an appraisal to determine the price to be paid by Remaining Member CLA for its purchase of Offering Member Bidsal's membership interest in Green Valley, and Mr. Bidsal had no right to demand an appraisal to determine the price to be paid by CLA for Mr. Bidsal's membership interest in Green Valley Commerce, LLC.

20. Significant among other factors adduced at hearing and in post-evidentiary sessions briefing, the Arbitrator further has determined that:

A. The "triggering" of the parties' Section 4.2 "buy-sell" provisions of the Green Valley Commerce, LLC ("Green Valley") Operating Agreement was under the control of Mr. Bidsal, as the Section 4.2 "Offering Party." What that means in this arbitration is that, among other things, Mr. Bidsal controlled whether and when he made his offer, and what the offering price would be, including whether or to what extent Mr. Bidsal engaged in due diligence to determine Green Valley's fair market valuation including via third-party professional appraisal, if he opted to obtain one preparatory to making his Section 4.2 offer.

B. Once Mr. Bidsal, as the contractually "Offering Party" conveyed his Section 4.2 offer --- and pursuant to the parties' "specific intent" set

forth in that section and discussed elsewhere herein, and as a matter of fundamental, cost-effective fairness between essentially partners, regardless of labels --- Mr. Bidsal contractually surrendered control of what next followed in the Section 4.2 "buy-sell" process to Mr. Golshani, on behalf of "Remaining Member" CLA.

C. There was no contractual residual protection available to Mr. Bidsal as to appraisal and/or price of his Membership Interest --- which, under Section 4.2, upon Mr. Bidsal's "triggering" of the same, became "the Membership interest" which Mr. Bidsal put in play. Put another way --- although CLA put up about 70% of Green Valley's capital --- CLA and Mr. Bidsal, by agreement, each had a 50% Membership Interest in the Green Valley LLC --- so that, at that point, CLA had the election under the "buy-sell" whether to buy or sell "the" 50% Membership Interest in Green Valley put in play by Mr. Bidsal. If CLA elected to buy, rather than sell, CLA had the contractual option to compel Mr. Bidsal to sell his 50% Membership Interest to CLA at a purchase price computed via the Section 4.2 formula, based either on Mr. Bidsal's $5 million valuation of the LLC in his July 7, 2017 Section 4.2 offer. If CLA elected to sell, rather than buy, CLA had the election to have the purchase price, via formula, set in accordance with Mr. Bidsal's offering valuation of $5 million or a (presumably greater) valuation set via contractual third-party appraisal, also under Section 4.2, if Mr. Golshani thought an appraised valuation for purposes of sale of its 50% Membership Interest to Mr. Bidsal would be more favorable to CLA. Thus, Mr. Bidsal had no right to demand an appraisal, and under Section 4.2 Mr. Bidsal was obligated to close escrow and sell his 50% Membership Interest to CLA within 30 days after CLA elected to buy, i.e. by September 3, 2017.

D. Under Section 4.2, CLA, as the Remaining Member, had 30 days from Mr. Bidsal's "triggering" of the "buy-sell" to make its election to buy or sell at the "same" price set forth in Mr. Bidsal's offer or to sell at a presumably higher appraised price --- or as indicated above to deliberately or inadvertently allow the 30-day period to expire without timely, adequate or any written response.

E There is no reference or indication in any earlier draft or other documentation generated prior to, or contemporaneous with, or following execution of the Green Valley Operating Agreement --- pre-dispute --- that an Offering Member retains a reserved right to unilaterally demand an appraisal, following, as here, the Remaining Member's unqualified, written acceptance of the Offering Member's Section 4.2-compliant written offer --- the offer and acceptance both expressly stating, and thus bindingly agreeing, that $5 million is the agreed valuation of the Company for purposes of computing the purchase

and sale price of "the Membership Interest" which was the subject of the parties' Section 4.2-compliant offer and acceptance. [7]

While an earlier version of what became Section 4.2 required that an offer be accompanied by an appraisal, the only reference to an appraisal or appraisal right in the final version of Section 4.2 is "If the offered price is not acceptable to the Remaining Member(s), within 30 days of receiving the offer, the Remaining members (or any of them) can request to establish FMV based on the following procedure...." To repeat, appraisal rights are triggered only"[i]f the [Offering Member's] offered price is not acceptable to the Remaining Member" and, further, that the Remaining Member requests the "following procedure" of an appraisal "within 30 days of receiving the offer." That 30-day period is exactly the same time limitation on the Remaining Member by which to accept the Offering Member's offers or not. By implication, that logically would foreclose the possibility of Mr. Bidsal, as the Offering Member, having a contractual right to request an appraisal to determine "FMV" as a "second bite at the [Green Valley valuation] apple." Similarly, Section 4.2's use of the word "same" market value would exclude a third-party expert-appraised market valuation right in Mr. Bidsal --- that is, without reading in a provision which just is not there expressly or by fair implication.

F. Mr. Bidsal's contractual interpretation position is irreconcilably inconsistent with the parties' specially included "specific intent" language added to the "buy-sell" provision mechanics.

G. Miscalculating the intentions, thinking and/or financial resources available to the other party in an arm's length transaction, such as a Section 4.2 "buy-sell," are not cognizable bases for re-writing or re-interpreting the parties' contractual procedures.

H. Mr. Bidsal's "best estimate of the current fair market value of the Company" at $5 million was authorized, prepared and conveyed on Mr. Bidsal's behalf by his lawyer on July 7, 2017. CLA accepted Mr. Bidsal's July 7 offer on August 3, 2017 --- 27 days later. While Mr. Bidsal appears to have had a unilateral right to retract his offer, at any time prior to its acceptance during that 27-day period --- including because of a realization that he had made a mistake in underestimating the then current fair market value of the Company

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[7] Deleted from the execution copy of the Green Valley Operating Agreement, which was signed by the parties, was Mr. LeGrand's earlier language of Section 7 --- which became Section 4 of the final --- that an LLC member's offer under the "buy-sell" was to be accompanied by an appraiser's appraisal. [8] Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

--- the preponderance of the evidence is that Mr. Bidsal's $5 million conveyed "best estimate" of Green Valley's value in his Section 4.2-compliant offer was the product of careful analysis and forethought and not error -- that is until Mr. Bidsal was informed of CLA's acceptance of his offer and Section 4.2 election to buy, rather than sell, a 50% Membership Interest based on Mr. Bidsal's $5 million valuation of the Company. It was only on August 5, 2017, in express "response to your August 3, 2017 letter relating to the Membership Interest in Green Valley Commerce, LLC" --- that Mr. Bidsal for the first time invoke[d] a purported right to establish the FMV by appraisal" "in accordance with Article V, Section 4 of the Company's Operating Agreement."

21. Mr. Bidsal has not sustained his burden of proof under his counterclaim, and is not entitled to any relief thereunder.

22. CLA's motion for reconsideration of the Arbitrator's sustaining Mr. Bidsal's objections to the admission of Exhibit 39 has been denied. Exhibit 39 is not in evidence, and CLA's reference to that exhibit in briefing other than whether or not that exhibit should be in evidence has not been considered.

A. The apparent primary purpose of CLA's attempt to introduce Exhibit 39 into evidence was to establish so-called "pattern evidence" of the parties' intent to include a "forced buy-sell" in the contract over which the parties are in dispute in this arbitration.[8] CLA's stated or ostensible --- but, the Arbitrator believes, secondary --- purpose in attempting to introduce Exhibit 39 is impeachment. Both efforts by CLA fail for the following reasons.

B. There is no contractual specification or limitation on the Arbitrator's broad authority and discretion conferred by operative JAMS Comprehensive Arbitration Rules, specifically Rule 22(d), to make evidentiary rulings and decisions --- including concerning the admission or exclusion of Exhibit 39.

C. Pattern evidence generally requires more than one instance of the alleged pattern --- which in this case is limited to one instance, which is an operating agreement of an unrelated entity, to which Mr. Bidsal was not a party, concerning an unrelated property, and a dispute in another arbitration, details of which bearing on Exhibit 39 the Arbitrator sought to avoid getting into during hearing in this arbitration. Those factors sufficiently weakened CLA's argument that the proffered "pattern evidence" that Mr. Bidsal's prior inclusion of a "buy-sell" provision agreed to by him in the other operating agreement (Exhibit 39)

[8] Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

raises an inference that he similarly agreed to a "forced" buy-sell in the Green Valley Operating Agreement.

D. Exhibit 39 was not produced by CLA to Mr. Bidsal, prior to its attempted introduction during the June 28, 2018 Merits Hearing evidentiary session. CLA's only justification for its non-production was that Exhibit 39, as documentation used for impeachment, only, need not be produced or identified, prior to attempted use for that limited purpose during hearing. With respect, the Arbitrator has not been persuaded that Exhibit 39 was withheld from production solely for impeachment at hearing.

24. Paragraph 1 of the relief granted to CLA in this Final Award contains the following language:

"Within ten (10) days of the issuance of the final award in this arbitration, Respondent Sharam Bidsal also known as Shawn Bidsal ("Mr. Bidsal") shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to Claimant CLA Properties, LLC, at a price computed via the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute and deliver any and all documents necessary to effectuate such sale and transfer."

Mr. Bidsal's obligation to transfer his 50% interest to CLA pursuant to Section 4.1 of the Green Valley Operating Agreement's, as well as CLA's request for relief in its arbitration demand, necessarily imply and contemplate that the subject interest at the time of transfer must be "free and clear of all liens and encumbrances" --- as the price for that interest under Section 4.1 is to be calculated on the same --- plus via means and within a time after a final arbitration award is issued, by which Mr. Bidsal must effect and complete that transfer --- here, within ten (10) days of the issuance of the final award, pursuant to the execution and delivery of all documents necessary to effectuate the sale and transfer of Mr. Bidsal's 50% interest in Green Valley, LLC.

IV
ATTORNEYS' FEES AND COSTS

25. Having been determined the prevailing party on the merits of the parties' contentions in this Merits Hearing, CLA is entitled to recover its attorneys' fees, costs and expenses as provided under Article III, Section 14.1 of the Green Valley Operating Agreement, which provides, in pertinent part that "at the conclusion of the arbitration, the arbitrator shall award the costs and

expenses (including the cost of the arbitration previously advanced and the fees and expenses of attorneys, accountants, and other experts) to the prevailing party."

26. The Arbitrator has carefully considered and weighed the evidence and other written submissions of the parties in connection with CLA's Section 14.1 attorneys' fees and costs application --- including weighing and consideration of the so-called Brunzell factors, under Nevada law[9] --- and has determined that CLA should be awarded $298,256.900, as and for contractual prevailing party attorneys' fees and costs and expenses reasonably incurred in connection with this arbitration.

27. The $298,256.00 amount to be awarded to CLA against Mr. Bidsal, as and for contractual prevailing party attorneys' fees and costs, has been computed as follows.

A. The full amount of CLA's requested attorneys' fees and costs through September 5, 2018, which is the last date of billed services rendered and costs and expenses incurred, per CLA's October 30, 2018 application for attorneys' fees and costs is $266,239.82.[10]

B. The full amount of additional requested attorneys' fees and costs through February 28, 2019, per CLA's supplemental application for attorneys' fees and costs (denominated, "Additional Presentation") is $52,238.67.

C. CLA's share of Arbitrator's compensation and JAMS management fees and expenses since the last JAMS invoice of 12/19/2018 submitted by CLA's counsel in its Additional Presentation --- including the Arbitrator's time since last JAMS billing to the date of the rendering of this Final Award --- is $6,295.00.

D. The aggregate of the sum of those amounts --- i.e., $324,773.49 -- should and will be reduced by $26,517.26, computed as follows: (1) $13,158.63, representing CLA's attorneys' fees and costs billed in connection with CLA's unsuccessful Rule 18 cross-motion (but not CLA's successful defense of Mr. Bidsal's Rule 18 cross-motion, in the amount of $11,800.00), (2) $12,000.00, representing a discretionary downward adjustment of CLA's attorneys' fees reasonably incurred, primarily after September 5, 2018, based on the Arbitrator's

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[9] Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969)("Brunzell").

[10] The full amount of CLA's requested attorneys' fees and costs through September 5, 2018 has been corrected to $266,239.92 from $249,078.75, the figure set forth in Paragraph 3 of Section V of the Interim Award.

careful consideration of CLA's initial application and Additional Presentations and Mr. Bidsal's objections to CLA's requested attorneys' fees, exclusive of his Rule 18 objection (which is covered under item (A), above), and (3) $1,358.63, as and for Mr. Golshani's Las Vegas-related expenses in connection with this arbitration.

After weighing and considering all relevant considerations and in the exercise of the Arbitrator's discretion ---- the Arbitrator has determined that not all of that billed additional attorney and paralegal time can or should included in the Final Award and that the ultimate amount to be awarded in this Final Award is correct and appropriate in the circumstances.

The discretionary downward adjustment of $12,000.00 from CLA's approximately $41,000.00 additional attorneys' fees requested since issuance of the Interim Award should not be interpreted as any direct or indirect criticism of CLA's counsel's decision-making and tasking at any time during this arbitration --- especially given that substantial attorney time appears to have been prompted by Mr. Bidsal's submissions, throughout this arbitration, as also determined below and elsewhere in this Final Award.

28. A principal determination in connection with CLA's application is that the main reason for the attorneys' fees and related costs being of the magnitude sought by CLA is that Mr. Bidsal, not CLA, was the principal cause and driver of those costs. Notwithstanding that Mr. Bidsal selected the attorney who drew the Operating Agreement (Mr. LeGrand), and that Mr. Bidsal had a key role in determining what became the "signed-off" Section 4 contractual provision which has been at the "core" of the parties' dispute, and notwithstanding the parties' specific contractual Section 4.2 "specific intent" and all the other reasons set out above (as in Par. 20(A) through (H), above), Mr. Bidsal's resistance to complying with his obligations included his conducting a "no holds barred" litigation over the "core" dispute over Section 4 contractual interpretation were the main drivers of the high costs of this litigation. "Parties who litigate with no hold barred in cases such as this, in which the prevailing party is entitled to a fee award, assume the risk they will have to reimburse the excessive expenses they force upon their adversaries."[11] --- requiring an arbitration involving attorney-intensive discovery and review of earlier drafts of the Operating Agreement, deposition and hearing testimony of Mr. LeGrand, attorney time to oppose Mr. Bidsal's motion to stay the arbitration and then to develop and demonstrate to the Arbitrator by testimony (including cross-

[11] Stokus v. Marsh, 295 Cal.App3d 647, 653-654 (1990). Mr. Bidsal earlier on conceded that "although Nevada law controls, Nevada courts do consider California cases if they assist with the interpretation." January 8, 2018 Bidsal Opening Brief, at p. 7. Mr. Bidsal's objections to attorneys' fees cite California, as well as Nevada cases.

examination) and extensive briefing why Mr. Bidsal's position, exhibits (e.g., Exhibit 351) and contentions concerning his claimed right of appraisal, in lieu of a $5 million "FMV", did not have merit --- were the main drivers of the high costs of this litigation, also knowing of the Section 14.1 consequences, if and as he has lost his unavailing fight for an unavailable rights of appraisal. CLA was required to have two senior attorneys (i.e., Rodney Lewin, Esq. and Louis Garfinkel, Esq.) because --- while Mr. Lewin, was CLA's lead counsel --- he is not admitted in Nevada, whose law governed the "core" Section 4.2 provision, as well as the Section 14.1 "prevailing party" attorneys' fees and costs provision --- and Mr. Garfinkel is admitted in Nevada and, further attended the deposition of Mr. LeGrand, which was taken in Nevada. It is also material that there was a symmetry in representation between the teams representing the parties. Mr. Bidsal was represented in this arbitration by three attorneys (Messrs. Shapiro and Herbert (NV) and Mr. Goodkin (CA), two of whom appeared for each deposition.

The applicability of Nevada substantive law and the provision for a Nevada venue for the Merits Hearing evidentiary sessions does not require or, without more, persuade the Arbitrator that Las Vegas, Nevada rates should be a "cap" or "prevailing market" hourly rate for purposes of determining the reasonable attorney's fees of a Section 14.1 prevailing party in this arbitration. Mr. Bidsal has not cited any case so requiring or that Las Vegas is the sole relevant legal market, regardless, for determining reasonable hourly rates for legal services.[12] Both sides had Southern California counsel, as well as Nevada counsel, as part of their trial teams and Messrs. Bidsal and Golshami are residents of Southern California. While the Arbitration Demand stated that the arbitration should be held in Las Vegas, it was at Mr. Bidsal's behest, later, that the Merits Hearing evidentiary sessions were held in Las Vegas, rather than in Southern California.

In the circumstances of this hotly contested case, and with the Arbitrator being familiar with prevailing hourly rates for legal services in both Las Vegas and Southern California, the $475/hr, with 42 years experience, and $395/hr for 60 years experience for Messrs Lewis and Agay and Mr. Garfinkel's rate of $375/hr for 30 years experience, were reasonable,[13] as were their billed hours of service, in the circumstances.[14] That is so notwithstanding the

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[12] But see Reazin v. Blue Cross & Shield, 899 F.2d 951, 983 (10th Cir. 1990) (affirmance of district court award attorneys' fees award, including based on out-of-state (Jones Day) hourly rates which exceeded those of local (Wichita) attorneys).

[13] The hourly rates of Messrs. Lewin and Agay are below comparable Southern California prevailing hourly rates for comparable legal services and relevant experience.

[14] That is so, particularly after a pre-application downward adjustment of approximately $28,000 in the amount of CLA's billed attorneys' fees.

considerable cross-traffic of briefing which, in the circumstances, appears to have been largely unavoidable, as well as, on balance, helpful to the Arbitrator, and thus, should not be the subject of penalty (including denial of prevailing party recovery).

However, under the authority of Nevada law --- in contrast to California law and, generally, law elsewhere --- CLA is not entitled to its attorneys' fees and costs incurred in connection with its Rule 18 cross-motion which --- along with Mr. Bidsal's cross-motion --- was denied. Barney v. Mt. Rose Heating & Air Conditioning, 192 P.2d 730, 726-737 (2008). As CLA's attorneys' fees in connection with the cross-motions in the amount of approximately $23,600 cannot meaningfully or cost-effectively be segregated by cross-motion, the Arbitrator has determined that one half of that amount --- i.e., $11,800 --- should not and will not include CLA's Rule 18 fees and costs incurred as part of CLA's awardable prevailing party fees and costs. In addition, Mr. Golshani's Las Vegas-related travel and accommodation expenses of $1,358.63 will also not be included as recoverable legal fees or costs.

Both sides have waived any objection which they had or may have had to a more detailed (e.g., factor-by-factor) and/or full-bodied analysis or discussion of the Bunzell factors in this Final Award or in the Interim Award. That is because neither side submitted any request for any such analysis or discussion, timely or at all, for inclusion of the same in this Final Award, after having been expressly afforded the opportunity to make such a request by February 28, 2019, 4:00 p.m. in the 7th subparagraph of Paragraph 23 of the Interim Award --- expressly subject to waiver of objection under JAMS Comprehensive Arbitration Rule 27(b) (Waiver) for failure to timely make such a request.[15]

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In addition, the relative amounts of total hours billed among CLA's counsel and a paralegal appear for this engagement to be in balance.

[15] The 7th subparagraph of Paragraph 23 of the Interim Award, at p. 19 thereof, states as follows:

"Upon receipt of written request by either side, by February 28, 2019, 4:00 p.m. (PT), the Arbitrator will consider preparing and including in the final award a more detailed explanation, including via Brunzell factor-by-factor analysis. If neither side timely requests a more full-bodied analysis and/or discussion of the Brunzell factors than the salient factors and considerations hereinabove set forth, any subsequent objection based on Brunzell should and will be deemed waived. See JAMS Comprehensive Arbitration Rule 27(b) (Waiver)."

V
RELIEF GRANTED AND DENIED

Based on careful consideration of the evidence adduced during and following the evidentiary hearings held to date, and the determinations hereinabove set forth, and applicable law, and good cause appearing, and subject to further modification as permitted by law and JAMS Comprehensive Arbitration Rules and Procedures, the Arbitrator hereby grants and denies relief in this Final Award, and it is adjudged and decreed, as follows:

1. Within ten (10) days of the issuance of this Final Award, Respondent Sharam Bidsal also known as Shawn Bidsal ("Mr. Bidsal") shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to Claimant CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.

2. Mr. Bidsal shall take nothing by his Counterclaim.

3. As the prevailing party on the merits, CLA shall recover from Mr. Bidsal the sum and amount of $298,256.00, as and for contractual attorneys' fees and costs reasonably incurred in connection with this arbitration.

4. Except as permitted under JAMS Comprehensive Arbitration Rule 24, neither side may file or serve any further written submissions, without the prior written permission of the Arbitrator. See JAMS Comprehensive Rule 29.

5. To the extent, if any, that there is any inconsistency and/or material variance between anything in this Final Award and the Interim Award, Merits Order No. 1 and/or any other prior order or ruling of the Arbitrator, this Final Award shall govern and prevail in each and every such instance.

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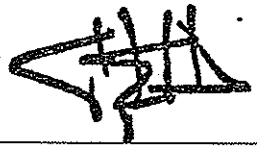
6. This Final Award resolves all claims, affirmative defenses, requests for relief (including requests for reconsideration) and all principal issues and contentions between the parties to this arbitration.

Except as expressly granted in this Final Award, all claims and requests for relief, as between the parties to this arbitration, are hereby denied.



Dated: April 5, 2019

STEPHEN E. HABERFELD
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: CLA Properties, LLC vs. Bidsal, Shawn
Reference No. 1260004569

I, Anne Lieu, not a party to the within action, hereby declare that on April 05, 2019, I served the attached Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

Rodney T. Lewin Esq.
L/O Rodney T. Lewin
8665 Wilshire Blvd.
Suite 210
Beverly Hills, CA 90211
Phone: 310-659-6771
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Parties Represented:
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Louis E. Garfinkel Esq.
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Parties Represented:
Shawn Bidsal

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Parties Represented:
Shawn Bidsal

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on April 05, 2019.

Anne Lieu
alieu@jamsadr.com

EXHIBIT "2"

EXHIBIT "2"

OPERATING AGREEMENT

Of

Green Valley Commerce, LLC
A Nevada limited liability company

This Operating Agreement (the "Agreement") is by and among Green Valley Commerce, LLC, a Nevada Limited Liability Company (sometimes hereinafter referred to as the "Company" or the "Limited Liability Company") and the undersigned Member and Manager of the Company. This Agreement is made to be effective as of June 15, 2011 ("Effective Date") by the undersigned parties.

WHEREAS, on about May 26, 2011, Shawn Bidsal formed the Company as a Nevada limited liability company by filing its Articles of Organization (the "Articles of Organization") pursuant to the Nevada Limited Liability Company Act, as Filing entity #E0308602011-0; and

NOW, THEREFORE, in consideration of the premises, the provisions and the respective agreements hereinafter set forth and for other good and valuable consideration, the parties hereto do hereby agree to the following terms and conditions of this Agreement for the administration and regulation of the affairs of this Limited Liability Company.

Article I.
DEFINITIONS

Section 01 Defined Terms

Advisory Committee or Committees shall be deemed to mean the Advisory Committee or Committees established by the Management pursuant to Section 13 of Article III of this Agreement.

Agreement shall be deemed to mean this Operating Agreement of this herein Limited Liability Company as may be amended.

Business of the Company shall mean acquisition of secured debt, conversion of such debt into fee simple title by foreclosure, purchase or otherwise, and operation and management of real estate.

Business Day shall be deemed to mean any day excluding a Saturday, a Sunday and any other day on which banks are required or authorized to close in the State of Formation.

Limited Liability Company shall be deemed to mean Green Valley Commerce, LLC a Nevada Limited Liability Company organized pursuant of the laws of the State of Formation.

Management and Manager(s) shall be deemed to have the meanings set forth in Article, IV of this Agreement.

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Member shall mean a person who has a membership interest in the Limited Liability Company.

Membership Interest shall mean, with respect to a Member the percentage of ownership interest in the Company of such Member (may also be referred to as **Interest**). Each Member's percentage of Membership Interest in the Company shall be as set forth in Exhibit B.

Person means any natural person, sole proprietorship, corporation, general partnership, limited partnership, Limited Liability Company, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

State of Formation shall mean the State of Nevada.

Article II.
OFFICES AND RECORDS

Section 01 Registered Office and Registered Agent.

The Limited Liability Company shall have and maintain a registered office in the State of Formation and a resident agent for service of process, who may be a natural person of said state whose business office is identical with the registered office, or a domestic corporation, or a corporation authorized to transact business within said State which has a business office identical with the registered office, or itself which has a business office identical with the registered office and is permitted by said state to act as a registered agent/office within said state.

The resident agent shall be appointed by the Member Manager.

The location of the registered office shall be determined by the Management.

The current name of the resident agent and location of the registered office shall be kept on file in the appropriate office within the State of Formation pursuant to applicable provisions of law.

Section 02 Limited Liability Company Offices.

The Limited Liability Company may have such offices, anywhere within and without the State of Formation, the Management from time to time may appoint, or the business of the Limited Liability Company may require. The "principal place of business" or "principal business" or "executive" office or offices of the Limited Liability Company may be fixed and so designated from time to time by the Management.

Section 03 Records.

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The Limited Liability Company shall continuously maintain at its registered office, or at such other place as may by authorized pursuant to applicable provisions of law of the State of Formation the following records:

(a) A current list of the full name and last known business address of each Member and Managers separately identifying the Members in alphabetical order;

(b) A copy of the filed Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any document has been executed;

(c) Copies of the Limited Liability Company's federal income tax returns and reports, if any, for the three (3) most recent years;

(d) Copies of any then effective written operating agreement and of any financial statements of the Limited Liability Company for the three (3) most recent years;

(e) Unless contained in the Articles of Organization, a writing setting out:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute;

(ii) The items as which or events on the happening of which any additional contributions agreed to be made by each Member are to be made;

(iii) Any right of a Member to receive, or of a Manager to make, distributions to a Member which include a return of all or any part of the Member's contribution; and

(iv) Any events upon the happening of which the Limited Liability Company is to be dissolved and its affairs wound up.

(f) The Limited Liability Company shall also keep from time to time such other or additional records, statements, lists, and information as may be required by law.

(g) If any of the above said records under Section 3 are not kept within the State of Formation, they shall be at all times in such condition as to permit them to be delivered to any authorized person within three (3) days.

Section 04 Inspection of Records.

Records kept pursuant to this Article are subject to inspection and copying at the request, and at the expense, of any Member, in person or by attorney or other agent. Each Member shall have the right during the usual hours of business to inspect for any proper purpose. A proper purpose shall mean a purpose reasonably related to such person's interest as a Member. In every

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instance where an attorney or other agent shall be the person who seeks the right of inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the Member.

Article III.
MEMBERS' MEETINGS AND DEADLOCK

Section 01 Place of Meetings.

All meetings of the Members shall be held at the principal business office of the Limited Liability Company the State of Formation except such meetings as shall be held elsewhere by the express determination of the Management; in which case, such meetings may be held, upon notice thereof as hereinafter provided, at such other place or places, within or without the State of Formation, as said Management shall have determined, and shall be stated in such notice. Unless specifically prohibited by law, any meeting may be held at any place and time, and for any purpose, if consented to in writing by all of the Members entitled to vote thereat.

Section 02 Annual Meetings.

An Annual Meeting of Members shall be held on the first business day of July of each year, if not a legal holiday, and if a legal holiday, then the Annual Meeting of Members shall be held at the same time and place on the next day is a full Business Day.

Section 03 Special Meetings.

Special meetings of the Members may be held for any purpose or purposes. They may be called by the Managers or by Members holding not less than fifty-one percent of the voting power of the Limited Liability Company or such other maximum number as may be, required by the applicable law of the State of Formation. Written notice shall be given to all Members.

Section 04 Action in Lieu of Meeting.

Any action required to be taken at any Annual or Special Meeting of the Members or any other action which may be taken at any Annual or Special meeting of the Members may be taken without a meeting if consents in writing setting forth the action so taken shall be signed by the requisite votes of the Members entitled to vote with respect to the subject matter thereof.

Section 05 Notice.

Written notice of each meeting of the Members, whether Annual or Special, stating the place, day and hour of the meeting, and, in case of a Special meeting, the purpose or purposes thereof, shall be given or given to each Member entitled to vote thereat, not less than ten (10) nor more than sixty (60) days prior to the meeting unless, as to a particular matter, other or further notice is required by law, in which case such other or further notice shall be given.

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Notice upon the Member may be delivered or given either personally or by express or first class mail, Or by telegram or other electronic transmission, with all charges prepaid, addressed to each Member at the address of such Member appearing on the books of the Limited Liability Company or more recently given by the Member to the Limited Liability Company for the purpose of notice.

If no address for a Member appears on the Limited Liability Company's books, notice shall be deemed to have been properly given to such Member if sent by any of the methods authorized here in to the Limited Liability Company 's principal executive office to the attention of such Member, or if published, at least once in a newspaper of general circulation in the county of the principal executive office and the county of the Registered office in the State of Formation of the Limited Liability Company.

If notice addressed to a Member at the address of such Member appearing on the books of the Limited Liability Company is returned to the Limited Liability Company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the Member at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the Member upon written demand of the Member at the principal executive office of the Limited Liability Company for a period of one (1) year from the date of the giving of such notice. It shall be the duty and of each member to provide the manager and/or the Limited Liability Company with an official mailing address.

Notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by telegram or other means of electronic transmission.

An affidavit of the mailing or other means of giving any notice of any Member meeting shall be executed by the Management and shall be filed and maintained in the Minute Book of the Limited Liability Company.

Section 06 Waiver of Notice.

Whenever any notice is required to be given under the provisions of this Agreement, or the Articles of Organization of the Limited Liability Company or any law, a waiver thereof in writing signed by the Member or Members entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent to the giving of such notice.

To the extent provided by law, attendance at any meeting shall constitute a waiver of notice of such meeting except when the Member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened, and such Member so states such purpose at the opening of the meeting.

Section 07 Presiding Officials.

Every meeting of the Limited Liability Company for whatever reason, shall be convened by the Managers or Member who called the meeting by notice as above provided; provided, however,

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it shall be presided over by the Management; and provided, further; the Members at any meeting, by a majority vote of Members represented thereat, and notwithstanding anything to the contrary elsewhere in this Agreement, may select any persons of their choosing to act as the Chairman and Secretary of such meeting or any session thereof.

Section 08. Business Which May Be Transacted at Annual Meetings.

At each Annual Meeting of the Members, the Members may elect, with a vote representing ninety percent (90%) in Interest of the Members, a Manager or Managers to administer and regulate the affairs of the Limited Liability Company. The Manager(s) shall hold such office until the next Annual Meeting of Members or until the Manager resigns or is removed by the Members pursuant to the terms of this Agreement, whichever event first occurs. The Members may transact such other business as may have been specified in the notice of the meeting as one of the purposes thereof.

Section 09 Business Which May Be Transacted at Special Meetings.

Business transacted at all special meetings shall be confined to the purposes stated in the notice of such meetings.

Section 10 Quorum.

At all meetings of the Members, a majority of the Members present, in person or by proxy, shall constitute a quorum for the transaction of business, unless a greater number as to any particular matter is required by law, the Articles of Organization or this Agreement, and the act of a majority of the Members present at any meeting at which there is a quorum, except as may be otherwise specifically provided by law, by the Articles of Organization, or by this Agreement, shall be the act of the Members.

Less than a quorum may adjourn a meeting successively until a quorum is present, and no notice of adjournment shall be required.

Section 11 Proxies.

At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person, or by proxy executed in writing by such Member or by his duly, authorized attorney-in-fact. No proxy shall be valid after three years from the date of its execution, unless otherwise provided in the proxy.

Section 12 Voting.

Every Member shall have one (1) vote(s) for each $1,000.00 of capital contributed to the Limited Liability Company which is registered in his/her name on the books of the Limited Liability Company, as the amount of such capital is adjusted from time to time to properly reflect any additional contributions to or withdrawals from capital by the Member.

12.1 The affirmative vote of %90 of the Member Interests shall be required to:

(A) adopt clerical or ministerial amendments to this Agreement and

(B) approve indemnification of any Manager, Member or officer of the Company as authorized by Article XI of this Agreement;

12.2. The affirmative vote of at least ninety percent of the Member Interests shall be required to:

(A) Alter the Preferred Allocations provided for in *Exhibit "B"*;

(B) Agree to continue the business of the Company after a Dissolution Event;

(C) Approve any loan to any Manager or any guarantee of a Manager's obligations; and

(D) Authorize or approve a fundamental change in the business of the Company.

(E) Approve a sale of substantially all of the assets of the Company.

(F) Approve a change in the number of Managers or replace a Manager or engage a new Manager.

Section 13 Meeting by Telephonic Conference or Similar Communications Equipment.

Unless otherwise restricted by the Articles of Organization, this Agreement of by law, the Members of the Limited Liability Company, or any Committee thereof established by the Management, may participate in a meeting of such Members or committee by means of telephonic conference or similar communications equipment whereby all persons participating in the meeting can hear and speak to each other, and participation in a meeting in such manner shall constitute presence in person at such meeting.

Section 14. Deadlock.

In the event that Members reach a deadlock that cannot be resolved with a respect to an issue that requires a ninety percent vote for approval, then either Member may compel arbitration of the disputed matter as set forth in Subsection 14.1

14.1 Dispute Resolution. In the event of any dispute or disagreement between the Members as to the interpretation of any provision of this Agreement (or the performance of obligations hereunder), the matter, upon written request of either Party, shall be referred to representatives of the Parties for decision. The representatives shall promptly meet in a good faith effort to resolve the dispute. If the representatives do not agree upon a decision within thirty (30) calendar days after reference of the matter to them, any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transactions arising hereunder shall be settled exclusively by arbitration in the City of Las Vegas, Nevada. Such arbitration shall be administered by JAMS in accordance with its then prevailing expedited rules, by one independent and impartial

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arbitrator selected in accordance with such rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 et seq. The fees and expenses of JAMS and the arbitrator shall be shared equally by the Members and advanced by them from time to time as required; provided that at the conclusion of the arbitration, the arbitrator shall award costs and expenses (including the costs of the arbitration previously advanced and the fees and expenses of attorneys, accountants and other experts) to the prevailing party. No pre-arbitration discovery shall be permitted, except that the arbitrator shall have the power in his sole discretion, on application by any party, to order pre-arbitration examination solely of those witnesses and documents that any other party intends to introduce in its case-in-chief at the arbitration hearing. The Members shall instruct the arbitrator to render his award within thirty (30) days following the conclusion of the arbitration hearing. The arbitrator shall not be empowered to award to any party any damages of the type not permitted to be recovered under this Agreement in connection with any dispute between or among the parties arising out of or relating in any way to this Agreement or the transactions arising hereunder, and each party hereby irrevocably waives any right to recover such damages. Notwithstanding anything to the contrary provided in this Section 14.1 and without prejudice to the above procedures, either Party may apply to any court of competent jurisdiction for temporary injunctive or other provisional judicial relief if such action is necessary to avoid irreparable damage or to preserve the status quo until such time as the arbitrator is selected and available to hear such party's request for temporary relief. The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction. The decision of the arbitrator shall be in writing and shall set forth findings of fact and conclusions of law to the extent applicable.

Article IV.
MANAGEMENT

Section 01 Management.

Unless prohibited by law and subject to the terms and conditions of this Agreement (including without limitation the terms of Article IX hereof), the administration and regulation of the affairs, business and assets of the Limited Liability Company shall be managed by Two (2) managers (alternatively, the "Managers" or "Management"). Managers must be Members and shall serve until resignation or removal. The initial Managers shall be Mr. Shawn Bidsal and Mr. Benjamin Golshani.

Section 02 Rights, Powers and Obligations of Management.

Subject to the terms and conditions of Article IX herein, Management shall have all the rights and powers as are conferred by law or are necessary, desirable or convenient to the discharge of the Management's duties under this Agreement.

Without limiting the generality of the rights and powers of the Management (but subject to Article IX hereof), the Management shall have the following rights and powers which the Management may exercise in its reasonable discretion at the cost, expense and risk of the Limited Liability Company:

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(a) To deal in leasing, development and contracting of services for improvement of the properties owned subject to both Managers executing written authorization of each expense or payment exceeding $ 20,000;

(b) To prosecute, defend and settle lawsuits and claims and to handle matters with governmental agencies;

(c) To open, maintain and close bank accounts and banking services for the Limited Liability Company.

(d) To incur and pay all legal, accounting, independent financial consulting, litigation and other fees and expenses as the Management may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred.

(e) To execute and deliver any contracts, agreements, instruments or documents necessary, advisable or appropriate to evidence any of the transactions specified above or contemplated hereby and on behalf of the Limited Liability Company to exercise Limited Liability Company rights and perform Limited Liability Company obligations under any such agreements, contracts, instruments or documents;

(f) To exercise for and on behalf of the Limited Liability Company all the General Powers granted by law to the Limited Liability Company;

(g) To take such other action as the Management deems necessary and appropriate to carry out the purposes of the Limited Liability Company or this Agreement; and

(h) Manager shall not pledge, mortgage, sell or transfer any assets of the Limited Liability Company without the affirmative vote of at least ninety percent in Interest of the Members.

Section 03 Removal.

Subject to Article IX hereof: The Managers may be removed or discharged by the Members whenever in their judgment the best interests of the Limited Liability Company would be served thereby upon the affirmative vote of ninety percent in Interest of the Members.

Article V.
MEMBERSHIP INTEREST

Section 01 Contribution to Capital.

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The Member contributions to the capital of the Limited Liability Company may be paid for, wholly or partly, by cash, by personal property, or by real property, or services rendered. By unanimous consent of the Members, other forms of contributions to capital of a Limited Liability company authorized by law may he authorized or approved. Upon receipt of the total amount of the contribution to capital, the contribution shall be declared and taken to be full paid and not liable to further call, nor shall the holder thereof be liable for any further payments on account of that contribution. Members may be subject to additional contributions to capital as determined by the unanimous approval of Members.

Section 02 Transfer or Assignment of Membership Interest.

A Member's interest in the Limited Liability Company is personal property. Except as otherwise provided in this Agreement, a Member's interest may be transferred or assigned. If the other (non-transferring) Members of the Limited Liability Company other than the Member proposing to dispose of his/her interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the Member's interest has no right to participate in the management of the business and affairs of the Limited Liability Company or to become a member. The transferee is only entitled to receive the share of profits or other compensation by way of income, and the return of contributions, to which that Member would otherwise be entitled.

A Substituted Member is a person admitted to all the rights of a Member who has died or has assigned his/her interest in the Limited Liability Company with the approval of all the Members of the Limited Liability Company by the affirmative vote of at least ninety percent in Interest of the members. The Substituted Member shall have all the rights and powers and is subject to all the restrictions and liabilities of his/her assignor.

Section 3. Right of First Refusal for Sales of Interests by Members. Payment of Purchase Price.

The payment of the purchase price shall be in cash or, if non-cash consideration is used, it shall be subject to this Article V, Section 3 and Section 4..

Section 4. Purchase or Sell Right among Members.

In the event that a Member is willing to purchase the Remaining Member's Interest in the Company then the procedures and terms of Section 4.2 shall apply.

Section 4.1 Definitions

Offering Member means the member who offers to purchase the Membership Interest(s) of the Remaining Member(s). "Remaining Members" means the Members who received an offer (from Offering Member) to sell their shares.
"COP" means "cost of purchase" as it specified in the escrow closing statement at the time of purchase of each property owned by the Company.
"Seller" means the Member that accepts the offer to sell his or its Membership Interest.
"FMV" means "fair market value" obtained as specified in section 4.2

Section 4.2 Purchase or Sell Procedure.

Any Member ("Offering Member") may give notice to the Remaining Member(s) that he or it is ready, willing and able to purchase the Remaining Members' Interests for a price the Offering

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Member thinks is the fair market value. The terms to be all cash and close escrow within 30 days of the acceptance.

If the offered price is not acceptable to the Remaining Member(s), within 30 days of receiving the offer, the Remaining Members (or any of them) can request to establish FMV based on the following procedure. The Remaining Member(s) must provide the Offering Member the complete information of 2 MIA appraisers. The Offering Member must pick one of the appraisers to appraise the property and furnish a copy to all Members. The Offering Member also must provide the Remaining Members with the complete information of 2 MIA approved appraisers. The Remaining Members must pick one of the appraisers to appraise the property and furnish a copy to all Members. The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV).

The Offering Member has the option to offer to purchase the Remaining Member's share at FMV as determined by Section 4.2,, based on the following formula.

(FMV – COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.

The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either

(i) Accepting the Offering Member's purchase offer; or,
(ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula.

(FMV – COP) x0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities.

The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) and according to the procedure set forth in Section 4.. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s).

Section 4.3 Failure To Respond Constitutes Acceptance.

Failure by all or any of the Remaining Members to respond to the Offering Member's notice within the thirty (30 day) period shall be deemed to constitute an acceptance of the Offering Member.

Section 5. Return of Contributions to Capital.

Return to a Member of his/her contribution to capital shall be as determined and permitted by law and this Agreement.

Section 6. Addition of New Members.

A new Member may be admitted into the Company only upon consent of at least ninety percent in Interest of the Members. The amount of Capital Contribution which must be made by a new Member shall be determined by the vote of all existing Members.

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A new Member shall not be deemed admitted into the Company until the Capital Contribution required of such person has been made and such person has become a party to this agreement.

DISTRIBUTION OF PROFITS

Section 03 Qualifications and Conditions.

The profits of the Limited Liability Company shall be distributed to the Members, from time to time, as permitted under law and as determined by the Manager, provided however, that all distributions shall in accordance with Exhibit B, attached hereto and incorporated by reference herein.

Section 04 Record Date.

The Record Date for determining Members entitled to receive payment of any distribution of profits shall be the day in which the Manager adopts the resolution for payment of a distribution of profits. Only Members of record on the date so fixed are entitled to receive the distribution notwithstanding any transfer or assignment of Member's interests or the return of contribution to capital to the Member after the Record Date fixed as aforesaid, except as otherwise provided by law.

Section 05 Participation in Distribution of Profit.

Each Member's participation in the distribution shall be in accordance with Exhibit B, subject to the Tax Provisions set forth in Exhibit A.

Section 06 Limitation on the Amount of Any Distribution of Profit.

In no event shall any distribution of profit result in the assets of the Limited Liability Company being less than all the liabilities of the Limited Liability Company, on the Record Date, excluding liabilities to Members on account of their contributions to capital or be in excess of that permitted by law.

Section 07 Date of Payment of Distribution of Profit.

Unless another time is specified by the applicable law, the payment of distributions of profit shall be within thirty (30) days of after the Record Date.

Article VI.
ISSUANCE OF MEMBERSHIP INTEREST CERTIFICATES

Section 01 Issuance of Certificate of Interest.

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The interest of each Member in the Company shall be represented by a Certificate of Interest (also referred to as the Certificate of Membership Interest or the Certificate). Upon the execution of this Agreement and the payment of a Capital Contribution by the Member, the Management shall cause the Company to issue one or more Certificates in the name of the Member certifying that he/she/it is the record holder of the Membership Interest set forth therein.

Section 02 Transfer of Certificate of Interest.

A Membership Interest which is transferred in accordance with the terms of Section 2 of Article V of this Agreement shall be transferable on the books of the Company by the record holder thereof in person or by such record holder's duly authorized attorney, but, except as provided in Section 3 of this Article with respect to lost, stolen or destroyed certificates, no transfer of a Membership Interest shall be entered until the previously issued Certificate representing such Interest shall have been surrendered to the Company and cancelled and a replacement Certificate issued to the assignee of such Interest in accordance with such procedures as the Management may establish. The management shall issue to the transferring Member a new Certificate representing the Membership Interest not being transferred by the Member, in the event such Member only transferred some, but not all, of the Interest represented by the original Certificate. Except as otherwise required by law, the Company shall be entitled to treat the record holder of a Membership Interest Certificate on its books as the owner thereof for all purposes regardless of any notice or knowledge to the contrary.

Section 03 Lost, Stolen or Destroyed Certificates.

The Company shall issue a new Membership Interest Certificate in place of any Membership Interest Certificate previously issued if the record holder of the Certificate:

(a) makes proof by affidavit, in form and substance satisfactory to the Management, that a previously issued Certificate has been lost, destroyed or stolen;

(b) requests the issuance of a new Certificate before the Company has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(c) Satisfies any other reasonable requirements imposed by the Management.

If a Member fails to notify the Company within a reasonable time after it has notice of the loss, destruction or theft of a Membership Interest Certificate, and a transfer of the Interest represented by the Certificate is registered before receiving such notification, the Company shall have no liability with respect to any claim against the Company for such transfer or for a new Certificate.

Article VII.
AMENDMENTS

Section 01 Amendment of Articles of Organization.

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Notwithstanding any provision to the contrary in the Articles of Organization or this Agreement, but subject to Article IX hereof, in no event shall the Articles of Organization be amended without the vote of Members representing at least ninety percent (90%) of the Members Interests.

Section 02 Amendment, Etc. of Operating Agreement.

This Agreement may be adopted, altered, amended or repealed and a new Operating Agreement may be adopted by at least ninety percent in Interest of the Members, subject to Article IX.

Article VIII.
COVENANTS WITH RESPECT TO, INDEBTEDNESS, OPERATIONS, AND FUNDAMENTAL CHANGES

The provisions of this Article IX and its Sections and Subsections shall control and supercede any contrary or conflicting provisions contained in other Articles in this Agreement or in the Company's Articles of Organization or any other organizational document of the Company.

Section 01 Title to Company Property.

All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each member's interest in the Company shall be personal property for all purposes for that member.

Section 02 Effect of Bankruptcy, Death or Incompetency of a Member.

The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a Member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Company interest shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent member.

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Article X.
MISCELLANEOUS

a. Fiscal Year.

The Members shall have the paramount power to fix, and from time to time, to change, the Fiscal Year of the Limited Liability Company. In the absence of action by the Members, the fiscal year of the Limited Liability Company shall be on a calendar year basis and end each year on December 31 until such time, if any, as the Fiscal Year shall be changed by the Members, and approved by Internal Revenue service and the State of Formation.

b. Financial Statements; Statements of Account.

Within ninety (90) business days after the end of each Fiscal Year, the Manager shall send to each Member who was a Member in the Limited Liability Company at any time during the Fiscal Year then ended an unaudited statement of assets, liabilities and Contributions To Capital as of the end of such Fiscal Year and related unaudited statements of income or loss and changes in assets, liabilities and Contributions to Capital. Within forty, five (45) days after each fiscal quarter of the Limited Liability Company, the Manager shall mail or otherwise deliver to each Member an unaudited report providing narrative and summary financial information with respect to the Limited Liability Company. Annually, the Manager shall cause appropriate federal and applicable state tax returns to be prepared and filed. The Manager shall mail or otherwise deliver to each Member who was a Member in the Limited Liability Company at any time during the Fiscal Year a copy of the tax return, including all schedules thereto. The Manager may extend such time period in its sole discretion if additional time is necessary to furnish complete and accurate information pursuant to this Section. Any Member or Manager shall the right to inspect all of the books and records of the Company, including tax filings, property management reports, bank statements, cancelled checks, invoices, purchase orders, check ledgers, savings accounts, investment accounts, and checkbooks, whether electronic or paper, provided such Member complies with Article II, Section 4.

c. Events Requiring Dissolution.

The following events shall require dissolution winding up the affairs of the Limited Liability Company:

i. When the period fixed for the duration of the Limited Liability Company expires as specified in the Articles of Organization.

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d. Choice of Law.

IN ALL RESPECTS THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, PERFORMANCE AND THE RIGHTS AND INTERESTS OF THE PARTIES UNDER THIS AGREEMENT WITHOUT REGARD TO THE PRINCIPLES GOVERNING CONFLICTS OF LAWS, UNLESS OTHERWISE PROVIDED BY WRITTEN AGREEMENT.

e. Severability.

If any of the provisions of this Agreement shall contravene or be held invalid or unenforceable, the affected provision or provisions of this Agreement shall be construed or restricted in its or their application only to the extent necessary to permit the rights, interest, duties and obligations of the parties hereto to be enforced according to the purpose and intent of this Agreement and in conformance with the applicable law or laws.

f. Successors and Assigns.

Except as otherwise provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representative, heirs, administrators, executors and assigns.

g. Non-waiver.

No provision of this Agreement shall be deemed to have been waived unless such waiver is contained in a written notice given to the party claiming such waiver has occurred, provided that no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given.

h. Captions.

Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

i. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. It shall not be necessary for all Members to execute the same counterpart hereof.

j. Definition of Words.

Wherever in this agreement the term he/she is used, it shall be construed to mean also it's as pertains to a corporation member.

k. Membership.

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A corporation, partnership, limited liability company, limited liability partnership or individual may be a Member of this Limited Liability Company.

l. Tax Provisions.

The provisions of Exhibit A, attached hereto are incorporated by reference as if fully rewritten herein.

ARTICLE XI
INDEMNIFICATION AND INSURANCE

Section 1. Indemnification: Proceeding Other than by Company. The Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Company, by reason of the fact that he or she is or was a Manager, Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, shareholder, director, officer, partner, trustee, employee or agent of any other Person, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Indemnification: Proceeding by Company. The Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he or she is or was a Manager, Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, shareholder, director, officer, partner, trustee, employee or agent of any other Person, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals there from, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 3: Mandatory Indemnification. To the extent that a Manager, Member, officer, employee or agent of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Article XI, Sections 1 and 2, or in defense of any claim, issue or matter therein, he or she must be indemnified by the Company against expenses, including attorneys' fees, actually and reasonably incurred by him or her in connection with the defense.

Section 4. Authorization of Indemnification. Any indemnification under Article XI, Sections 1 and 2, unless ordered by a court or advanced pursuant to Section 5, may be made by the Company only as authorized in the specific case upon a determination that indemnification of the Manager, Member, officer, employee or agent is proper in the circumstances. The determination must be made by a majority of the Members if the person seeking indemnity is not a majority owner of the Member Interests or by independent legal counsel selected by the Manager in a written opinion.

Section 5. Mandatory Advancement of Expenses. The expenses of Managers, Members and officers incurred in defending a civil or criminal action, suit or proceeding must be paid by the Company as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the Manager, Member or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the Company. The provisions of this Section 5 do not affect any rights to advancement of expenses to which personnel of the Company other than Managers, Members or officers may be entitled under any contract or otherwise.

Section 6. Effect and Continuation. The indemnification and advancement of expenses authorized in or ordered by a court pursuant to Article XI, Sections 1 – 5, inclusive:

(A) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the Articles of Organization or any limited liability company agreement, vote of Members or disinterested Managers, if any, or otherwise, for either an action in his or her official capacity or an action in another capacity while holding his or her office, except that indemnification, unless ordered by a court pursuant to Article XI, Section 2 or for the advancement of expenses made pursuant to Section Article XI, may not be made to or on behalf of any Member, Manager or officer if a final adjudication establishes that his or her acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.

(B) Continues for a person who has ceased to be a Member, Manager, officer, employee or agent and inures to the benefit of his or her heirs, executors and administrators.

(C) Notice of Indemnification and Advancement. Any indemnification of, or advancement of expenses to, a Manager, Member, officer, employee or agent of the Company in accordance with this Article XI, if arising out of a proceeding by or on behalf of the Company, shall be reported in writing to the Members with or before the notice of the next Members' meeting.

(D) Repeal or Modification. Any repeal or modification of this Article XI by the Members of the Company shall not adversely affect any right of a Manager, Member, officer, employee or agent of the Company existing hereunder at the time of such repeal or modification.

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ARTICLE XII
INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION

Each Member, by his or its execution of this Agreement, hereby represents and warrants to, and agrees with, the Managers, the other Members and the Company as follows:

Section 1. Pre-existing Relationship or Experience. (i) Such Member has a preexisting personal or business relationship with the Company or one or more of its officers or control persons or (ii) by reason of his or its business or financial experience, or by reason of the business or financial experience of his or its financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, such Member is capable of evaluating the risks and merits of an investment in the Company and of protecting his or its own interests in connection with this investment.

Section 2. No Advertising. Such Member has not seen, received, been presented with or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the offer or sale of Interests in the Company.

Section 3. Investment Intent. Such Member is acquiring the Interest for investment purposes for his or its own account only and not with a view to or for sale in connection with any distribution of all or any part of the Interest.

Section 4. Economic Risk. Such Member is financially able to bear the economic risk of his or its investment in the Company, including the total loss thereof.

Section 5. No Registration of Units Such Member acknowledges that the Interests have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or qualified under any state securities law or under the laws of any other jurisdiction, in reliance, in part, on such Member's representations, warranties and agreements herein.

Section 6. No Obligation to Register. Such Member represents, warrants and agrees that the Company and the Managers are under no obligation to register or qualify the Interests under the Securities Act or under any state securities law or under the laws of any other jurisdiction, or to assist such Member in complying with any exemption from registration and qualification.

Section 7. No Disposition in Violation of Law. Without limiting the representations set forth above, and without limiting Article 12 of this Agreement, such Member will not make any disposition of all or any part of the Interests which will result in the violation by such Member or by the Company of the Securities Act or any other applicable securities laws. Without limiting the foregoing, each Member agrees not to make any disposition of all or any part of the Interests unless and until:(A) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or(B) such Member has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and if reasonably requested by the

Managers, such Member has furnished the Company with a written opinion of legal counsel, reasonably satisfactory to the Company, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law or under the laws of any other jurisdiction.

Section 8. Financial Estimate and Projections. That it understands that all projections and financial or other materials which it may have been furnished are not based on historical operating results, because no reliable results exist, and are based only upon estimates and assumptions which are subject to future conditions and events which are unpredictable and which may not be relied upon in making an investment decision.

ARTICLE XIII

Preparation of Agreement.

Section 1. This Agreement has been prepared by David G. LeGrand, Esq. (the "Law Firm"), as legal counsel to the Company, and:

(A) The Members have been advised by the Law Firm that a conflict of interest would exist among the Members and the Company as the Law Firm is representing the Company and not any individual members, and

(B) The Members have been advised by the Law Firm to seek the advice of independent counsel; and

(C) The Members have been represented by independent counsel or have had the opportunity to seek such representation; and

(D) The Law Firm has not given any advice or made any representations to the Members with respect to any consequences of this Agreement; and

(E) The Members have been advised that the terms and provisions of this Agreement may have tax consequences and the Members have been advised by the Law Firm to seek independent counsel with respect thereto; and

(F) The Members have been represented by independent counsel or have had the opportunity to seek such representation with respect to the tax and other consequences of this Agreement.

IN WITNESS WHEREOF, the undersigned, being the Members of the above-named Limited Liability Company, have hereunto executed this Agreement as of the Effective Date first set forth above.

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Member:

Shawn Bidsal, Member

CLA Properties, LLC

by

Benjamin Golshani, Manager

Manager/Management:

Shawn Bidsal, Manager

Benjamin Golshani, Manager

TAX PROVISIONS

EXHIBIT A

1.1 Capital Accounts.

4.1.1 A single Capital Account shall be maintained for each Member (regardless of the class of Interests owned by such Member and regardless of the time or manner in which such Interests were acquired) in accordance with the capital accounting rules of Section 704(b) of the Code, and the regulations there under (including without limitation Section 1.704-1(b)(2)(iv) of the Income Tax Regulations), In general, under such rules, a Member's Capital Account shall be:

4.1.1.1 increased by (i) the amount of money contributed by the Member to the Company (including the amount of any Company liabilities that are assumed by such Member other than in connection with distribution of Company property), (ii) the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that under Section 752 of the Code the Company is considered to assume or take subject to), and (iii) allocations to the Member of Company income and gain (or item thereof), including income and gain exempt from tax; and

4.1.1.2 decreased by (i) the amount of money distributed to the Member by the Company (including the amount of such Member's individual liabilities that are assumed by the Company other than in connection with contribution of property to the Company), (ii) the fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that under Section 752 of the Code such Member is considered to assume or take subject to), (iii) allocations to the Member of expenditures of the Company not deductible in computing its taxable income and not properly chargeable to capital account, and (iv) allocations to the Member of Company loss and deduction (or item thereof).

4.1.2 Where Section 704(c) of the Code applies to Company property or where Company property is revalued pursuant to paragraph (b)(2)(iv)(t) of Section 1.704-1 of the Income Tax Regulations, each Member's Capital Account shall be adjusted in accordance with paragraph (b)(2)(iv)(g) of Section 1.704-1 of the Income Tax Regulations as to allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes with respect to such property.

4.1.3 When Company property is distributed in kind (whether in connection with liquidation and dissolution or otherwise), the Capital Accounts of the Members shall first be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property (that has not been

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reflected in the Capital Account previously) would be allocated among the Members if there were a taxable disposition of such property for the fair market value of such property (taking into account Section 7701(g) of the Code) on the date of distribution.

4.1.4 The Members shall direct the Company's accountants to make all necessary adjustments in each Member's Capital Account as required by the capital accounting rules of Section 704(b) of the Code and the regulations there under.

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ALLOCATION OF PROFITS AND LOSSES; TAX AND ACCOUNTING MATTERS

5.1 Allocations. Each Member's distributive share of income, gain, loss, deduction or credit (or items thereof) of the Company as shown on the annual federal income tax return prepared by the Company's accountants or as finally determined by the United States Internal Revenue Service or the courts, and as modified by the capital accounting rules of Section 704(b) of the Code and the Income Tax Regulations there under, as implemented by Section 8.5 hereof, as applicable, shall be determined as follows:

5.1.1 Allocations. Except as otherwise provided in this Section 1.1:

5.1.1.1 items of income, gain, loss, deduction or credit (or items thereof) shall be allocated among the members in proportion to their Percentage Interests as set forth in ***Exhibit "B"***, subject to the Preferred Allocation schedule contained in ***Exhibit "B"***, except that items of loss or deduction allocated to any Member pursuant to this Section 2.1 with respect to any taxable year shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have a deficit balance in his or its Capital Account at the end of such year, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of Section 1.704-1 of the Income Tax Regulations. Any such items of loss or deduction in excess of the limitation set forth in the preceding sentence shall be allocated as follows and in the following order of priority:

5.1.1.1.1 first, to those Members who would not be subject to such limitation, in proportion to their Percentage Interests, subject to the Preferred Allocation schedule contained in ***Exhibit "B"***; and

5.1.1.1.2 Second, any remaining amount to the Members in the manner required by the Code and Income Tax Regulations.

Subject to the provisions of subsections 2.1.2 – 2.1.11, inclusive, of this Agreement, the items specified in this Section 1.1 shall be allocated to the

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Members as necessary to eliminate any deficit Capital Account balances and thereafter to bring the relationship among the Members' positive Capital Account balances in accord with their pro rata interests.

5.1.2 Allocations With Respect to Property Solely for tax purposes, in determining each Member's allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to revalued property where the Company's property is revalued pursuant to paragraph (b)(2)(iv)(f) of Section 1.704-1 of the Income Tax Regulations, shall be allocated to the Members in the manner (as to revaluations, in the same manner as) provided in Section 704(c) of the Code. The allocation shall take into account, to the full extent required or permitted by the Code, the difference between the adjusted basis of the property to the Member contributing it (or, with respect to property which has been revalued, the adjusted basis of the property to the Company) and the fair market value of the property determined by the Members at the time of its contribution or revaluation, as the case may be.

5.1.3 Minimum Gain Chargeback. Notwithstanding anything to the contrary in this Section 2.1, if there is a net decrease in Company Minimum Gain or Company Nonrecourse Debt Minimum Gain (as such terms are defined in Sections 1.704-2(b) and 1.704-2(i)(2) of the Income Tax Regulations, but substituting the term "Company" for the term "Partnership" as the context requires) during a Company taxable year, then each Member shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) in the manner provided in Section 1.704-2 of the Income Tax Regulations. This provision is intended to be a "minimum gain chargeback" within the meaning of Sections 1.704-2(f) and 1.704-2(i)(4) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

5.1.4 Qualified Income Offset. Subject to the provisions of subsection 2.1.3, but otherwise notwithstanding anything to the contrary in this Section 2.1, if any Member's Capital Account has a deficit balance in excess of such Member's obligation to restore his or its Capital Account balance, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of Section 1.704-1 of the Income Tax Regulations, then sufficient amounts of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be allocated to such Member in an amount and manner sufficient to eliminate such deficit as quickly as possible. This provision is intended to be a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

5.1.5 Depreciation Recapture. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, gain recognized (or deemed recognized under the provisions hereof) upon the sale

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or other disposition of Company property, which is subject to depreciation recapture, shall be allocated to the Member who was entitled to deduct such depreciation.

5.1.6 Loans If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.

5.1.7 Tax Credits Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members under subsection 2.1.1 hereof, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.

5.1.8 Change of Pro Rata Interests. Except as provided in subsections 2.1.6 and 2.1.7 hereof or as otherwise required by law, if the proportionate interests of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in section 2.1.1 during each such portion of the taxable year in question.

5.1.9 Effect of Special Allocations on Subsequent Allocations. Any special allocation of income or gain pursuant to subsections 2.1.3 or 2.1.4 hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.1 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 2.1 if such special allocations of income or gain under subsection 2.1.3 or 2.1.4 hereof had not occurred.

5.1.10 Nonrecourse and Recourse Debt. Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.7042(b)(4) of the

Income Tax Regulations shall be allocated to the Members bearing the economic risk of loss with respect to such debt in accordance with Section 1704-2(i)(1) of the Income Tax Regulations. Items of deduction and loss attributable to recourse liabilities of the Company, within the meaning of Section 1.752-2 of the Income Tax Regulations, shall be allocated among the Members in accordance with the ratio in which the Members share the economic risk of loss for such liabilities.

5.1.11 State and Local Items. Items of income, gain, loss, deduction, credit and tax preference for state and local income tax purposes shall be allocated to and among the Members in a manner consistent with the allocation of such items for federal income tax purposes in accordance with the foregoing provisions of this Section 2.1.

5.2 **Accounting Matters.** The Managers or, if there be no Managers then in office, the Members shall cause to be maintained complete books and records accurately reflecting the accounts, business and transactions of the Company on a calendar-year basis and using such cash, accrual, or hybrid method of accounting as in the judgment of the Manager, Management Committee or the Members, as the case may be, is most appropriate; provided, however, that books and records with respect to the Company's Capital Accounts and allocations of income, gain, loss, deduction or credit (or item thereof) shall be kept under U.S. federal income tax accounting principles as applied to partnerships.

5.3 **Tax Status and Returns.**

5.3.1 Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.

5.3.2 The Manager(s) shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within one-hundred twenty (120) days after the end of each calendar year, the Manager(s) shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.

5.3.3 Unless otherwise provided by the Code or the Income Tax Regulations there under, the current Manager(s), or if no Manager(s) shall have been elected, the Member holding the largest Percentage Interest, or if the Percentage Interests be equal, any Member shall be deemed to be the "Tax Matters

Member." The Tax Matters Member shall be the "Tax Matters Partner" for U.S. federal income tax purposes.

EXHIBIT B

Member's	Percentage Interest	Member's Capital Contributions
Shawn Bidsal	50%	$ 1,215,000 (30% of capital)
CLA Properties, LLC	50%	$ 2,834,250 (70% of capital)

PREFERRED ALLOCATION AND DISTRIBUTION SCHEDULE
Cash Distributions from capital transactions shall be distributed per the following method between the members of the LLC. Upon any refinancing event, and upon the sale of Company asset, cash is distributed according to a "Step-down Allocation." Step-down means that, step-by-step, cash is allocated and distributed in the following descending order of priority, until no more cash remains to be allocated. The Step-down Allocation is:

First Step, payment of all current expenses and/or liabilities of the Company;

Second Step, to pay in full any outstanding loans (unless distribution is the result of a refinance) held with financial institutions or any company loans made from Manager(s) or Member(s).

Third Step, to pay each Member an amount sufficient to bring their capital accounts to zero, pro rata based upon capital contributions.

Final Step, After the Third Step above, any remaining net profits or excess cash from sale or refinance shall be distributed to the Members fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.

Losses shall be allocated according to Capital Accounts.

Cash Distributions of Profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC

It is the express intent of the parties that "Cash Distributions of Profits" refers to distributions generated from operations resulting in ordinary income in contrast to Cash Distributions arising from capital transactions or non-recurring events such as a sale of all or a substantial portion of the Company's assets or cash out financing.

BC
SB

DISTRICT COURT
CLARK COUNTY, NEVADA
****

In the Matter of the Petition of CLA Properties LLC	Case No.: A-19-795188-P Department 27

NOTICE OF HEARING

Please be advised that the Petition for Confirmation of Arbitration Award and Entry of Judgment in the above-entitled matter is set for hearing as follows:

Date: June 26, 2019

Time: 9:00 AM

Location: RJC Courtroom 03A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Diana Matson
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Diana Matson
Deputy Clerk of the Court

EXHIBIT 2

EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No. A-19-795188-P Dept. No. 31

RESPONDENT'S OPPOSITION TO CLA'S PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND COUNTERPETITION TO VACATE ARBITRATION AWARD

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, hereby opposes CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and submits his Counterpetition for the Arbitration Award to be Vacated.

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This Opposition and Counterpetition is made and based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument set for this matter.

Dated this 15th day of July, 2019

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case is about the attempted break-up of a limited liability company, Green Valley Commerce, LLC ("***Green Valley***"), by its members, under the buy-sell provisions of Green Valley's operating agreement (the "***OPAG***"). It is also about the unfair advantage taken by one of the LLC members, CLA Properties, LLC ("***CLAP***"), of the other member, Bidsal, through a twisted interpretation of the OPAG which was never contemplated by either member. The Arbitration Proceeding was brought to sort out the parties' differences in interpretation of the OPAG, yet the arbitrator committed plain error, blatantly recognized, but disregarded the law, misconstrued the undisputed facts, and exceeded his powers when rendering the Award in favor of CLAP. In other words, the Arbitrator's ruling ignores the evidence, makes up evidence that does not exist, and interprets the parties' agreement in a way that is expressly contradicted by the plain words of the agreement and the documents that can be used to interpret the agreement. Therefore, intervention by the Court has become necessary.

The OPAG, Section 14, paragraph 14.1 states that arbitration arising out of the contract shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 *et seq.* On or about April 9,

2019, Bidsal filed a motion to vacate an arbitration award in United States District Court, District of Nevada. On or about April 25, 2019 CLAP filed a motion to dismiss for lack of subject matter jurisdiction. On or about June 24, 2019 the United States District Court, District of Nevada, determined that there was no independent federal-question, in that, the Federal Arbitration Act does not create an independent federal question that would grant jurisdiction and there is no diversity jurisdiction. *See* a true and correct copy of the order granting motion to dismiss (the "***Federal Order***") attached hereto as ***Exhibit "A"*** and incorporated by this reference herein. *See* (App. Part 1: APP 001-003).

Well before the Federal Order was issued, CLAP filed the present action with this Court. Based upon the Federal Order, Bidsal now seeks the same relief from this Court that it originally sought from the Federal Court.

II.

STATEMENT OF FACTS

A. BIDSAL'S PAST INVESTMENT EXPERIENCE.

Since November 1996 (a period of over twenty (20) years), Bidsal has been investing in and managing real property on a full-time basis. *See* a true and correct copy of pertinent portions of the transcript from the Arbitration Proceeding (the "***Merits Hearing***") attached hereto as ***Exhibit "B"*** and incorporated by this reference herein at 346:15-20 (Appendix Part 1: APPENDIX0053[1]). As a result of Bidsal's business activities and extensive experience, he has developed a strong infrastructure to facilitate the purchase, management and sale of real property. *See* Exhibit "B" at 346:21 – 347:13 (App. Part 1: APP0053-0054).

B. BIDSAL'S AND GOLSHANI'S BUSINESS VENTURE.

CLAP's principal and owner, Benjamin Golshani ("***Golshani***"), is Bidsal's cousin with a background in the textile industry. *See* Exhibit "B" at 349:14-16 and 359:1-8 (App. Part. 1: APP0058, 0068). Recognizing the opportunities available in real estate (an area that Golshani did not have any experience), in 2009-10, Golshani approached Bidsal about investment

[1] For brevity sake, all future references to "APPENDIX" will be simply made to "APP".

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opportunities. *See* Exhibit "B" at 349:18-23 (App. Part 1: APP0056). Bidsal agreed to partner with Golshani.

Bidsal's infrastructure was already in place when Golshani first approached him, and, over a period of time, they formulated terms of a joint investment. *See* Exhibit "B" at 350:4-8 and 351:9-17 (App. Part 1: APP0059-0060). Ultimately, Golshani, through his entity CLAP, invested with Bidsal in Green Valley Commerce, LLC ("***Green Valley***") because of Bidsal's expertise, experience, knowledge, and infrastructure. *See* Exhibit "B" at 395:3-9 (App. Part 1: APP0094).

Golshani and Bidsal agreed that Golshani would put up more money than Bidsal, but that Bidsal would put in sweat equity in the form of the management of the property. *See* Exhibit "B" at 115:3-6 (App. Part 1: APP0014). Golshani was more than willing to invest 70% of the funds needed, but that the profit would be split 50/50. *See* Exhibit "B" at 51:6-12 & 216:9-13 (App. Part 1: APP00011 & 0029).

C. THE FORMATION OF GREEN VALLEY COMMERCE.

Bidsal located commercial real property at 3 Sunset Way, Henderson, Nevada 89014 (the "***Green Valley Commerce Center***"). *See* Exhibit "B" at 353:6-8 (App. Part 1: APP0062). The Green Valley Commerce Center was subject to a defaulted note, which was an exceptional value because there is greater risk with a note that is subject to potential defenses before it is foreclosed, and a great deal is involved in converting the note to fee simple title. *See* Exhibit "B" at 353:14-354:2 (App. Part 1: APP0062-0063).

On May 26, 2011, Bidsal formed Green Valley. *See* Exhibit "B" at 356:13 - 357:5 (App. Part 1: APP0065-0066). *See also* a true and correct copy of the Articles of Organization for Green Valley, attached hereto as ***Exhibit "C"*** and incorporated by this reference herein (App. Part 1: APP00101-102).

Ultimately, Bidsal and Golshani were successful in purchasing the note secured by a deed of trust against the Green Valley Commerce Center. *See* Exhibit "B" at 357:21-358:6 (App. Part 1: APP0066-0067). Bidsal was ultimately successful, in converting the note into a deed-in-lieu of foreclosure. *See* Exhibit "B" at 358:4-6 and 363:20-25 (App. Part 1: APP0067, 00671). On September 22, 2011, Green Valley obtained title to the Green Valley Commerce Center. *See* a

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true and correct copy of the Grant, Bargain, Sale Deed for the Green Valley Commerce Center, attached hereto as ***Exhibit "D"*** and incorporated by this reference herein (App. Part 1: APP0103-0107).

D. THE HISTORY, PROPOSAL AND DRAFTING OF GOLSHANI'S BUY-SELL PROVISIONS IN SECTION 4 OF THE OPERATING AGREEMENT.

The Operating Agreement of Green Valley was not agreed upon and signed until after the Green Valley Commerce Center was purchased by Green Valley.

1. The Initial Draft OPAG.

One of the commercial real estate brokers with whom Bidsal had developed a business relationship and who had assisted Bidsal in finding different opportunities, Jeff Chain ("***Chain***"), provided Bidsal and Golshani with a form operating agreement for Bidsal and Golshani to use with Green Valley. *See* Exhibit "B" at 360:11-18 (App. Part 1: APP0069). *See also* a true and correct copy of Chain's June 17, 2011 email with the form operating agreement, attached hereto as ***Exhibit "E"*** and incorporated by this reference herein (App. Part 1: APP0108-0133). Chain also introduced Bidsal and Golshani to a transaction attorney, David LeGrand ("***LeGrand***"), to assist them in drafting an operating agreement for Green Valley. *See* Exhibit "B" at 360:23-361:8 (App. Part 1: APP0069-0070).

LeGrand made changes to the draft operating agreement before providing it to CLAP and Bidsal; however, neither the original form operating agreement from Chain, nor LeGrand's revised version, contained any buy-sell language. *See* Exhibit "E" (App. Part 1: APP105-30). *See also* true and correct copies of LeGrand's June 17, 2011 and June 27, 2011 emails with attachments, attached hereto as ***Exhibits "F" and "G"*** respectfully and incorporated by this reference herein (App. Part 1: APP0134-0209).

2. LeGrand's Initial Operating Agreement Drafts that the Arbitrator Inexplicably Relied Upon for His Ruling, Were Undeniably Not Used in the Final Operating Agreement.

LeGrand's first couple of drafts of the operating agreement did not contain any language even remotely similar to the Section 4 that ultimately ended up in the OPAG. *See*

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Exhibits "F" and "G". Id. *See also* a true and correct copy of LeGrand's July 22, 2011 email, attached hereto as ***Exhibit "H"*** and incorporated by this reference herein (App. Part 2: APP0210-0211). The first buy-sell language appeared in LeGrand's July 22, 2011 draft in the form of right of first refusal ("***ROFR***") language, but was nothing like Section 4. *See* a true and correct copy of LeGrand's July 25, 2011 emails, attached hereto as ***Exhibit "I"*** and incorporated by this reference herein at DL137 & 148-150 (App. Part 2: APP0262-0292 at 0262, 0271-0273).

On August 18, 2011, LeGrand introduced new buy-sell language which LeGrand referred to as "Dutch Auction" language (the "***Dutch Auction language***")[2]. *See* a true and correct copy of LeGrand's August 18, 2011 email is attached hereto as ***Exhibit "J"*** and incorporated by this reference herein at DL211-212 (App. Part 2: APP0293-0351). This is the first time that true buy-sell language was proposed. LeGrand's Dutch Auction buy-sell language specifically provided that an appraisal would be obtained to set the price at which the membership interest would be sold. *See* Exhibit "J" at DL211. Id. at APP0306. LeGrand testified that this language did ***not*** end up in the final executed OPAG. *See* Exhibit "B" at 316:12-15 (App. Part 1: APP0048). Rather, the parties continued to negotiate the terms of the proposed operating agreement, and in LeGrand's September 16, 2011 draft of the operating agreement (the 5th iteration), the Dutch Auction buy-sell language had been removed, leaving only the ROFR language. *See* a true and correct copy of LeGrand's September 16, 2011 email, attached hereto as ***Exhibit "K"*** and incorporated by this reference herein (App. Part 2: APP0352-0380).

On September 19, 2011, LeGrand sent an email expressing his opinion that "[a] simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price **does *not* appear sensible to me**." *See* a true and correct copy of LeGrand's September 19, 2011 email, attached hereto as ***Exhibit "L"*** and incorporated by this reference herein at DL288 *(emphasis added)* (App. Part 2: APP0380). Consistent with the first buy-sell language that required an appraisal, LeGrand's email confirmed that the "Dutch Auction"

[2] LeGrand readily admitted that his use of the phrase "Dutch Auction" is different than how a "Dutch Auction" is currently defined. *See* Exhibit "B" at 315:13-15 (App. Part 1: APPENDIX0047). However, LeGrand repeatedly uses the phrase "Dutch Auction" to refer to his proposed buy-sell concept.

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concept was not sensible nor what the parties were looking for. Id. Attached to that email was a new draft of the operating agreement, which included some new buy-sell language, but which is not even close to what ultimately ended up in Section 4. *See* a true and correct copy of LeGrand's September 20, 2011 email, attached hereto as ***Exhibit "M"*** and incorporated by this reference herein at DL301 *(emphasis added)* (App. Part 2: APP0383-0414 at APP0394). LeGrand testified that Golshani and Bidsal wanted a buy-sell provision in the OPAG, but LeGrand refused to confirm that it was a "forced buy/sell" even after counsel for Golshani pressed him to do so. *See* Exhibit "B" at 273:8-13 (App. Part 1: APP0044). Rather, LeGrand stated that he was trying to draft a "vanilla style" buy-sell provision. *See* Exhibit "B" at 274:15-17 (App. Part 1: APP0045).

3. Golshani Drafted Buy-Sell Language For The OPAG.

Golshani was not happy with any of the language proposed by LeGrand, and as such, on September 22, 2011, Golshani emailed Bidsal some buy-sell language that Golshani himself came up with. *See* a true and correct copy of Golshani's September 22, 2011 email, attached hereto as ***Exhibit "N"*** and incorporated by this reference herein (App. Part 2: APP0415-0418). To be clear, this was language that Golshani drafted and was proposing to Bidsal. Id. Golshani called his initial draft of the proposed language a "ROUGH DRAFT", which, after some modifications, ultimately ended up in Section 4. Id.; *See also* a true and correct copy of the OPAG ultimately executed by the parties, attached hereto as ***Exhibit "O"*** and incorporated by this reference herein at pp. 10-11 (App. Part 2: APP0419-0447 at APP0429-0430). On October 26, 2011, Golshani emailed Bidsal a revised version of his earlier "ROUGH DRAFT", which Golshani identified as "ROUGH DRAFT 2". *See* a true and correct copy of Golshani's October 26, 2011 email, attached hereto as ***Exhibit "P"*** and incorporated by this reference herein (App. Part 2: APP0448-0451). Again, Golshani, not Bidsal, was the one who made the changes, and it is this language that was used in the final Operating Agreement. Id.

The changes between ROUGH DRAFT and ROUGH DRAFT 2 are important in helping understand the negotiations and intent of the parties. There is no dispute that Golshani drafted the ROUGH DRAFT, nor that he made all of the changes to ROUGH DRAFT 2. See Exhibits "N" and "P" (App. Part 2: APP0415-0418 & Part 2: APP0448-0451). One of the changes made by

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Golshani was intentionally changing the triggering event for a buy-sell transaction from an offer by one member "***to sell his or its Member's Interest*** in the Company to the other Members" to an offer by that member "***to purchase the Remaining Member's Interest*** in the Company." *See* Exhibit "N" and "P" (App. Part 2: APP0415-04168, 0448-0451). *See also* a true and correct copy of a demonstrative exhibit used at the Merits Hearing which explained the proper procedure for a company break-up, attached hereto as ***Exhibit "Q"*** and incorporated by this reference herein (App. Part 2: APP0452-453). *See also* Exhibit "B" at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part 1: APP0079-0082). It is also significant to note that there is no draft that includes both "sell" and "purchase" in the same sentence. Id.

A short time later, Golshani sent a fax to LeGrand containing his ROUGH DRAFT 2 buy-sell language. *See* a true and correct copy of LeGrand's November 10, 2011 email referencing Golshani's fax, attached hereto as ***Exhibit "R"*** an incorporated by this reference herein (App. Part 2: APP0454-455). *See also* Exhibit "B" at 318:7-9 (App. Part 1: APP0049). LeGrand then made a few minor changes to Golshani's ROUGH DRAFT 2, renamed it "DRAFT 2", and circulated the DRAFT 2 to Bidsal and Golshani. *See* Exhibit "O" and "P" (App. Part 2: APP0419-0451, 0446-0449). *See also* a true and correct copy of DRAFT 2, attached hereto as ***Exhibit "S"*** and incorporated by this reference herein (App. Part 3: APP0456-0458). *See also* Exhibit "B" at 318:10-14 and 318:23-319:5 (App. Part 1: APP0049-0047). However, the differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. *See* Exhibits "P" and "S" (App. Part 2: APP0448-0451, 0456-0458). *See also* a true and correct copy of a demonstrative exhibit from the Merits Hearing comparing the two drafts, attached hereto as ***Exhibit "T"*** and incorporated by this reference herein (App. Part 3: APP0262-0292). *See also* Exhibit "B" at 320:11-17 and 321:19-22 (App. Part 1: APP0051-0052). Rather, LeGrand simply took Golshani's language and inserted it almost untouched into the Operating Agreement. Id.

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4. Golshani Added an Appraisal Process to the Buy-Sell for Fairness Purposes.

During the course of their discussions, both Bidsal and Golshani wanted to have protections for both parties in equity and fairness. *See also* Exhibit "B" at 381:18-22 (App. Part 1: APP0083). Consequently, an appraisal process was added to the buy-sell provision. *See also* Exhibit "B" at 31:8-14 (App. Part 1: APP0010). Bidsal and Golshani discussed the what-ifs while the OPAG was being prepared and that the buy-sell procedure would begin when one member makes an offer to purchase. *See also* Exhibit "B" at 381:16-25 (App. Part 1: APP0083).

Bidsal explained the mechanics of what they discussed: the initial offer is made on the member's estimate of value. *See also* Exhibit "B" at 382:1-5 (App. Part 1: APP0084). The other side looks at it. *See also* Exhibit "B" at 382:6-7 (App. Part 1: APP0084). If he is willing to sell at that number, they are done. Id. If he is not happy with the number, they go to an appraisal process. *See also* Exhibit "B" at 382:12-15 (App. Part 1: APP0084). Initially, they talked about three appraisers, but it was too cumbersome so they went with two appraisers. *See also* Exhibit "B" at 382:12-383:1 (App. Part 1: APP0083-84). If the other side decided to make a counteroffer, then they would go through the appraisal process to determine FMV, fair market value, by appraisal. *See also* Exhibit "B" at 385:14-17 (App. Part 1: APP0082). At the same time, there was no scenario where one side made an offer to purchase and the other side twisted it around to make a counteroffer to purchase at that number. *See also* Exhibit "B" at 227:13-19 and 383:21-25 (App. Part 1: APP0036, 0082). Not only was that not discussed, but Golshani's changes from ROUGH DRAFT to ROUGH DRAFT 2 intentionally made it clear that the triggering event would be an "offer to *purchase*…" as opposed to "an offer to *sell*…". *See* Exhibits "N", "P", and "Q" (App. Part 2: APP0415-0418, 0449-0451, and 0452-0453). *See also* Exhibit "B" at 226:1-5, 376:17-25, 377:6-8, 378:13-17, 379:1-4, and 384:1-4 (App. Part 1: APP0035, 0079-0082, 0086).

As more fully described below, if the Remaining Member chose the first option (roman numeral "i"), by accepting the Offering Member's offer to purchase, then they would go to the specific intent provision. *See* Exhibit "B" at 257:11-24 (App. Part 1: APP0040). *See also* Exhibit "O" (App. Part 2: APP0419-0447). If the Remaining Member chose the second option (roman numeral "ii"), by making a counteroffer, then they would go through the appraisal process and go

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back to the same specific intent provision. *See* Exhibit "B" at 257:25-258:16 (App. Part 1: APP0040-0041). *See also* Exhibit "O" (App. Part 2: APP0419-0447). As soon as the Remaining Member made an election to make a counteroffer, they would have to continue with the rest of the sentence and complete an appraisal based on FMV. *See* Exhibit "B" at 262:15-19 (App. Part 1: APP0039). *See also* Exhibit "O" (App. Part 2: APP0419-0447).

FMV is a defined word in Section 4.2 as the medium of two appraisals, and it is further defined in Section 4.1 (which refers back to Section 4.2). *See* Exhibit "B" at 263:20-24 (App. Part 1: APP0043). *See also* Exhibit "O" (App. Part 2: APP0419-0447). This interpretation is the only logical interpretation and explains why the last paragraph of Section 4.2 uses "this provision" and separately the phrase "…according to the procedure set forth in Section 4." It also explains why the "specific intent" language appears at the end of the buy-sell procedure contained in Section 4.2 as opposed to appearing at the beginning of Section 4.

All told, Bidsal, Golshani, and LeGrand spent more than 6 months negotiating the terms of the proposed OPAG and produced at least seven different revisions before it was ultimately signed. *See* Exhibits "F", "G", "H", "I", "J", "K", "L", "M", "N" and "O" (App. Part 1: APP0134-0209; Part 2: APP0210-0447). Bidsal never drafted any of the revisions. *See* Exhibit "B" at 208:6-7, 384:18-23 and 387:13-15 (App. Part 1: APP0025, 0086, 0088). Rather, Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. *See* Exhibit "B" at 385:8-12 and 19-21 (App. Part 1: APP0087). To the extent any changes were not made by LeGrand, they were made by Golshani. *See* Exhibit "B" at 152:20-22 (App. Part 1: APP0001).

By August 3, 2012, the OPAG had been signed by Bidsal and Golshani. *See* Exhibit "O" (App. Part 2: APP0419-0447). *See also* a true and correct copy of an August 3, 2012 email sent to Bidsal, attached hereto as ***Exhibit "U"*** and incorporated by this reference herein (App. Part 3: APP0461-0491). *See also* Exhibit "B" at 213:22-25 (App. Part 1: APP0027). While the language of Section 4 in the signed OPAG was slightly different than Golshani's ROUGH DRAFT 2, the changes are minor and were made by Golshani prior to signing. *See* Exhibit "B" at 214:4-11 (App. Part 1: APP0027). *See also* Exhibits "O" and "P" (App. Part 2: APP0419-0450). More

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importantly, the intent of the parties that the initial offer ***not be*** an offer to buy or sell, but solely an offer to buy, remained unchanged.

E. THE MANAGEMENT AND OPERATION OF GREEN VALLEY.

After Green Valley acquired the Green Valley Commerce Center, Bidsal and Golshani decided to sell some of the buildings. *See* Exhibit "B" at 365:3-7 (App. Part 1: APP0073). As part of this process, Bidsal subdivided the Green Valley Commerce Center into separate buildings, creating a building association, conducting a reserve study for the building association, and commissioning survey work. *See* Exhibit "B" at 365:18 - 366:11 (App. Part 1: APP0073-0074). Bidsal did "most of the work" in handling the subdivision process and working with the surveyors. Bidsal, alone, handled the management and leasing of the Green Valley Commerce Center. *See also* Exhibit "B" at 114:9-15 & 19-21 (App. Part 1: APP0013).

Ultimately, Bidsal, as part of his management activities, was able to sell buildings B, C, and E of the Green Valley Commerce Center for a profit. *See* Exhibit "B" at 369:4-5 (App. Part 1: APP0076). Further, when the buildings sold, the proceeds from one of the properties were used to purchase a new property through a 1031 exchange. *See* Exhibit "B" at 369:17 - 370:1 (App. Part 1: APP0076-0077). The proceeds from the sale of the other two buildings were paid to Golshani and Bidsal for their respective capital percentages. Id. The formula used to determine the allocation of proceeds is contained in Exhibit B of the OPAG. *See* Exhibit "B" at 389:19-24 (App. Part 1: APP0089). *See also* Exhibit "O" (App. Part 2: APP0419-0447).

Even though Golshani took a very limited personal role in the sale of a property, every sale was done with Golshani's approval. *See* Exhibit "B" at 373:18-20 (App. Part 1: APP0078). Golshani admitted that Bidsal would send him emails with information about the properties and their values "all the time." *See* Exhibit "B" at 175:19-23 (App. Part 1: APP0024). *See also* a true and correct copy of Chain's August 3, 2012 email, attached hereto as ***Exhibit "V"*** and incorporated by this reference herein (App. Part 3: APP0492-0520). Following the sales, Green Valley still owns five buildings in the Green Valley Commerce Center, and another property in Arizona. *See* Exhibit "B" at 370:18-23 (App. Part 1: APP0077).

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F. MISSION SQUARE.

If there was any doubt left as to who drafted Section 4 of the OPAG, that doubt was resolved in early 2013. In April 2013, Golshani and Bidsal formed another company, Mission Square, LLC ("***Mission Square***"), using the Green Valley OPAG as the starting point, which, according to LeGrand "**is based upon the GVC OPAG *that has Ben's language on buy sell***." *See* a true and correct copy of LeGrand's June 19, 2013 email, attached hereto as ***Exhibit "X"*** and incorporated by this reference herein. *(emphasis added)* (App. Part 3: APP0528-0586). LeGrand's reference to "Ben's language" is based, in part, on the fact that Golshani, over the course of several drafts, perfected the buy-sell language and spearheaded the corrections with LeGrand. *See* Exhibit "B" at 389:8-14 (App. Part 1: APP0089). No testimony was presented by Golshani to undermine the parties' understanding at that time.

G. THE INITIATING BUY-OUT OFFER AND GOLSHANI'S ATTEMPT TO CHANGE THE TERMS OF THE TRANSACTION.

Consistent with ROUGH DRAFT 2, on July 7, 2017, Bidsal made a written offer ***to purchase*** CLAP's Membership Interest in the Company pursuant to Section 4, at a price based upon an estimate of the Company's total value of $5,000,000.00, which Bidsal *thought* was the fair market value, derived without the benefit of a formal appraisal (the "***Initial Offer***"). *See* Exhibit "B" at 331:15-20 (App. Part 1: APP0053). *See also* a true and correct copy of Bidsal's July 7, 2017 letter, attached hereto as ***Exhibit "Y"*** and incorporated by this reference herein (App. Part 3: APP0587-0588). The $5,000,000 value was Bidsal's estimate of the value of Green Valley. *See* Exhibit "B" at 390:1-5, and 390:21-22 and Exhibit "OO" at 333:10-12 (App. Part 1: APP0090, App. Part 5: APP1149). Bidsal initiated the process to buy Green Valley because he wanted to finish the deal and move on. *See* Exhibit "B" at 390:14-20 (App. Part 1: APP0089). Bidsal did not obtain an appraisal before making the offer.

Notwithstanding Bidsal's openness to Golshani during the entire ownership period, behind the scenes, on July 31, 2017, Golshani obtained an appraisal from Petra Latch, MAI indicating that the Green Valley Commerce Center was worth more than originally thought. *See* Exhibit "OO" at 156:7-10 (App. Part 5: APP1146). *See also* a true and correct copy of the appraisal

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attached hereto as ***Exhibit "Z"*** and incorporated by this reference herein (App. Part 3: APP0589-0828).

As a result of Petra Latch's appraisal, and notwithstanding the fact that Golshani specifically changed the language of Section 4 from an offer to <u>*sell*</u> to an offer to <u>*purchase*</u> when the Operating Agreement was being negotiated, Golshani attempted to take advantage of Bidsal by trying to twist Bidsal's offer to <u>*purchase*</u> into an offer to <u>*sell*</u>. *See* Exhibits "N", "P", and "Q" (App. Part 2: APP00415-00418; APP0448-0453). *See also* Exhibit "B" at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part 1: APP0079-0082). Specifically, on August 3, 2017, Golshani / CLAP provided a response in which Golshani inappropriately attempted to convert Bidsal's Initial Offer to *purchase* into an offer by Bidsal to *sell* Bidsal's membership interests in the Company without the benefit of Bidsal obtaining an appraisal. *See* a true and correct copy of CLAP's August 3, 2017 response letter, attached hereto as ***Exhibit "AA"*** and incorporated by this reference herein (App. Part 4: APP0826-0827).

Golshani specifically agreed that the Initial Offer would not be an offer to <u>*sell*</u>, but instead, solely an offer to <u>*purchase*</u>. This is evidenced by the language that Golshani drafted and which ultimately ended up in Section 4.2 of the OPAG. Given the plain language of paragraph one of Section 4.2, CLAP's options were clear, either the offered price was acceptable and CLAP could accept Bidsal's offer or the price was unacceptable and paragraph 2 of Section 4.2 would be invoked, calling for appraisals to be performed. *See* Exhibit "O", (App. Part 2: APP00429-00430). CLAP failed to abide by paragraph two, electing to veer away from the requirements of the OPAG. Instead, CLAP sought its own appraisal, clearly indicating it thought one was necessary. *See* Exhibit "Z" (App. Part 3: APP0589-0717; App. Part 4 APP0718-0825). CLAP after "conveniently" skipping the requirements of paragraph two of Section 4.2 landed on OPAG, Section 4.2(ii). By skipping paragraph two of Section 4.2 and going to Section 4.2(ii) CLAP inappropriately and prematurely relied on the option to reject Bidsal's offer and make a counteroffer. *See* Exhibit "O" (App. Part 2: APP00430). Section 4.2(ii) clearly comes after paragraph two of Section 4.2, thus contemplating that the FMV assessment resulting from two appraisals had already been completed, which in this situation, had not occurred. The premature

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counter-offer came in the form of the CLAP August 3, 2017 letter. *See* Exhibit "AA". On August 5, 2017, Bidsal sent a letter back to CLAP, requesting that the appraisal process contemplated from the beginning be utilized. *See* a true and correct copy of Bidsal's August 5, 2017 letter attached hereto as ***Exhibit "BB"*** and incorporated by this reference herein (App. Part 4: APP0828-0829). Bidsal informed Golshani that he needed to initiate the appraisal process because if a counteroffer is made, then they need to go to the FMV and it is defined as the medium of two appraisals in Section 4.2. *See* Exhibit "B" at 391:4-11 (App. Part 1: APP0091). If one were to give CLAP the benefit of the doubt that it was trying to abide by the terms in Section 4 of the OPAG, when it drafted the August 3, 2017 letter, it could be seen as CLAP's expression that it was not interested in selling at that time. In that situation, the August 3, 2017 letter could be seen as an offer to purchase made to Bidsal, forcing Bidsal to either accept the offer or request that a FMV be established. *See* Exhibit O (App. Part 2: APP0430).

On August 28, 2017, Golshani and CLAP sent another letter to Bidsal, continuing to insist on an option not contemplated by Section 4 of the OPAG. *See* a true and correct copy of CLAP's August 28, 2017 letter, attached hereto as ***Exhibit "CC"*** and incorporated by this reference herein (Part 4: APP0830-0834).

H. THE ARBITRATION PROCEEDING.

1. Demand for Arbitration.

On or about September 26, 2017, CLAP filed a Demand for Arbitration with JAMS, requesting an arbitration proceeding before a JAMS arbitrator, with a hearing to take place in Las Vegas, Nevada (the "***Arbitration Demand***"). A true and correct copy of the Demand is attached hereto as ***Exhibit "DD"*** and incorporated by this reference herein (App. Part 4: APP0835-0840).

In the Arbitration Demand, CLAP described its interpretation of the buy-sell provisions of the OPAG, recited Bidsal's July 7, 2017 initial break-up letter, and identified the issue as Bidsal "has refused to sell his interest, but instead has demanded an appraisal to determine FMV." *See* Exhibit "DD" at 2 (end of the second paragraph) (App. Part 4: APP0835-0840 at 837). Thus, CLAP brought the Arbitration Proceeding to get an Arbitrator to endorse CLAP's interpretation

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of the buy-sell provisions of the OPAG, and to force Bidsal to sell his interest in Green Valley to CLAP at a price based upon Bidsal's initial estimate as to the value of Green Valley. CLAP did not articulate any other issues to be decided by the Arbitrator. *See* Exhibit "DD" (App. Part 4: APP0835-0840).

2. Arbitration Merits Hearing.

On or about May 8-9, 2018, the Arbitrator conducted the Merits Hearing in the Arbitration Proceeding. *See* Exhibit "B" (App. Part 1: APP1-97). The Arbitrator then took the matter under advisement, to render a decision at a later time.

3. Merits Order and Objections to Proposed Awards.

On or about October 9, 2018, *five months* after the Merits Hearing[3], the Arbitrator entered his Merits Order No. 1. A true and correct copy of the Merits Order No. 1 is attached hereto as ***Exhibit "EE"*** and incorporated by this reference herein.

In the Merits Order, the Arbitrator defined the entirety of the dispute in the case in Section 3 of the Merits Order, as follows:

> 3. The arbitration --- as briefed, tried, argued and resolved as a business/legal dispute involving "pure" issues of contractual interpretation, between an entity and an individual . . .
>
> The "core" of the parties' dispute is whether or not Bidsal contractually agreed to sell and can be legally compelled to sell his 50% Membership Interest in Green Valley to CLA at a price computed via a contractual formula not in dispute, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 written offer to purchase CLA's 50% Membership Interest in Green Valley --- without regard to a formal appraisal of Green Valley, which Mr. Bidsal has contended the parties agreed Mr. Bidsal has the contractual right to demand as a "counteroffered seller" under Section 4.2 of the Green Valley Operating Agreement.

See Exhibit "EE" at 2 (App. Part 4: APP0841-0856 at 0843).

On or about October 30, 2018, CLAP submitted a proposed Interim Award (the "***Interim Award***"). A true and correct copy of the Interim Award is attached hereto as ***Exhibit "FF"*** and

[3] The Arbitrator was supposed to issue his decision much earlier, but granted his own motion to extend the time. Exhibit "B" (APP 5-100), Exhibit "O" § 14 (APP 426), Exhibit "EE" (APP 841-856) It is likely that the significant amount of time that elapsed between the Merits Hearing and the issuance of his decision may have contributed to the error's identified in the Motion.

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incorporated by this reference herein (App. Part 4: APP0857-0872). On the same date, CLAP also submitted an application for an award of attorneys' fees and costs (the "***Attorneys' Fees Application***"). A true and correct copy of the Attorneys' Fees Application is attached hereto as ***Exhibit "GG"*** and incorporated by this reference herein (App. Part 4: APP0873-0965). In the Attorneys' Fees Application, CLAP sought an award of $255,403.75 for attorneys' fees and $29,200.07 in costs.

On or about November 20, 2018, Bidsal filed an objection to the Interim Award (the "***Award Objection***"). A true and correct copy of the Award Objection is attached hereto as ***Exhibit "HH"*** and incorporated by this reference herein (App. Part 4: APP0966-0979). On the same date, Bidsal filed an objection to the Attorneys' Fees Application (the "***Attorneys' Fees Objection***"). A true and correct copy of the Attorneys' Fees Objection is attached hereto as ***Exhibit "II"*** and incorporated by this reference herein (App. Part 5: APP0980-1030).

On or about January 21, 2019, the Arbitrator delivered his Interim Award (the "***Interim Award***"). A true and correct copy of the Interim Award is attached hereto as ***Exhibit "JJ"*** and incorporated by this reference herein (App. Part 5: APP1031-1053). In spite of Bidsal's Award Objection and Attorneys' Fees Objection, in the Interim Award, the Arbitrator maintained the same critical incorrect findings as he did in the Merits Order, and awarded to CLAP the incredible sum of $249,078.75 for attorneys' fees and costs, which was 95% of the inflated amounts sought by CLAP in its Attorneys' Fees Application (App. Part 5: APP1029-1051 at APP1034, APP1035, and APP1048).

The Arbitrator further permitted CLAP until February 28, 2019 within which to submit additional declarations and billing statements for attorneys' fees and costs incurred after September 5, 2018 (the "***Attorneys' Fees Supplement***"). Bidsal was given until March 7, 2019 within which to file any objection to the Attorneys' Fees Supplement. The parties were also given until March 7, 2019 within which to submit any proposed corrections to the Interim Award not inconsistent with the determinations or relief granted in the Interim Award.

On or about February 28, 2019, CLAP submitted an Attorneys' Fees Supplement, seeking additional attorneys' fees and costs for a total of $304,061.03 in attorneys' fees and costs. A true

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and correct copy of the Attorneys' Fees Supplement is attached hereto as ***Exhibit "KK"*** and incorporated by this reference herein (App. Part 5: APP1054-1083). On or about March 7, 2019, Bidsal served his objection to the Interim Award (the "***Interim Award Objection***"). A true and correct copy of the Interim Award Objection is attached hereto as ***Exhibit "LL"*** and incorporated by this reference herein (App. Part 5: APP1084-1086).

4. Final Award.

On or about April 5, 2019, the Arbitrator entered the final Award. A true and correct copy of the Award is attached hereto as ***Exhibit "MM"*** and incorporated by this reference herein (App. Part 5: APP1087-1108). The Award contained essentially the same content as the Interim Award, and granted to CLAP the outrageous sum of $298.256.00 for attorneys' fees and costs. Id.

III.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD FOR VACATUR OF ARBITRATION AWARDS.

According to 9 U.S.C. § 10, arbitration awards may be vacated as follows:

> **(a)** In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> **(1)** where the award was procured by corruption, fraud, or undue means;
>
> **(2)** where there was evident partiality or corruption in the arbitrators, or either of them;
>
> **(3)** where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> **(4)** where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
>
> **(b)** If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.
>
> **(c)** The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order

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> vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

9 U.S.C. § 10.

Likewise, N.R.S Chapter 38 governing Mediation and Arbitration also allows for Courts to vacate an arbitration award under nearly identical circumstances as the Federal Arbitration Act.

B. THE ARBITRATOR EXCEEDED HIS POWERS.

Under 9 U.S.C. § 10(a)(4), an arbitration award will be vacated if the arbitrator "exceeded [his or her] powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4).

The Ninth Circuit Court of Appeals has held that arbitrators "exceed their powers" when the award is (1) "completely irrational" or (2) exhibits a "manifest disregard of the law." Kyocera Corp. v. Prudential-Bache Trade Servs., Inc., 341 F.3d 987, 997 (9th Cir. 2003).

Thus, when an arbitrator strays from interpretation and application of the agreement and effectively '***dispense[s] his own brand of industrial justice***' his or her decision may be unenforceable. Stolt-Nielsen, S.A. v. AnimalFeeds International, 130 S. Ct. 1758, 1767 (2010) (*quoting* Major League Baseball Players Ass'n. v. Garvey, 532 U.S. 504, 509, 121 S. Ct. 1724 (2001))(emphasis added); *See also* ASPIC Eng'g & Constr. Co. v. ECC Centcom Constructors LLC, Case No. 17-16510 (9th Cir., January 28, 2019) ("Thus, we held that the district court properly vacated the award because the arbitrator 'dispense[d] his own brand of industrial justice' by 'disregard[ing] a specific contract provision to correct what he perceived as an injustice.'").

An arbitration decision may be vacated when the arbitrator exceeds his or her powers because the task of an arbitrator is to "interpret and enforce a contract, not to make public policy." Id. at 1767-68. An arbitrator cannot "simply impose [his or her] own view of sound policy." Id.

The Nevada Supreme Court in Clark County Education Association v. Clark County School District, 122 Nev. 337, 131 P.3d 5 (2006), recognized two common-law grounds to be applied by a court reviewing an award resulting from private binding arbitration. The two common-law grounds under which a court may review private binding arbitration awards are "…(1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2)

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whether the arbitrator manifestly disregarded the law." Id. (*Citing* Wichinsky v. Mosa, 109 Nev. 84, 89-90, 847 P.2d at 731 (1993)). Thus an arbitrator can't simply issue an award that metes out his own idea of justice. This is especially true, where the arbitrator disregards a specific contract provision to correct what he or she may perceive as an injustice. In Pacific Motor Trucking Co. v. Automotive Machinists Union, 702 F.2d 176 (9th Cir. 1983), citing Federated Employers of Nevada, Inc. v. Teamsters Local No. 631, 600 F.2d 1263, 1265 (9th Cir. 1979) the court found that, "[a]n award that conflicts directly with the contract cannot be a "plausible interpretation." Although an arbitrator has great freedom in determining an award, he or she may not "dispense his [or her] own brand of industrial justice." Id. (*quoting* United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 80 S. Ct. 1358, 1361 (1960)).

1. The Arbitrator Made Factual Findings To Support His Desired Outcome Which Were Directly Contradicted By The Plain, Uncontroverted Evidence.

Apparently having made up his mind how he wanted to rule from the very beginning, the Arbitrator made factual findings to support his desired outcome which was directly contradicted by the plain, uncontroverted evidence. Specifically, the Arbitrator found that: (a) Section 4 of the Operating Agreement was drafted by Shawn Bidsal; (b) a forced buy-sell agreement or "Dutch Auction" was used in Section 4.2, notwithstanding clear evidence to the contrary; and (c) Section 4.2 employed a "form of cost-effective 'rough justice'", when the concept was never part of the drafting of Section 4.2.

The Arbitrator made comments and critiques regarding the case being one of "rough justice" beginning during the Rule 18 Summary Motion hearing and continuously and erroneously relied on his self created notion throughout the arbitration process. The Arbitrator relied upon a crude initial understanding of two terms within the OPAG, Section 4, Purchase or Sell Right among Members. The first term being "Offering Member." "Offering Member" is defined in the OPAG, Section 4.1, Definitions, as "…the member who offers to purchase the Membership Interest(s) of the Remaining Member(s)." "Remaining Members" is defined in the same section as, "…the Members who received an offer (from Offering Member) to sell their shares." Despite the clear language in the OPAG, the Arbitrator misconstrued the definition as

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indicating that the "Remaining Member" would be the member that remains the owner of Green Valley, while the "Offering Member" would be member leaving Green Valley, making an offer to sell. This misguided interpretation is in clear contravention of the language of the agreement.

Likewise, the Arbitrator appears to taken the language in Bidsal's July 7, 2017 offer letter and replaced the OPAG Section 4 definitions, with the language used by Bidsal's attorney in the offer letter. *See* Exhibit "Y" (App. Part 3: APP0587-0588.) *See also* Exhibit "O" (App. Part 2: APP0429-0430). *See also* Exhibit "MM" (App. Part 5: APP1087-1108). Specifically, the July 7, 2017 offer letter states, "[t]he Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***")." *See* Exhibit "Y" (App. Part 3: APP0587-0588). The Arbitrator takes the non-binding definition of FMV in the offer letter and uses it to replace the binding and controlling language of the OPAG. The Arbitrator then finds, "[u]nder Section 4.2 of the Green Valley Operating Agreement, the 'Remaining Member' (CLA) has the option to sell or buy 'the [50%] Membership Interest' put in issue by the Offering Member, 'based upon the same fair market value (FMV)' set forth in the Offering Member's Section 4.2-compliant offer." *See* Exhibit "MM" (App. Part 4: APP1087-1108 at 1096). As one can plainly see, the Arbitrator had to cut and paste various sections of the OPAG, Section 4 together to arrive at his twisted version of the definitions. However, the twisting and stretching of the Section 4 language was totally unnecessary, when read in order, the language lays out a clear and unambiguous path to arrive at who the selling party will be, who the purchasing party will be and what the purchase price will be. There was no need for the Arbitrator to create a definition of FMV, when the OPAG, Section 4.2, clearly states "[t]he medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." Neither Bidsal's best estimate of the value of the company, nor his attorney's statement of FMV, constitute the medium of two appraisals as is defined by the controlling OPAG. *See* Exhibit "O" (App. Part 2: APP00430).

The establishment of FMV is especially important, as it is the driving figure in establishing what the Offering Member needs to pay the Remaining Member to purchase the Remaining Member's Interests. The Arbitrator is correct in stating the contractual formula listed in Section 4.2 of the OPAG is not in dispute *See* Exhibit "MM" (App. Part 4: APP1087-1108 at

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1091). The formula is "(FMV-COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." The terms "FMV" and "COP" are both defined in the same section that contains the formula. FMV being defined as "[t]he medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." And COP being defined as, 'cost of purchase' as it [is] specified in the escrow closing statement at the time of purchase of each property owned by the Company." *See* Exhibit "O" (App. Part 2: APP0429-0430). Of paramount importance is that the formula is listed directly after the sentence establishing how to define FMV. A reading separating these two sections, as was done by the Arbitrator, is illogical. The Arbitrator clearly separated the sentences in an effort to arrive at the conclusion he had predetermined before hearing any evidence in this matter.

Additionally, while the contractual formula listed in 4.2 of the OPAG is not in dispute, it is de facto, obsolete. As was addressed in the paragraph above the formula for purchase price to be used after two appraisals have been completed, is stated as "(FMV-COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." However, using this formula negates a fact well known by both Parties and the Arbitrator. The fact is that the capital contributions had changed significantly, as had the properties sold and exchanged by Green Valley. *See* Exhibit "B" (App. Part 1: APP0076-0077). For example, the majority of Golshani's capital contribution had been repaid *See* Exhibit "B" (App. Part 1: APP0077 at (370:8-11)). Additionally, three of the buildings of the original property had been sold. One of the three buildings had been sold and then another purchased using a 1031 exchange. *See* Exhibit "B" (App. Part 1: APP0077).

These erroneous factual findings were important to the Arbitrator's ultimate outcome because of the legal principal that a contract provision is to be construed against the party who drafted it. Williams v. Waldman, 108 Nev. 466, 473, 836 P.2d 614, 619 (1992). In making these incorrect factual findings, the Arbitrator was then able to apply the law to the incorrect facts in a manner that gave him his predetermined result.

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(a) <u>The Undisputed Evidence Clearly Demonstrated That Section 4 of the Operating Agreement was drafted by Golshani, not Bidsal.</u>

Ignoring numerous Exhibits and witness testimony, the Arbitrator astoundingly found that Section 4 of the Operating Agreement was drafted by Bidsal. (*See* Exhibit "MM" at 5 (fn. 5) and 9 (¶ 17) (App. Part 5: APP1092). However, the voluminous evidence presented to the Arbitrator demonstrated exactly the opposite.

The uncontroverted evidence demonstrated that Golshani, who was not happy with any of the language proposed by LeGrand, was the one who drafted and emailed the first iteration of Section 4. *See* Exhibit "B" at 318:7-319:5, 320:11-321:22, 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part: APP0049-0052 & 0079-0082), Exhibit "N" (App. Part 2: APP0415-0418), Exhibit "O" (App. Part 2: APP0419-0447), Exhibit "P" (App. Part 2: APP0448-0451), Exhibit "Q" (App. Part 2: APP0452-0453), Exhibit "R" (App. Part 2: APP0454-0455), Exhibit "S" (App. Part 3: APP04546-0458), and Exhibit "T" (App. Part 3: APP0459-0460). Specifically, the Arbitrator ignored the following in determining that Bidsal was the drafter of Section 4.

1. On September 22, 2011, ***Golshani emailed*** Bidsal some buy-sell language that Golshani proposed and identified as a "ROUGH DRAFT", and which, after some modifications, ultimately ended up in Section 4. *See* Exhibit "N" and "O" at pp. 10-11 (App. Part 2: APP0415-0447);

2. On October 26, 2011, ***Golshani emailed*** Bidsal a revised version of his earlier "ROUGH DRAFT", which Golshani identified as "ROUGH DRAFT 2". *See* Exhibit "P" (App. Part 2: APP0448-0451);

3. One of the changes ***made by Golshani*** was intentionally changing the triggering event for a buy-sell transaction from an offer by one member "***to <u>sell</u> his or its Member's Interest*** in the Company to the other Members" to an offer by that member "***to <u>purchase</u> the Remaining Member's Interest*** in the Company." *See* Exhibits "N", "P", "Q" and Exhibit "B" at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part 2: APP0415-0418, 0448-0451; App. Part 1: APP0079).

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4. A short time after October 26, 2011, ***Golshani sent*** a fax to LeGrand containing his ROUGH DRAFT 2 buy-sell language. *See* Exhibit "R" and Exhibit "B" at 318:7-9 (App. Part 2: APP0454-0455, App. Part 1: APP49).

5. LeGrand then made a few minor changes to Golshani's ROUGH DRAFT 2, renamed it "DRAFT 2", and circulated the DRAFT 2 to Bidsal and Golshani. *See* Exhibit "O" and "P" (App. Part 2: APP0419-0451). *See also* Exhibit "S" (App. Part 3: APP0456-0458). *See also* Exhibit "B" at 318:10-14 and 318:23-319:5 (App. Part 1: APP49).

6. The differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. *See* Exhibits "P", "S", "T", and Exhibit "B" at 320:11-17 and 321:19-22 (App. Part 2: APP0448-0451; App. Part 3: APP0456-0460; App. Part 1: APP0051-0052).

7. LeGrand simply took ***Golshani's language*** and inserted it almost untouched into the Operating Agreement. Id;

8. Bidsal never drafted any of the revisions. *See* Exhibit "B" at 208:6-7, 384:18-23, and 387:13-15 (App. Part 1: APP0025, 0086, 0088);

9. Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. *See* Exhibit "B" at 385:8-12 and 19-21 (App. Part 1: APP0087);

10. To the extent any changes were not made by LeGrand, they were made by Golshani. *See* Exhibit "B" at 152:20-22 (App. Part 1: APP0015); and

11. LeGrand, himself, stated that nearly identical buy-sell language used two years later in an operating agreement for another entity, Mission Square, contained and consisted of (in LeGrand's words): "Ben's language." *See* Exhibit "X" and Exhibit "B" at 389:8-14 (App. Part 3: APP0528-0586, App. Part 1: APP0089).[4]

Thus, the undisputed evidence showed that Golshani was the drafter of the buy-sell language at issue, yet the Arbitrator ignored the undisputed facts and made up justifications,

[4] The Arbitrator's conclusion that "the substance of [LeGrand's] testimony is essentially the same as, and thus corroborates, CLA's contentions" is dumbfounding, considering LeGrand's own words in Exhibit "X" (App. Part 3: APPENDIX0528-0586). *See* Exhibit "EE" at 5 (Para. 8) (App. Part 4: APPENDIX0841-56 at 846).

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unsupported by the facts, for declaring that Bidsal was the drafter. *See* Exhibit "EE" at 3, fn. 3 (App. Part 4: APP0841-0856 at 0844-0845); *See also* Exhibits "JJ" at 6 (App. Part 5: APP1031-1052 at APP1037). This was done in an obvious attempt at backing into a result the Arbitrator wished to find.

(b) <u>The Undisputed Evidence Clearly Demonstrated that the "Dutch Auction" Concept Was Not Used in Drafting Section 4.</u>

Again ignoring numerous Exhibits and witness testimony, the Arbitrator found that Section 4 of the Operating Agreement was drafted using the "Dutch Auction" concept. *See* Exhibit "MM" at pp. 5, para. 8 (App. Part 5: APP1092). However, as before, this finding is completely unsupported, even contradicted, by the evidence and demonstrates the Arbitrator's bias against Bidsal.

Specifically, David LeGrand clearly and unequivocally made it clear that the "Dutch Auction" concept, which he alone proposed, was ultimately discarded and not used. *See* Exhibit "B" at 273:8-13, 274:15-17, 316:12-15 (App. Part 1: APP 0044-0045 & 0047), Exhibit "J" (App. Part 2: APP0293-0351), Exhibit "K" (App. Part 2: APP0352-380), Exhibit "L" (App. Part 2: APP0381-0382) (wherein LeGrand stated that "[a] simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price **does *not* appear sensible to me**."), Exhibit "M" at DL 301 (App. Part 2: APP0383-0414 at APP0396). No evidence was presented that, after the concept was intentionally and specifically discarded by LeGrand and the parties, that it was somehow resurrected and used. To the contrary, Golshani drafted entirely new language which was ultimately used by the Parties. *See supra*.

(c) <u>The Undisputed Evidence Clearly Demonstrated "Rough Justice" Was Never Part Of The Consideration For Section 4.</u>

Finally, the Arbitrator found that the concept of 'rough justice' was part of the Parties' intent. However, neither the phrase, nor the concept, was part of any of the evidence presented to the Arbitrator[5].

[5] Normally, a citation to the record would be in order. However, since the concept of 'rough justice' simply did not come up at the Merit Hearing, there is nothing to cite to. This, of course, is the point being made--that the Arbitrator created the concept on his own, interjected it into the process, then relied upon it in making his final award.

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2. The Arbitrator's Ruling is Unsupported by the Agreement.

"If an award is determined to be arbitrary capricious ***or unsupported by the agreement***, it may not be enforced." Wichinsky v. Mosa, 109 Nev. 84, 847 P.2d 727. (emphasis added). An award is "completely irrational" where "the arbitration decision fails to draw its essence from the agreement." Lagstein v. Certain Underwriters at Lloyd's, London, 607 F.3d 634, 642 (9th Cir. 2010); Biller v. Toyota Motor Corp., 668 F.3d 655, 665 (9th Cir. 2012). An arbitration award draws its essence from the agreement if "the award is derived from the agreement, viewed in light of the agreement's language and context, as well as other indications of the parties' intentions." Id.

In this case, the Award, which embraced the terms of the Merits Order was completely irrational, and unsupported by the agreement, because the Arbitrator failed to draw his ruling "from the essence of the agreement." Because the buy-sell provisions in Section 4.2 of the OPAG were ambiguous, the Arbitrator was tasked with the responsibility of interpreting Section 4.2 consistent with the intent of the parties, based upon the evidence before him - the OPAG's "language and context" and "other indications of the parties' intentions." *See* Exhibit "EE" at 2-3, fn.2. (App. Part 4: APP0843-44); *See* Exhibit "JJ" at 5 (fn. 5) (App. Part 5: APP1031-1053); *See* Lagstein at 642.

However, the Arbitrator failed to base his order on the agreement instead relying on: (i) LeGrand's language that did not make its way into the final Operating Agreement, (ii) what "is common among partners in business entities" rather than the actions, words, and course of dealing of the actual parties, and (iii) his own made-up notion of "rough justice" to steer his interpretation of Section 4.2, incorrectly finding that the language had been drafted by Bidsal. *See* Exhibit EE" at 3-4 (App. Part 4: APP0844-0845). This severe departure from the presented facts was a clear example of "***issuing an award that simply reflect[s] [his or her] own notions of justice*** rather than draw[ing] its essence from the contract." *See* Sutter, 569 U.S. at 569, 133 S. Ct. 2064. (emphasis added).

This severe departure from the presented facts was also evident from the fact that the Arbitrator found that Section 4.2 was drafted by Shawn Bidsal, as opposed to Ben Golshani, thereby allowing him to construe Section 4.2 against Bidsal. *See supra*; *See also* Anvui, LLC v. GL Dragon, LLC, 123 Nev. 212, 163 P.3d 405 (2007); Lewis v. Saint Mary's Heath First D. Nev. 2005), 402 F. Supp. 2d 1182.

The departure was also evident from the Arbitrator's finding that Section 4.2 of the OPAG contained a "Dutch Auction". *See* Exhibit "EE" at 3-4 (App. Part 4 APP0841-0856). The undisputed evidence showed that a "Dutch Auction" was initially contemplated by LeGrand, but discarded by the parties long before the final version of the buy-sell provisions of Section 4.2 was set in stone in the OPAG. *See* Exhibit "J" at DL211-212, Exhibit "B" at 316:12-15, and Exhibit "K" (App. Part 2: APP0293-351; Part 1: APP0048; Part 2: APP0352-0380).

The departure was also evident from the Arbitrator's reliance upon what "is common among partners in business entities like partnership, joint ventures, LLC's, close corporations…" instead of the actions, words, and course of dealing of the parties.

These actions are in direct violation of the principles set forth in Wichinsky, Clark County Education Association, Stolt-Nielsen, Suter, and Pacific Motor Trucking. The Arbitrator disregarded the specific buy-sell provisions of Section 4.2, the systematic procedure for Section 4.2 which was illustrated for him at the Merits Hearing with Exhibit "T", and the undisputed evidence which showed that Golshani was the drafter of the buy-sell provisions in Section 4.2. Instead, he dispensed with his own brand of industrial justice, or, as the Arbitrator, himself, put it, the buy-sell provision was simply based on a "form of cost-effective 'rough justice'". *See* Exhibit "EE" at 3-4 and fn. 3 (App. Part 4: APP0841-0856). Because the Arbitrator issued his ruling based upon his own notions of justice, and not from the contract before him, the Award should be vacated.

3. The Arbitrator Recognized the Law, but Manifestly Disregarded it.

A manifest disregard for the law exists where the "…arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law." *See* Clark County Education Association, 122 Nev. 337, 131 P.3d 5 (2006) (*citing* Bohlmann v. Printz, 120

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Nev. 543, 96 P.3d 1155 (2004). Collins v. D.R. Horton, Inc., 505 F.3d 874, 879 (9th Cir. 2007) (*quoting* San Maritime Compania De Navegacion, S.A. v. Saguenay Terminals Ltd., 293 F.2d 796, 801 (9th Cir. 1961)) holds that manifest disregard of the law exists where "the arbitrator 'underst[oo]d and correctly state[d] the law, but proceed[ed] to disregard the same.'". In other words, "the arbitrators were aware of the law and intentionally disregarded it." Bosack v. Soward, 586 F.3d 1096, 1104 (9th Cir. 2009) (*quoting* Lincoln Nat'l Life Ins. Co. v. Payne, 374 F.3d 672, 675 (8th Cir. 2004)).

In this case, the Arbitrator manifestly disregarded the law. The Arbitrator recognized the law that the purpose of contract interpretation was "to discern the intent of the contracting parties." *See* Exhibit "EE" at 6, fn. 7 (*citing to* American First Federal Credit Union v. Soro, 359 P.3d 105, 106 (Nev. 2015) and Davis v. Beling, 128 Nev 301, 279 P.3d 501, 515 (Nev. 2011)) (App. Part 4: APP0841-0856); *See also* Exhibit "EE" at 13 wherein the Arbitrator stated that his decision was based upon "careful consideration . . . of applicable law . . ." (App. Part: APP0841-0856). Undoubtedly, the Arbitrator also reviewed and digested the legal argument and citations to legal authority in the briefs submitted by the parties.

Nonetheless, the Arbitrator disregarded the law by relying upon what "is common among partners in business entities …" instead of the actions, words, and course of dealing of the actual parties and invoking "rough justice" and the principle of a "Dutch Auction", which had nothing to do with discerning the intent of the parties, as reflected in the evidence presented at the Arbitration Hearing.

4. The Arbitrator Exceeded his Authority.

Moreover, the Arbitrator recognized the law of the case with respect to this dispute, which, as he stated, involved only:

> whether or not Bidsal contractually agreed to sell and can be legally compelled to sell his 50% Membership Interest in Green Valley to CLA at a price computed via a contractual formula not in dispute, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 written offer to purchase CLA's 50% Membership Interest in Green Valley --- without regard to a formal appraisal of Green Valley, which Mr. Bidsal has contended the parties agreed Mr. Bidsal has the contractual right to demand as a "counteroffered seller" under Section 4.2 of the Green Valley Operating Agreement.

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See Exhibit "EE" at 2 (App. Part 4: APP0841-0856). However, the Award then adopted the terms of the proposed Interim Award, which included other matters clearly outside the scope of the Arbitration Proceeding. *See* Exhibits "FF", "JJ", and "MM" (App. Part 4: APP0857-0872 and APP1031-1053; APP1087-1108). These included the following:

1. Ordering Bidsal to transfer his membership interests in Green Valley to CLAP "free and clear of all liens and encumbrances";

2. Placing an arbitrary and commercially unreasonable deadline of 10 days for Bidsal to complete the transfer of his membership interests in Green Valley;

See Exhibit "FF" at 15 (App. Part 4: APP0857-0872)

At no time was there ever any evidence or discussion about the nature of Bidsal's membership interest in Green Valley and whether or not it should be transferred "free and clear of all liens and encumbrances." Likewise, the 10 day deadline imposed by the Award is not founded on any of the evidence introduced at the Merit Hearing, but is instead, simply an arbitrary period of time derived solely by the Arbitrator.

Finally, while the Arbitrator recognized his authority derived from the JAMS rules and Article III, Section 14.1 of the OPAG, he went beyond the authority granted by both by granting to himself continuing jurisdiction. *See* Exhibit "LL" at 3; Exhibit "O" at Article III, Section 14.1. (App. Part 5: APP1084-1086; App. Part 2 : APP0419-0447). There is nothing in either the OPAG or the JAMS rules which authorize the Arbitrator to retain any continuing jurisdiction once a final Award is entered but before it is converted into a judgment with the district court. *See* Exhibit "O" at Article III, Section 14.1 and Exhibit "LL". (App. Part: APP00419-0447; App. Part 5: APP1084-1086) Therefore, the Arbitrator exceeded his powers and the Award should be vacated.

The Arbitrator clearly disregarded the law and exceeded his powers in granting relief not set forth in the Arbitration Demand, not the subject of discovery, not briefed by the parties, and not presented via evidence at the Arbitration Proceeding. Therefore, the Arbitrator exceeded his powers and the Award should be vacated.

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5. The Award is Irreconcilable with Undisputed Dispositive Facts.

Courts may review a private arbitration award where the award is arbitrary or capricious. *See* Clark County Education Association, 122 Nev. 337, 131 P.3d 5 (2006). Courts may also vacate an arbitration award that is legally irreconcilable with the undisputed facts. Coutee v. Barrington Capital Group, L.P., 336 F.3d 1128, 1133 (9th Cir. 2003). Because facts and law are often intertwined, "an arbitrator's failure to recognize undisputed, legally dispositive facts may properly be deemed a manifest disregard for the law." Id.

In this case, the Award was arbitrary, capricious, in that it failed to rely on the undisputed facts presented. Specifically, the Award was irreconcilable with the undisputed fact, described above, that Golshani was the drafter of the buy-sell language, a critical point considering any ambiguity in Section 4.2 should be construed against the drafter, which in this case was Golshani, not Bidsal. *See* Anvui, LLC v, 163 P.3d at 407; Lewis, 402 F. Supp. 2d 1182.

Because the Arbitrator's failure went to the very heart of the dispute, the Award should be vacated.

C. THE ARBITRATOR IS GUILTY OF PARTIALITY AND MISBEHAVIOR BY WHICH THE RIGHTS OF BIDSAL HAVE BEEN PREJUDICED.

Similarly, 9 U.S.C. § 10(a)(2) and (3) provide that an arbitration award shall be vacated "where there was evident ***partiality*** or corruption in the arbitrators, or either of them;" or "where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or ***of any other misbehavior by which the rights of any party have been prejudiced***." 9 U.S.C. § 10(a)(3)(emphasis added).

In this case, as described above, rather than follow the law governing the dispute, the Arbitrator, with both eyes open, ignored the actions, words and course of dealing of the parties and instead, relied upon what "is common among partners in business entities" and inserted his own notions of "rough justice." To blatantly do so, rises to the level of misconduct. Bidsal was prejudiced by the Arbitrator's misbehavior because he lost the right to an appraisal before selling his membership interests in Green Valley to CLAP. Instead, Bidsal is stuck with selling his

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membership interests without the benefit of an appraisal. If the Arbitrator had followed the law on interpretation of contracts, rather than inserting his own brand of frontier justice or his own ideas of good public policy, the OPAG would have been interpreted consistent with the parties' intentions. Bidsal was entitled to the proper legal standards and the benefit of his bargain pursuant to the terms of the OPAG. The Arbitrator denied him both.

Second, the Arbitrator committed actions arising to wrongdoing because it appears that he deliberately ignored the express words of the final Operating Agreement and intentional metamorphosis of the buy-sell language, which was clearly illustrated for him in Exhibit "Q" (which was demonstrative Exhibit 360 during the Merits Hearing) (App. Part 2: APP452-0453). The critical aspect of that change was to move from an initiating offer to ***sell*** to an initiating offer to ***purchase***. Thus, the offering member never intended to sell his or its membership interest in Green Valley merely on an estimated value for the company, and an appraisal process was added to protect the actual selling party (whether initial buyer, or seller subject to a counteroffer) so that no one would be forced to sell his or her interest without the chance to lock down a fair price. However, the Arbitrator's blatant disregard for Exhibit "Q" appeared to be deliberate and his final ruling orders Bidsal to "sell" instead of "purchase." (App. Part 2: APP0452-0453).

Third, even though the Arbitrator is now forcing Bidsal to sell his interests to CLAP at a price based upon a ball-park initial estimate of company value, CLAP was ***never*** in jeopardy of having to sell its interest at a price based upon Bidsal's initial estimate, but could have demanded an appraisal and be adequately protected if that initial estimate was inaccurate. Yet, in spite of this, the Arbitrator apparently conjured up sympathy for CLAP and exhibited a bias against Bidsal by painting Bidsal out to be calculating and scheming. This is evident from the Arbitrator's statements in the Merits Order, Interim Award, and Award which impermissibly relies on a contrived motive when Bidsal did not agree to sell without the parties pursuing the express arbitration process set forth in the buy-sell provision of the Operating Agreement:

1. Exhibit "EE" at 4 (Para. 6), Exhibit "JJ" at 6 (Para. 9) "the parties' dispute appears to be a result and expression of 'seller's remorse' by Mr. Bidsal . . ." (App. Part 4: APP0841-0856) (App. Part 5: APP1031-1053);

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2. Exhibit "EE" at 4 (Para. 7B), "Mr. Bidsal's testimony, arguments and position in support of his having contractual appraisal rights appear to be 'outcome determinative' in his favor (App. Part 4: APP0841-0856 at 843);

3. Exhibit "EE" at 7 (Para. 9): "It appears that in this case, Mr. Bidsal attempted to find a contractual 'out' to regain lost leverage to either buy or sell a 50% membership interest in Green Valley at a price and/or terms less favorable that he originally invisaged . . ." (App. Part 4: APP0841-0856).

4. Exhibit "EE" at 7 (Para. 9), "What Mr. Bidsal seems to have settled on for negotiation and arbitration was ignoring, disregarding and, it appeared at the hearing, resisting strict application of the 'specific intent' language quoted and discussed above . . ." (App. Part 4: APP0841-0856).

5. Exhibit "EE" at 7-8 (Para. 9), Exhibit "35" at 10 (Para. 17): "What Mr. Bidsal apparently found and settled on was a drafting ambiguity in Section 4 of the Green Valley Operating Agreement --- i.e., 'FMV' . . . while it apparently was under Mr. Bidsal's control for final revisions . . ." (App. Part 4: APP0841-0856);

6. Exhibit "EE" at 8 (Para. 9), Exhibit "35" at 10 (Para. 17) "Mr. Bidsal used that ambiguity as his justification for refusing to perform as a compelled seller under the Section 4.2 'buy-sell'. . ." (App. Part 4: APP0841-0856);

7. Exhibit "EE" at 8 (Para. 10), ". . . there is an unanswered logical flaw in Bidsal's position - - which the Arbitrator has determined to be 'outcome determinative' . . . " (App. Part 4: APP0841-0856).

8. Exhibit "EE" at 11 (Para. 11D: ". . . [m]iscalculating the intentions, thinking and/or financial resources available to the other party in an arm's length transaction, such as a Section 4.2 'buy-sell,' are not cognizable bases for re-writing or re-interpreting the parties' contractual procedures." (App. Part 4: APP0841-0856).

9. Exhibit "MM" at 16-7 (Para. 28): ". . . Mr. Bidsal, not CLA, was the principal driver of those costs . . . Mr. Bidsal's resistance to complying with his obligations including his conducting a 'no holds barred' litigation . . . " (App. Part 5: APP1087).

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The foregoing examples of statements from the Merits Order show that they were made by the Arbitrator simply as pretext for ruling against Bidsal. The Arbitrator exhibited an open hostility toward Bidsal, and a preference for CLAP. Further, because this hostility to Bidsal and clear preference for Golshani and CLAP resulted in a clearly biased decision in favor of CLAP, Bidsal was clearly prejudiced. The Arbitrator's statements show that he is improperly projecting motive, thoughts and intentions. Essentially, the Arbitrator has taken it upon himself to be an armchair psychologist, presuming to know the thoughts and minds of Bidsal. For this reasons, the resulting Arbitration Award, which is clearly the product of partiality, should be vacated.

D. LEGAL STANDARD ON MODIFYING AND CORRECTING ARBITRATION AWARDS.

As the forgoing demonstrates, the appropriate remedy is to vacate the entire Arbitration Award. However, even if an award is not completely vacated, under 9 U.S.C. § 11, an arbitration award may be modified or corrected as follows:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—
>
> **(a)** Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> **(b)** Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> **(c)** Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9 U.S.C. § 11.

Likewise, N.R.S Chapter 38 governing Mediation and Arbitration also allows for Courts to modify or correct an arbitration award. According to NRS 38.242 arbitration awards may be modified or corrected as follows:

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> 1. Upon motion made within 90 days after the movant receives notice of the award pursuant to NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS 38.237, the court shall modify or correct the award if:
>
> (a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;
>
> (b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
>
> (c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.
>
> 2. If a motion made under subsection 1 is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.
>
> 3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

As explained below, even if the entire Award was not vacated, it should still be corrected or modified.

1. <u>The Arbitrator Included Matters Not Submitted to Him.</u>

Even if the Court does not vacate the entirety of the Award, it should still modify and correct the Award. Nevada clearly contemplates erroneous arbitration awards needing correction and/or modification, however, as this particular Award was determined under the Federal Arbitration Act, modification should be considered under 9 U.S.C. § 11(b). As stated earlier, 9 U.S.C. § 11(b) is controlling and provides that an arbitration award may be modified and corrected if "the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted." 9 U.S.C. § 11(b)(in pertinent part).

The Ninth Circuit Court of Appeals agrees that the court may "strike all or a portion of an award pertaining to an issue not at all subject to arbitration." <u>Kyocera</u>, 341 F.3d at 997-98; <u>Schoenduve Corp. v. Lucent Technologies</u>, 442 F.3d 727, 732 (9th Cir. 2006). That is because review by a district court is ultimately still "designed to preserve due process" without unnecessary public intrusion into private arbitration procedures. <u>Id</u>.

Similarly, arbitrators do not have authority to decide issues not submitted by the parties. Hughes Aircraft Co. v. Electronic Space Technicians, Local 1553, AFL-CIO, 822 F2d 827 (9th Cir. 1987). Thus, an arbitrator exceeds his or her authority if he or she has "considered issues beyond those submitted by the parties or issues prohibited by the terms of their agreement." Jock v. Sterling Jewelers, Inc., 646 F.3d 113, 122 (2nd Cir. 2011).

In this case, as stated earlier, in the Interim Award, CLAP added various provisions involving issues never made an issue in the Arbitration Proceeding by CLAP in its Demand. *See* Exhibit "DD" (App. Part 4: APP0835-038). These provisions were set forth in Section V of the Interim Award, and include:

1. Ordering Bidsal to transfer his membership interests in Green Valley to CLAP "free and clear of all liens and encumbrances";

2. Placing an arbitrary and commercially unreasonable deadline of 10 days for Bidsal to complete the transfer of his membership interests in Green Valley;

See Exhibit "FF" (App. Part 4: APP858-70 at 869-72). *See also* Exhibit "MM" (App. Part 5: APP1087-1108).

However, these issues were not raised by CLAP in its Arbitration Demand. *See* Exhibit "DD" (App. Part 4: APP0835-0840). Rather, CLAP simply sought assistance from the Arbitrator to interpret the OPAG consistent with CLAP's interpretation of it and force Bidsal to sell his membership interest in Green Valley to CLAP. Consequently, the parties never conducted discovery on those issues, prepared to present evidence at the Merits Hearing related to those issues, or formulated legal argument related to those issues in any briefs submitted to the Arbitrator.

Further, these provisions were not found anywhere in the Merits Order. *See* Exhibit "EE" (App. Part 4: APP0841-0856). In fact, they could not have been, because JAMS Rule 11(b) did not grant the Arbitrator authority to award anything outside of "disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought."

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See a true and correct copy of the JAMS rules, attached hereto as ***Exhibit "NN"*** an incorporated by this reference herein (App. Part 5: APP1109-1143).

Likewise, Section 14.1 of Article III of the OPAG only mandated arbitration "[i]n the event of any dispute or disagreement between the members *as to the interpretation of any provision of this Agreement* . . ." (emphasis added) *See* Exhibit "O" at Section 14.1 (App. Part 2: APP0419-0447 at 426-7). Thus, issues properly considered in the Arbitration Proceeding all dealt with the interpretation of the OPAG. Distributions to the members had nothing to do with the interpretation of the OPAG, and as such, were not properly part of the issues to be decided in the Arbitration Proceeding.

Moreover, the Final Award would not enforceable in and of itself. Rather, both JAMS Rule 24(J) and Article III Section 14.1 of the OPAG provided that the provisions of the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) govern the process in this case. *See* Exhibit "O" (App. Part 2: APP0419-0447 at 426-7). Under 9 U.S.C. § 9, CLAP must apply to a court of law to confirm any final arbitration award within one year, in order to enforce it. At the same time, under 9 U.S.C. § 12, Bidsal was entitled to file a motion to vacate, modify, or correct any final arbitration award within three (3) months after the award is filed or delivered. Consequently, a ten (10) day finalization date was premature and unwarranted under the law.

Bidsal brought these issues to the attention of the Arbitrator. *See* Exhibit "HH" (App. Part 4, APP0966-0979). Nonetheless, in blatant disregard of the law, the Arbitrator exceeded his authority by including in the Award these provisions of matters not properly before him. *See* Exhibit "JJ" and "LL" (App. Part 5: APP1031-1053)(App. Part 5: APP1084-1086). Consequently, the Award should, at least, be modified to remove these offending provisions.

E. THE ATTORNEYS' FEES AWARDED SHOULD BE VACATED AS WELL.

As with general arbitration awards, awards of attorneys' fees may be vacated based on a "manifest disregard of the law." *See* Arbitration Between Bosack v. Soward, 573 F.3d 891, 899 (9th Cir. 2009). Nevada law governs any award of attorney's fees. *See* Operating Agreement, Exhibit "O" (App. Part 2: APP0419-0447).

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In the State of Nevada, all applications for awards of attorneys' fees and costs are governed by Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969). The Nevada Supreme Court mandates that a Court analyze the following elements when considering an award of attorneys' fees:

> (1) *the qualities of the advocate:* his ability, his training, education, experience, professional standing and skill; (2) *the character of the work to be done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) *the work actually performed by the lawyer:* the skill, time and attention given to the work; (4) *the result:* whether the attorney was successful and what benefits were derived.

85 Nev. at 349, 455 P.2d at 33 (*citing* 7 C.J.S. Attorney and Client § 191 a. (2), p. 1080 *et seq.*; 5 Am.Jur., Attorneys at Law, section 198, *Cf.* Ives v. Lessing, 19 Ariz. 208, 168 P. 506 (1917)). The Brunzell Court continued: "good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight." Id.

Further, in order to be recoverable, fees must relate to work that has "necessity and usefulness" in the case. Thayer v. Wells Fargo Bank, 112 Cal. Rptr. 2d 284 (Ct. App. 2001). Consequently, billing for duplicative or unnecessary work is not recoverable. *See* Serrano v. Unruh, 652 P.2d 985, fn. 21 (Cal. 1982). As an example of unnecessary work, the Court in Serrano stated that "**not allowable are hours on which plaintiff did not prevail** or hours that simply should not have been spent at all, such as where attorneys' efforts are unorganized or duplicative. This may occur . . . when young associates' labors are inadequately organized by supervising partners." Id. (*citing* Copeland v. Marshall, 641 F.2d 880 (D.C. Cir.), 902-903 (1980)) (emphasis added).

Similarly, "'padding' in the form of inefficient or duplicative efforts is not subject to compensation." *See* Ketchum v. Moses, 103 Cal. Rptr. 2d 377 (2001); *see also* Chavez v. Netflix, 75 Cal. Rptr. 3d 413 (Ct. App. 2008) (upholding trial court's decision to reduce hours included in fee award based on inefficient billing).

The Nevada Supreme Court has also recognized that a District Court may reduce requested attorneys' fees for overbilling. Woods v. Woods, Nev. Sup. Ct. No. 72665 (July 27,

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2018). In this case, CLAP was overbilled by its attorneys. The Nevada Supreme Court has further ruled that attorneys' fees should not be awarded for specific activities outside the matters on which the party prevailed. Barney v. Mt. Rose Heating & Air Conditioning, 192 P.3d 730, 736-37, 124 Nev. Adv. Op. No. 71 (Sept. 18, 2008).

Courts in the State of California have, similarly, emphasized that in determining whether the number of hours billed are reasonable, trial courts should consider whether the work billed for actually advanced the case. As one court put it, "the predicate of *any* attorney fee award, whether based on a percentage-of-the-benefit or a lodestar calculation, is the necessity and usefulness of the conduct for which compensation is sought." *See* Thayer v. Wells Fargo Bank, 112 Cal. Rptr. 2d 284 (Ct. App. 2001). Courts agree that the fees associated with failed motions are not recoverable. *See* Serrano, 652 P.2d 985 ("not allowable are hours on which plaintiff did not prevail"). Likewise, fees are not recoverable when they relate to unsuccessful causes of action or claims for relief. *See, e.g.*, Californians for Responsible Toxics Management v. Kizer, 259 Cal. Rptr. 599 (Ct. App. 1989) (holding that **a 35% reduction from a plaintiff's requested fee award was reasonable** in light of the fact that the plaintiff "did not succeed on any of its motions" and included both successful and unsuccessful claims). (emphasis added)

In this case, all of the foregoing legal principles were submitted to the Arbitrator in Bidsal's Attorneys' Fees Objection. *See* Exhibit "II" (App. Part 5, APP0980-1030). For the sake of brevity, those arguments are incorporated by reference as if more fully set forth herein. As a result, the Arbitrator should have reduced the attorneys' fees and costs sought by CLAP by the sum of $136,970.83. Id.

Nonetheless, the Arbitrator manifestly disregarded those legal principles presented to him in awarding to CLAP the sum of $249,078.75, which represented 95% of the fees initially sought by CLAP, then tacked on an additional amount pursuant to the Attorneys' Fees Supplement, while only slightly reducing the award because of CLAP's failure to prevail on the Rule 18 Motion and CLAP's wrongful attempt to recover the travel costs of CLAP's principal, for a total of $298,256.00. *See* Exhibits "GG" and "EE" (App. Part 4: APP871-965). The Award should be

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modified and corrected to reduce the award of attorneys' fees and costs to the sum of $136,970.83.

III.

CONCLUSION

A. THE ARBITRATOR'S FLAWED ASSUMPTIONS INVALIDATE HIS FINDINGS.

An arbitrator cannot supplant his own notions of justice and fact, when there is ample evidence to the contrary. In the present case, as shown above, the Arbitrator attributes a self-created concept of "rough justice" to Section 4.2 of the OPAG. In attributing this concept he unilaterally and unjustifiably decided that Section 4.2 of the OPAG was a "forced buy-sell agreement", when in reality, and by a plain reading of the document, indicates that the entire procedure listed in 4.2 must be followed prior to reaching the final paragraph of 4.2 that addresses when an offer to purchase can be turned into an obligation to sell by the offering member. Using the Arbitrator's fictional understanding of the OPAG, Section 4.2, any offer to purchase, made by any member could instantaneously be converted into a forcible sale. Begging the question, why would any member, not wishing to sell, **ever** make an offer to purchase. Furthermore, as addressed above, the Arbitrator, once again unilaterally and unjustifiably, determined that the provision in Section 4.2 of the OPAG was a "forced buy-sell agreement" because those types of provisions are "common among partners in business entities." *See* Exhibit EE" at 3-4 (App. Part 4: APP0844-0845). While such agreements may be common, it is abundantly clear that CLAP and Bidsal did not elect to have such an agreement and instead Golshani on behalf of CLAP drafted specific language that did not include a common "forced buy-sell agreement," as imagined by the Arbitrator.

B. THE ARBITRATOR ARBITRARILY ASSIGNED AUTHORSHIP OF THE OPAG.

Despite the abundance of evidence to the contrary the Arbitrator decided that Bidsal, not Golshani, drafted the provision in question, Section 4.2 of the OPAG. In addition to the abundance of evidence that Golshani was the drafter, there was a distinct lack of evidence that Bidsal was the drafter. Yet, the Arbitrator not only attributed the drafting to Bidsal, but in a plain

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act of prejudice used that flawed conclusion to interpret the provision in favor or CLAP and against Bidsal.

C. THE ARBITRATOR IGNORED THE PLAIN LANGUAGE OF THE OPAG.

The Arbitrator acknowledged and then disregarded the fact that the term "FMV" was defined in the OPAG. Apparently deciding that he knew best, the Arbitrator noted that the term "FMV" was defined in Section 4.2, but disregarded the plain language. The language used in the OPAG is not complex, "The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." This language becomes even clearer when read in context. In a plain language reading of the OPAG Section 4, it is apparent that the definitions come first, followed by use of the defined terms in the follow on subsections. The Arbitrator makes a very simple definition infinitely more confusing, devoting multiple paragraphs to deciding how he wanted to define the term, rather than using a simple and plain reading of the language the Parties had agreed upon.

For the aforementioned reasons above, Bidsal respectfully requests that this Court deny CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment in its entirety and Vacate the Arbitration Award.

Dated this 15th day of July, 2019

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 15th day of June, 2019, I served a true and correct copy of the foregoing **RESPONDENT'S OPPOSITION TO CLA'S PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND COUNTERPETITION TO VACATE ARBITRATION AWARD**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey File & Serve, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered on May 9, 2014.

/s/ Jill M. Berghammer
An employee of Smith & Shapiro, PLLC

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EXHIBIT 3

EXHIBIT 3

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER OF THE PETITION OF CLA PROPERTIES LLC	Case No.: A-19-795188-P Dept. No.: XXXI **ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD**

This matter came on for hearing for Petitioner's Confirmation of Arbitration Award and Entry of Judgement and Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgement and Counterpetition to Vacate Arbitration Award, on November 12, 2019. Present at the hearing was, Louis E. Garfinkel Esq. for Petitioner; and James E. Shapiro, Esq. for Respondent. Respondent Shawn Bidsal was also present.

The issues before the Court were whether the Award in favor of Petitioner should be upheld or whether the Arbitrator erroneously interpreted Section 4.2 of the Green Valley Operating Agreement and thus the Award should be vacated.

I. PROCEDERAL AND FACTUAL BACKGROUND

CLA Properties, LLC (Petitioner or CLA) and Shawn Bidsal (Respondent or Mr. Bidsal) were the sole members of Green Valley, LLC (Green Valley), a Nevada limited

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liability company, which owns and manages real property in Las Vegas, Nevada. CLA Properties, LLC is solely owned by its principal Benjamin Golshani (Mr. Golshani). Petitioner and Respondent each owned a 50% membership interest in Green Valley.

It is undisputed that Mr. Golshani on behalf of CLA, along with Respondent executed an Operating Agreement for Green Valley (Operating Agreement) on June 15, 2011. Section 4 of Article 5 (Section 4) of the Operating Agreement contained provisions regarding how the membership interest of one member could be purchased and/or sold to the other member. The Operating Agreement allows members to initiate the purchase or sale of one member's interest by the other. These provisions were drafted by third party attorney, David LeGrand, and then were modifications made. More specifically, Section 4 allowed the offering member to buy out the remaining member at a price based upon a valuation of the fair market value of Green Valley. It is then that the remaining member is given the option to buy or sell pursuant to the valuation or demand an appraisal.

Section 4 of Article V commences on page 10 and the relevant portions read as follows:

> **Section 4. Purchase or Sell Right among Members.**
>
> In the event that a Member is willing to purchase the Remaining Member's Interest in the Company then the procedures and terms of Section 4.2. shall apply.
>
> **Section 4.1 Definitions.**
>
> Offering Member means the member who offers to purchase the membership Interest(s) of the Remaining Member(s). "Remaining members" means the Members who received an offer (from Offering Member) to sell their shares.
> "COP" means the cost of purchase" as it is specified in the escrow closing statement at the time of purchase of each property owned by the Company.

"Seller" means the Member that accepts the offer to sell his or its Membership Interest.
"FMV"means "fair market value" obtained as specified in section 4.2

Section 4.2 Purchase or Sell Procedure.

Any Member ("Offering Member") may give notice to the Remaining Member(s) that he or it is ready, willing and able to purchase the Remaining Members' Interests for a
price the Offering Member thinks is the fair market value. The terms to be all cash and close escrow within 30 days of the acceptance.

If the offered price is not acceptable to the Remaining Member(s), within 30 days of receiving the offer, the Remaining Members (or any of them) can request to establish FMV based on the following procedure. The Remaining Member(s) must provide the Offering Member the complete information of 2 MIA appraisers. The Offering Member must pick one of the appraiser to appraise the property and furnish a copy to all Members. The Offering Member also must provide the Remaining Member with the complete information of 2 MIA approved appraiser. The Remaining Member must pick one of the appraiser to appraise the property and furnish a copy to all Members. The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV).

The Offering Member has the option to offer to purchase the Remaining Member's share at FMV as detem1ined by Section 4.2, based on the following formula.

(FMV- COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.

The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either

(i)Accepting the Offering Member's purchase offer, or.
(ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula....

On July 7, 2017, Respondent sent Petitioner a written offer to buy Petitioner's 50% membership interest based on an estimate valuation of $5 million. On August 3, 2017, Petitioner instead elected to buy Respondent's 50% membership interest based on the $5 million valuation and without an appraisal. On August 7, 2019, Respondent

refused to sell his interest to Petitioner and instead stated that he had a right to have a fair market value appraisal of his membership interest. The parties disputed whether the Operating Agreement provided that Respondent had a right to seek a fair market valuation of his interest or whether the Agreement provided that Respondent had to sell his share at the $5 million dollar price.

On May 8, 2018 through May 9, 2018, the parties arbitrated the dispute in Las Vegas, Nevada, pursuant to Article III, Section 14.1 of the Operating Agreement.

Article III, Section 14.1 of the Operating Agreement of Green Valley is entitled "Dispute Resolution" and contains an arbitration provision whereby the parties agreed the dispute would be resolved exclusively by arbitration. Section 14.1 states in pertinent part:

> The representative shall promptly meet in good faith effort to resolve the dispute.
>
> If the representatives do not agree upon a decision within thirty (30) calendar days after reference of the matter to them, any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transaction arising hereunder shall be settled exclusively by arbitration in the City of Las Vegas, Nevada: Such arbitration shall be administered by JAMS in accordance with its then prevailing expedited rules, by one independent and impartial arbitrator selected in accordance with such rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1, *et seq*. . . . The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction. The decision .of the arbitrator shall be in writing and shall set forth findings of fact and conclusions of law to the extent applicable.

See, Exhibit "2", pp. 7-8

Arbitrator Stephen E. Haberfeld (Arbitrator) was appointed in JAMS Arbitration Number 1260004569. On April 5, 2019, the Arbitrator entered the Award in favor of Petitioner and ordered Respondent to transfer his 50% membership interest in Green Valley to Petitioner, free and clear of all liens and encumbrances. Further, the Award ordered the transfer by sale at a price computed at $5 million, in accordance with Section 4. Lastly, the Award granted Petitioner $298,256.00 plus attorneys' fees and costs. Conversely, Respondent was awarded nothing on the counterclaim.

On May 21, 2019, Petitioner filed the Petition for Confirmation of Arbitration Award and Entry of Judgment, which asserted that Respondent failed to comply with the Arbitrator's Award. On July 15, 2019, Responded filed an Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award.

Petitioner argued that Respondent is required to transfer his fifty (50%) percent Membership Interest in Green Valley Commerce, LLC (Green Valley), free and clear of all liens and encumbrances, to CLA Properties, LLC. Petitioner further argued the price is specifically to be computed pursuant to Section 4.2 of the Operating Agreement, and with the Fair Market Value portion of the formula fixed as five million dollars. Petitioner contends that the ruling of the Arbitrator both as to the sale price and the attorney fees awarded is correct and should be affirmed.

Respondent argued the Court should vacate the Award because the Arbitrator interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement. Further, Respondent disagrees with the Arbitrator's findings that the subject contract provision was drafted by Respondent, rather than third-party, David LeGrand. Lastly,

Respondent contends the Arbitrator exceeded his authority by ignoring the plain language definition of "FMV" (fair market value), as stated in the Operating Agreement.

The parties also litigated this matter in Federal Court. On April 9, 2019, Respondent filed a Motion to Vacate an Arbitration Award in United States District Court, District of Nevada. On April 25, 2019, Petitioner filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. On June 24, 2019, the United States District Court, District of Nevada, granted Petitioner's Motion to Dismiss because the case did not present a federal question. Petitioner filed the present action with the Court.

II. ANALYSIS

At the November 12, 2019 hearing, the parties agreed that this Court has jurisdiction to review the Arbitrator's Award pursuant to Nevada Revised Statute 38.244(2). Moreover, the parties agreed the Court's decision to vacate the Award is properly governed by United States Arbitration Act, 9 U.S.C. § 9. Respondent also analyzed the Motions pursuant to Nevada Revised Statute 38. The parties further agreed that regardless if the Court utilized the federal or state standard, the result would be the same. The dispute is whether the Court should affirm or vacate the Arbitrator's award.

Having reviewed the papers and pleadings on file herein, including, but not limited to, exhibits and affidavits; having heard oral arguments of the parties in excess of ninety minutes, the Court finds that the Arbitration award should be affirmed. The language of the Operating Agreement supports the decision of Arbitrator Haberfeld. (Ex. MM, App 1088). The Court finds that Arbitrator Haberfeld's analysis that the offering

member does not have a right to an appraisal in the instant scenario is supported by the language of the Operating Agreement and the testimony of the witnesses including that of David LeGrand as well as the other evidence presented.

Although Respondent contends that the Arbitrator interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement, the decision sets forth that the labeling of the Agreement was not the controlling factor, but instead it was the language of the Agreement as supported by the evidence presented at the Arbitration. The fact that the final provision in the Agreement was not the same language initially drafted by Mr. LeGrand has not been shown by Respondent to merit setting aside the Arbitrator's findings under either the federal or state standards. Further, the Arbitrator said that his decision would be the same, even if Mr. Golshani had been the draftsman. See, e,g, 17 of Ex. MM pg 9, APP 1088 at 1097. Thus, whether both parties modified the language in some respect or if Respondent's position is adopted that it was only Mr. Golshani, the outcome is the same–there was not sufficient evidence that the Arbitrator's decision should be vacated based on his interpretation of who drafted the provision.

Further, while Respondent contends the Arbitrator exceeded his authority by ignoring the plain language definition of "FMV" (fair market value), as stated in the Operating Agreement, there is insufficient support or evidence to support that contention. Instead, Arbitrator's Haberfeld's decision clearly articulates the evidence he relied on in making his decision and he supported that decision to the extent necessary to have it affirmed both under state and federal law. While Respondent disagrees with the decision, he has not established pursuant to the plethora of case law cited in both

party's briefs, that his disagreement merits vacating the award. Moreover, to the extent his decision was not as timely as the parties would have wished has not been shown to invalidate the decision. Accordingly, as Petitioner has met its burden to have the award affirmed and Respondent has not met his burden to vacate the award. Thus, the Court must affirm the Arbitrator's award in its entirety.

ORDER

IT IS **HEREBY ORDERED, ADJUDGED, and DECREED** that pursuant to the Operating Agreement, 9 U.S.C. § 9 and Nevada Revised Statute 38.244(2), Petitioner's Confirmation of Arbitration Award and Entry of Judgement is GRANTED. Accordingly, the Court ORDERS Judgment in favor of Petitioner CLA Properties, LLC and against Respondent Shawn Bidsal in accordance with the Award, confirming that Bidsal shall take nothing by his Counterclaim and ordering Bidsal to:

A. Within fourteen (14) days of the Judgment, (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.

B. Pay CLA as the prevailing party on the merits of the Arbitration Claim, the sum awarded by the Arbitrator. Specifically, CLA shall recover from Bidsal the sum and amount of $298,256.00 plus interest from April 5, 2019 at the

INA S. KISHNER
ISTRICT JUDGE
'ARTMENT XXXI
GAS, NEVADA 89155

legal rate, and as and for contractual attorneys' fees and costs reasonably incurred in connection with the Arbitration.

IT IS FURTHER ORDERED ADJUDGED, and DECREED that Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award is DENIED.[1]

Dated this 5th day of December, 2019.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

[1] Any request for fees and/or costs for the present action before the state District Court is not presently before the Court and thus, if any request were to be made it would need to be by separate Motion.

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

Louis E. Garfinkel, Esq.
1671 W. HORIZON RIDGE PKWY, STE. 230
HENDERSON, NV. 89031

James E. Shapiro, Esq.
2400 SAINT ROSE PKWY, STE. 220
HENDERSON, NV. 89074

for TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT 4

EXHIBIT 4

NEOJ

Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
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Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES LLC, a limited liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

Case No.: A-19-795188-P
Dept.: 31

NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD

PLEASE TAKE NOTICE that on December 6, 2019, the Court entered its Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's

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Opposition and Counter-petition to Vacate the Arbitrator's Award, a copy of which is attached as Exhibit "1."

Dated this 16th day of December, 2019

LEVINE & GARFINKEL

By: Louis E. Garfinkel

Louis E. Garfinkel, Esq. (Nevada Bar No. 3416)
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Henderson, NV 89012
Tel: (702) 673-1612 / Fax: (702) 735-0198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of LEVINE & GARFINKEL, and that on the 16th day of December, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD** to be served as follows:

[ ] by placing a true and correct copy of the same to be deposited for mailing in the US Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

[ ] by hand delivery to the parties listed below; and/or

[X] pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending it via electronic service to:

James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
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Attorneys for Respondent Shawn Bidsal

Melanie Bruner

Melanie Bruner, an Employee of
LEVINE & GARFINKEL

EXHIBIT "1"

EXHIBIT "1"

Electronically Filed
12/6/2019 8:49 AM
Steven D. Grierson
CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER OF THE PETITION OF CLA PROPERTIES LLC	Case No.: A-19-795188-P Dept. No.: XXXI **ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD**

This matter came on for hearing for Petitioner's Confirmation of Arbitration Award and Entry of Judgement and Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgement and Counterpetition to Vacate Arbitration Award, on November 12, 2019. Present at the hearing was, Louis E. Garfinkel Esq. for Petitioner; and James E. Shapiro, Esq. for Respondent. Respondent Shawn Bidsal was also present.

The issues before the Court were whether the Award in favor of Petitioner should be upheld or whether the Arbitrator erroneously interpreted Section 4.2 of the Green Valley Operating Agreement and thus the Award should be vacated.

I. PROCEDERAL AND FACTUAL BACKGROUND

CLA Properties, LLC (Petitioner or CLA) and Shawn Bidsal (Respondent or Mr. Bidsal) were the sole members of Green Valley, LLC (Green Valley), a Nevada limited

liability company, which owns and manages real property in Las Vegas, Nevada. CLA Properties, LLC is solely owned by its principal Benjamin Golshani (Mr. Golshani). Petitioner and Respondent each owned a 50% membership interest in Green Valley.

It is undisputed that Mr. Golshani on behalf of CLA, along with Respondent executed an Operating Agreement for Green Valley (Operating Agreement) on June 15, 2011. Section 4 of Article 5 (Section 4) of the Operating Agreement contained provisions regarding how the membership interest of one member could be purchased and/or sold to the other member. The Operating Agreement allows members to initiate the purchase or sale of one member's interest by the other. These provisions were drafted by third party attorney, David LeGrand, and then were modifications made. More specifically, Section 4 allowed the offering member to buy out the remaining member at a price based upon a valuation of the fair market value of Green Valley. It is then that the remaining member is given the option to buy or sell pursuant to the valuation or demand an appraisal.

Section 4 of Article V commences on page 10 and the relevant portions read as follows:

> **Section 4. Purchase or Sell Right among Members.**
>
> In the event that a Member is willing to purchase the Remaining Member's Interest in the Company then the procedures and terms of Section 4.2. shall apply.
>
> **Section 4.1 Definitions.**
>
> Offering Member means the member who offers to purchase the membership Interest(s) of the Remaining Member(s). "Remaining members" means the Members who received an offer (from Offering Member) to sell their shares.
> "COP" means the cost of purchase" as it is specified in the escrow closing statement at the time of purchase of each property owned by the Company.

"Seller" means the Member that accepts the offer to sell his or its Membership Interest.
"FMV"means "fair market value" obtained as specified in section 4.2

Section 4.2 Purchase or Sell Procedure.

Any Member ("Offering Member") may give notice to the Remaining Member(s) that he or it is ready, willing and able to purchase the Remaining Members' Interests for a price the Offering Member thinks is the fair market value. The terms to be all cash and close escrow within 30 days of the acceptance.

If the offered price is not acceptable to the Remaining Member(s), within 30 days of receiving the offer, the Remaining Members (or any of them) can request to establish FMV based on the following procedure. The Remaining Member(s) must provide the Offering Member the complete information of 2 MIA appraisers. The Offering Member must pick one of the appraiser to appraise the property and furnish a copy to all Members. The Offering Member also must provide the Remaining Member with the complete information of 2 MIA approved appraiser. The Remaining Member must pick one of the appraiser to appraise the property and furnish a copy to all Members. The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV).

The Offering Member has the option to offer to purchase the Remaining Member's share at FMV as detem1ined by Section 4.2, based on the following formula.

(FMV- COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.

The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either

(i)Accepting the Offering Member's purchase offer, or.
(ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula....

On July 7, 2017, Respondent sent Petitioner a written offer to buy Petitioner's 50% membership interest based on an estimate valuation of $5 million. On August 3, 2017, Petitioner instead elected to buy Respondent's 50% membership interest based on the $5 million valuation and without an appraisal. On August 7, 2019, Respondent

refused to sell his interest to Petitioner and instead stated that he had a right to have a fair market value appraisal of his membership interest. The parties disputed whether the Operating Agreement provided that Respondent had a right to seek a fair market valuation of his interest or whether the Agreement provided that Respondent had to sell his share at the $5 million dollar price.

On May 8, 2018 through May 9, 2018, the parties arbitrated the dispute in Las Vegas, Nevada, pursuant to Article III, Section 14.1 of the Operating Agreement.

Article III, Section 14.1 of the Operating Agreement of Green Valley is entitled "Dispute Resolution" and contains an arbitration provision whereby the parties agreed the dispute would be resolved exclusively by arbitration. Section 14.1 states in pertinent part:

> The representative shall promptly meet in good faith effort to resolve the dispute.
>
> If the representatives do not agree upon a decision within thirty (30) calendar days after reference of the matter to them, any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transaction arising hereunder shall be settled exclusively by arbitration in the City of Las Vegas, Nevada: Such arbitration shall be administered by JAMS in accordance with its then prevailing expedited rules, by one independent and impartial arbitrator selected in accordance with such rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1, *et seq*.... The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction. The decision .of the arbitrator shall be in writing and shall set forth findings of fact and conclusions of law to the extent applicable.

See, Exhibit "2", pp. 7-8

Arbitrator Stephen E. Haberfeld (Arbitrator) was appointed in JAMS Arbitration Number 1260004569. On April 5, 2019, the Arbitrator entered the Award in favor of Petitioner and ordered Respondent to transfer his 50% membership interest in Green Valley to Petitioner, free and clear of all liens and encumbrances. Further, the Award ordered the transfer by sale at a price computed at $5 million, in accordance with Section 4. Lastly, the Award granted Petitioner $298,256.00 plus attorneys' fees and costs. Conversely, Respondent was awarded nothing on the counterclaim.

On May 21, 2019, Petitioner filed the Petition for Confirmation of Arbitration Award and Entry of Judgment, which asserted that Respondent failed to comply with the Arbitrator's Award. On July 15, 2019, Responded filed an Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award.

Petitioner argued that Respondent is required to transfer his fifty (50%) percent Membership Interest in Green Valley Commerce, LLC (Green Valley), free and clear of all liens and encumbrances, to CLA Properties, LLC. Petitioner further argued the price is specifically to be computed pursuant to Section 4.2 of the Operating Agreement, and with the Fair Market Value portion of the formula fixed as five million dollars. Petitioner contends that the ruling of the Arbitrator both as to the sale price and the attorney fees awarded is correct and should be affirmed.

Respondent argued the Court should vacate the Award because the Arbitrator interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement. Further, Respondent disagrees with the Arbitrator's findings that the subject contract provision was drafted by Respondent, rather than third-party, David LeGrand. Lastly,

Respondent contends the Arbitrator exceeded his authority by ignoring the plain language definition of "FMV" (fair market value), as stated in the Operating Agreement.

The parties also litigated this matter in Federal Court. On April 9, 2019, Respondent filed a Motion to Vacate an Arbitration Award in United States District Court, District of Nevada. On April 25, 2019, Petitioner filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. On June 24, 2019, the United States District Court, District of Nevada, granted Petitioner's Motion to Dismiss because the case did not present a federal question. Petitioner filed the present action with the Court.

II. ANALYSIS

At the November 12, 2019 hearing, the parties agreed that this Court has jurisdiction to review the Arbitrator's Award pursuant to Nevada Revised Statute 38.244(2). Moreover, the parties agreed the Court's decision to vacate the Award is properly governed by United States Arbitration Act, 9 U.S.C. § 9. Respondent also analyzed the Motions pursuant to Nevada Revised Statute 38. The parties further agreed that regardless if the Court utilized the federal or state standard, the result would be the same. The dispute is whether the Court should affirm or vacate the Arbitrator's award.

Having reviewed the papers and pleadings on file herein, including, but not limited to, exhibits and affidavits; having heard oral arguments of the parties in excess of ninety minutes, the Court finds that the Arbitration award should be affirmed. The language of the Operating Agreement supports the decision of Arbitrator Haberfeld. (Ex. MM, App 1088). The Court finds that Arbitrator Haberfeld's analysis that the offering

member does not have a right to an appraisal in the instant scenario is supported by the language of the Operating Agreement and the testimony of the witnesses including that of David LeGrand as well as the other evidence presented.

Although Respondent contends that the Arbitrator interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement, the decision sets forth that the labeling of the Agreement was not the controlling factor, but instead it was the language of the Agreement as supported by the evidence presented at the Arbitration. The fact that the final provision in the Agreement was not the same language initially drafted by Mr. LeGrand has not been shown by Respondent to merit setting aside the Arbitrator's findings under either the federal or state standards. Further, the Arbitrator said that his decision would be the same, even if Mr. Golshani had been the draftsman. See, e.g, 17 of Ex. MM pg 9, APP 1088 at 1097. Thus, whether both parties modified the language in some respect or if Respondent's position is adopted that it was only Mr. Golshani, the outcome is the same–there was not sufficient evidence that the Arbitrator's decision should be vacated based on his interpretation of who drafted the provision.

Further, while Respondent contends the Arbitrator exceeded his authority by ignoring the plain language definition of "FMV" (fair market value), as stated in the Operating Agreement, there is insufficient support or evidence to support that contention. Instead, Arbitrator's Haberfeld's decision clearly articulates the evidence he relied on in making his decision and he supported that decision to the extent necessary to have it affirmed both under state and federal law. While Respondent disagrees with the decision, he has not established pursuant to the plethora of case law cited in both

party's briefs, that his disagreement merits vacating the award. Moreover, to the extent his decision was not as timely as the parties would have wished has not been shown to invalidate the decision. Accordingly, as Petitioner has met its burden to have the award affirmed and Respondent has not met his burden to vacate the award. Thus, the Court must affirm the Arbitrator's award in its entirety.

ORDER

IT IS **HEREBY ORDERED, ADJUDGED, and DECREED** that pursuant to the Operating Agreement, 9 U.S.C. § 9 and Nevada Revised Statute 38.244(2), Petitioner's Confirmation of Arbitration Award and Entry of Judgement is GRANTED. Accordingly, the Court ORDERS Judgment in favor of Petitioner CLA Properties, LLC and against Respondent Shawn Bidsal in accordance with the Award, confirming that Bidsal shall take nothing by his Counterclaim and ordering Bidsal to:

A. Within fourteen (14) days of the Judgment, (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.

B. Pay CLA as the prevailing party on the merits of the Arbitration Claim, the sum awarded by the Arbitrator. Specifically, CLA shall recover from Bidsal the sum and amount of $298,256.00 plus interest from April 5, 2019 at the

INA S. KISHNER
ISTRICT JUDGE
'ARTMENT XXXI
GAS, NEVADA 89155

legal rate, and as and for contractual attorneys' fees and costs reasonably incurred in connection with the Arbitration.

IT IS FURTHER ORDERED ADJUDGED, and DECREED that Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award is DENIED.[1]

Dated this 5th day of December, 2019.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

[1] Any request for fees and/or costs for the present action before the state District Court is not presently before the Court and thus, if any request were to be made it would need to be by separate Motion.

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

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James E. Shapiro, Esq.
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for TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT 5

EXHIBIT 5

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Attorneys for Respondent, Shawn Bidsal

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No. **A-19-795188-P** Dept. No. 31 ***Hearing Requested***

RESPONDENT'S MOTION FOR STAY PENDING APPEAL

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, hereby submits his Motion for Stay Pending Appeal. (the "***Motion***")

This Motion is made and based upon the attached Memorandum of Points and Authorities, the attached affidavit and exhibit and any oral argument the Court may wish to entertain in the premises.

Dated this 17th day of January, 2020

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Petitioner CLA PROPERTIES, LLC ("***CLAP***") and Respondent Bidsal are the sole members of Green Valley Commerce, LLC ("***GVC***"). *See* Declaration of Shawn Bidsal, a true and correct copy of which is attached hereto as ***Exhibit "A"*** and incorporated herein by this reference. GVC owns and manages commercial property in Las Vegas, Nevada. *Id*. CLAP is solely owned by its principal Benjamin Golshani ("***Golshani***"). *Id*. On or about June 15, 2011 CLAP and Bidsal entered into an Operating Agreement ("***OPAG***") for GVC. *Id*. From its inception, GVC's primary business has been the ownership and operation of commercial properties. *See* Exhibit "A".

On or about July 7, 2017 Bidsal sent CLAP a written offer to purchase CLAP's share of GVC. After that July 7, 2017 correspondence was received, CLAP and Bidsal reached an impasse as to how the OPAG directed a buy-out of interests for GVC (the "***Impasse***").

From on or about May 8, 2018 to May 9, 2018 Bidsal and CLAP participated in an arbitration to resolve the Impasse. Arbitrator Stephen E. Haberfeld ("***Arbitrator***") was appointed to hear the matter. Nearly eleven months later, on or about April 5, 2019, the Arbitrator entered an arbitration award in favor of CLAP (the "***Arbitrator's Award***"). Under the Arbitrator's Award, CLAP is required to pay well over One Million Dollars ($1,000,000) to Bidsal for Bidsal's membership interest in GVC. *See* Exhibit "A".

On May 21, 2019, CLAP filed a Petition for Confirmation of Arbitration Award and Entry of Judgment (the "***Petition***"). Bidsal, filed an Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and filed a Counterpetition to Vacate Arbitration Award on July 15, 2019 (the "***Counterpetition***").

The Petition and the Counterpetition were heard on November 12, 2019 in the District Court. On December 6, 2019 the District Court rendered a decision granting the Petition ("***District Court Order***"). The Notice of Entry of the District Court Order was entered on December 16, 2019.

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On January 9, 2020 Bidsal filed a Notice of Appeal of the District Court Order. For the reasons set forth below, Bidsal requests that the Court enter a stay pending appeal of the District Court Order.

II.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD.

NRAP 8 allows a party to seek a stay of any order pending an appeal of the same and requires that the motion be first brought in front of the district court judge. NRCP 62, which governs requests for a stay pending appeal, states in pertinent part:

> (d) Stay Pending an Appeal.
>
> (1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.
>
> (2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

NRCP 62(d).

As NRCP 62(d) indicates, a stay pending appeal is granted as a matter of routine so long as a supersedeas bond has been posted. NRCP 62(d). Further, a supersedeas bond is not required before a stay will be granted, so long as some other bond or other security is provided. *Id*.

The amount of the bond is left to the discretion of the Court, but ordinarily is in an amount equal to the amount of the judgment. McCulloch v. Jeakins, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983). However, "[a] district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant." *Id*.

In deciding whether to issue a stay, the Nevada Supreme Court considers the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. Hansen v.

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Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). *See also* NRAP Rule 8(c).

B. A STAY OF ENFORCEMENT OF THE ORDER IS APPROPRIATE.

Considering the four factors identified in Hansen, a stay would be appropriate in this case. First, the purpose of the appeal is to determine whether Bidsal has an obligation to abide by the Arbitrator's decision, confirmed by the District Court. However, the District Court Order requires the transfer of Bidsal's interest in GVC to occur within 14 days of the Judgment. Thus, the object of the appeal would be defeated absent a stay because Bidsal would be required by the District Court Order to transfer his shares before the court that hears the appeal determines whether such an transfer as ordered by the District Court is required.

Second, Bidsal will suffer irreparable harm if the stay is denied. If the transfer of shares in GVC occurs and the appeal results in a reversal of the Arbitrator's decision, it will be virtually impossible to undo the transfer. *See* Exhibit "A". This is in part, because Bidsal, who is currently managing the property owned by GVC, would lose the ability to manage GVC and its properties if the transfer occurs prior to the appeal. *Id*. The value of any commercial property, including GVC's commercial property, is directly linked to its management. *Id*. By losing the ability to manage GVC and its properties pending the appeal, Bidsal will suffer irreparable harm. *Id*.

Third, respondent will not suffer any injury if the stay is granted. If the Order is confirmed on appeal, Respondent will merely be required to wait a little longer to receive Bidsal's shares. Bidsal has managed the real property that is GVC's primary asset from the beginning, including while this matter has worked its way through the legal system. Bidsal has proven capable and willing to continue to manage the property for GVC. CLAP will not in any way be divested of its shares in GVC simply due to a stay. Further, CLAP will suffer no monetary harm. While the Arbitrator awarded CLAP attorneys fees, CLAP can easily offset the full amount of the award from the purchase price which CLAP ultimately pays to Bidsal for Bidsal's shares (should the Arbitrator's Award be upheld). Because confirming the Arbitrator's Award will require a significant payment of money from CLAP to Bidsal, there is literally no monetary risk to CLAP as CLAP can offset any amounts owed by Bidsal to CLAP from CLAP's ultimate payment to Bidsal.

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Fourth, while no appeal is sure to be successful, under these circumstances, the appeal is warranted, and this appeal has as much chance of success as any other appeal.

Based upon the foregoing, a stay should be granted.

C. THE REQUIREMENT OF SUPERSEDEAS BOND SHOULD BE WAIVED.

While NRCP 62 generally requires the posting of a supersedeas bond before a stay can be imposed, under these circumstances, the requirement of a bond should be waived.

A district court has discretion in identifying the type of security required before a stay will be entered. *See* NRCP 62(d); *See also* McCulloch, 99 Nev. 122. The purpose of requiring a supersedeas bond "is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252(2005); *See also* V-1 Oil Co. v. People, 799 P.2d 1199, 1203 (Wyo. 1990) ("The essence of posting a supersedeas bond by an appellant following judgment entry is to avoid a mootness challenge that might otherwise arise if the judgment is paid before appeal is taken ....") cited by the Nevada Supreme Court in Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 71 P. 3d 1258 (Nev. 2003).

In this case, the Arbitration Award and District Court Order require CLAP to essentially pay Two Million, Five Hundred Thousand Dollars ($2,500,000.00) to Bidsal[1]. Because CLAP is the one who, under the terms of the Arbitration Award, is required to pay $2.5M to Bidsal, CLAP will not be prejudiced by any stay as it will simply give CLAP more time to come up with the money. Further, to the extent that CLAP incurs any harm from the appeal, the monetary amount can simply be deducted from the amount which CLAP ultimately must pay to Bidsal.

Because the purpose of the bond "is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay," and because, under the unique facts of this case, CLAP is already fully

[1] The Arbitration Award found that Bidsal's offer based upon a $5,000,000 fair market value was enforceable against Bidsal by CLAP. Because Bidsal owns 50% of GVC, on its face, CLAP would have to pay Bidsal 50% of the $5,000,000 of the fair market value, or $2,500,000. While there are adjustments which need to be made before the final payment is paid, the point is that at the end of the day, CLAP will owe Bidsal significantly more than any monetary harm CLAP will incur while the appeal is pending.

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protected by virtue of the payment which CLAP will owe to Bidsal should the Arbitration Award be upheld, requiring a bond will not further the reason for the bond in the first place, nor will it provide any additional security to CLAP, who is already fully protected. *See* Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252(2005). In fact, requiring any type of bond at this point will only prejudice Bidsal, without providing any tangible benefit to CLAP.

Because the purpose and intent of a supersedeas bond is entirely missing, Bidsal requests that, under these unique circumstances, the requirement of a supersedeas bond be waived. Alternatively, the amount should be nominal.

III.

CONCLUSION

Based upon the foregoing points and authorities, the Bidsal respectfully requests that the Court grant this Motion for Stay.

Dated this 17th day of January, 2020

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
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Aimee M. Cannon, Esq.
Nevada Bar No. 11780
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Attorneys for Respondent, Shawn Bidsal

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 17th day of January, 2020, I served a true and correct copy of the foregoing **RESPONDENT'S MOTION FOR STAY PENDING APPEAL**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey File & Serve, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered on May 9, 2014.

/s/ Jennifer Bidwell
An employee of Smith & Shapiro, PLLC

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EXHIBIT A

EXHIBIT A

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DECLARATION OF SHAWN BIDSAL
IN SUPPORT OF RESPONDENT'S MOTION FOR STAY PENDING APPEAL

I, Shawn Bidsal, do hereby declare under penalty of perjury, under the laws of the State of Nevada in accordance with N.R.S. § 53.045 as follows:

1. I am a resident of the State of California.

2. I am the Managing Member of GREEN VALLEY COMMERCE, LLC ("***GVC***").

3. I am currently the respondent in the petition of CLA Properties, LLC v. Shawn Bidsal., Case No. A-19-795188-P.

4. My counsel is Smith & Shapiro, PLLC ("***Bidsal's Counsel***").

5. GVC owns and manages commercial property in Las Vegas, NV. From its inception, GVC's primary business has been the ownership and operation of commercial properties.

6. Since its inception, I have managed GVC and all of the commercial properties it has owned.

7. If I lose the ability to manage GVC, I will suffer irreparable harm, particularly if Benjamin Golshani ("***Ben***") takes over the manager as Ben is in textile business and has no experience with commercial properties.

8. It is my understanding that Ben is the sole owner and principal of CLA Properties, LLC ("***CLAP***").

9. Ben is the individual I have dealt with who has acted on behalf of CLAP.

10. On or about June 15, 2011, I entered into an Operating Agreement for GVC with CLAP.

11. On or about July 7, 2017, I sent CLAP a written offer to purchase its share of GVC.

12. After my July 7, 2017 correspondence, CLAP and I reached an impasse as to how the GVC operating agreement directed a buy-out of one member's interest.

13. I participated in an arbitration with CLAP from May 8, 2018 to May 9, 2018 in an effort to resolve the buy-out impasse.

14. Stephen E. Haberfeld was the arbitrator during the May 8, 2018 to May 9, 2018 arbitration.

\\\

15. Nearly 11 months later, on or about April 5, 2019, Arbitrator Haberfeld entered an arbitration award in favor of CLAP.

16. Under the arbitrator's award, CLAP is required to pay well over a Million Dollars ($1,000,000) to me for my membership interest in GVC.

17. On May 21, 2019 CLAP filed a Petition for Confirmation of Arbitration Award and Entry of Judgment.

18. On July 15, 2019 I filed an Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and filed a Counterpetition to Vacate Arbitration Award.

19. The Petition and Counterpetition were heard on November 12, 2019 in the Eighth Judicial District Court.

20. On December 6, 2019 the District Court rendered a decision grating the Petition. The Notice of Entry of the District Court Order was entered on December 16, 2019.

21. On January 9, 2020 I filed a Notice of Appeal of the District Court Order.

22. If I am required to transfer my shares in GVC, prior to the Supreme Court of Nevada considering my appeal I will suffer irreparable harm, as I will lose the ability to manage GVC's commercial properties.

23. By losing the ability to manage GVC and its properties, I will suffer irreparable harm.

24. I make this Declaration freely and of my own free will and choice and I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16 day of January, 2020.

Shawn Bidsal

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