Case Nos. 80427 & 80831

In the Supreme Court of Nevada

In the Matter of the Petition of CLA PROPERTIES LLC.
SHAWN BIDSAL, Appellant, *vs.* CLA PROPERTIES LLC, Respondent.
CLA PROPERTIES LLC, Appellant, *vs.* SHAWN BIDSAL, Respondent.

APPEAL

from the Eight Judicial District Court, Clark County, Nevada
The Honorable JOANNA S. KISHNER, District Judge
District Court Case No. A-19-795188-P

APPELLANT'S APPENDIX
VOLUME 1
PAGES 1–250

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

JAMES E. SHAPIRO (SBN 7907)
AIMEE M. CANNON (SBN 11,780)
SMITH & SHAPIRO, PLLC
3333 E. Serene Avenue, Suite 130
Henderson, Nevada 89074
(702) 318-5033

Attorneys for Shawn Bidsal

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CERTIFICATE OF SERVICE

I certify that on November 24, 2020, I submitted the foregoing "Appellant's Appendix" for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Louis E. Garfinkel
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy.
Suite 230
Henderson, Nevada 89102

Rodney T. Lewin
LAW OFFICES OF RODNEY T. LEWIN, APC
8665 Wilshire Blvd., Suite 210
Beverly Hills, California 90211

Robert L. Eisenberg
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street
Third Floor
Reno, Nevada 89519

Attorneys for CLA Properties LLC

/s/ Cynthia Kelley
An Employee of Lewis Roca Rothgerber Christie LLP

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Steven D. Grierson
CLERK OF THE COURT

PTNC
Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612/Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
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.
Nevada Bar No. 3416
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612 / Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
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

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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

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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: _____

Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612 / Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties, LLC

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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.

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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.

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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").

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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

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--- 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.

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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.

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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.

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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

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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)."

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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

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

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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.

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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

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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.

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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

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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.

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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

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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.

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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

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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.

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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.

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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.

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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.

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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)

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[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."

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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

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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]

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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.

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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.

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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.

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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-

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[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.

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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.

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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)."

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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.

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

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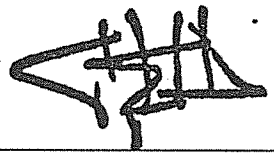
6. This Final Award resolves all claims, affirmative defenses, requests for relief (including requests for reconsideration) and all principal issues and contentions between the parties to this arbitration.

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

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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
rod@rtlewin.com
Parties Represented:
CLA Properties, LLC

Louis E. Garfinkel Esq.
Levine Garfinkel Eckersley & Angioni
1671 W. Horizon Ridge Parkway
Suite 230
Henderson, NV 89102
Phone: 702-735-0451
lgarfinkel@lgkattorneys.com
Parties Represented:
CLA Properties, LLC

James E. Shapiro Esq.
Sheldon A. Herbert Esq.
Smith & Shapiro
3333 E Serene Ave.
Suite 130
Henderson, NV 89074
Phone: 702-318-5033
jshapiro@smithshapiro.com
sherbert@smithshapiro.com
Parties Represented:
Shawn Bidsal

Daniel Goodkin Esq.
Goodkin & Lynch
1875 Century Park East
Suite 1860
Los Angeles, CA 90067
Phone: 310-853-5730
dgoodkin@goodkinlynch.com
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"

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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(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.

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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.

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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.

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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.

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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.

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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,

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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 Golshami, Manager

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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:

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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.

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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

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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)(l) 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.

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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

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

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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

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Electronically Filed
5/28/2019 8:28 AM
Steven D. Grierson
CLERK OF THE COURT

AOS
Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612
Fax: (702) 735-2198
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.: 27

AFFIDAVIT OF SERVICE
(Shawn Bidsal, an individual)

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NO.	FOR COURT USE ONLY
LOUIS E. GARFINKEL, NBN 3416 1671 W. Horizon Ridge Pkwy, Suite 230 Henderson NV 89012	(702) 673-1612	
ATTORNEY FOR (Name): Plaintiff		
Insert of Court Name of Judicial District and Branch Court if any CLARK COUNTY, NEVADA		
SHORT TITLE OF CASE CLA PROPERTIES v SHAWN BIDSAL		
3511271 (HEARING) Date: 06/26/2019 Time: 9:00AM Dept: 27		Case Number: A19795188P REFERENCE NO.: CLA Properties, LLC v Bidsal

PROOF OF SERVICE OF SUMMONS

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION

2. I SERVED COPIES OF THE:
   SUMMONS & COMPLAINT
   PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGEMENT
   NOTICE OF HEARING

3. a. PARTY SERVED: SHAWN BIDSAL, an individual

CAUCASIAN MALE 55YRS 5'5" 180LBS. BROWN HAIR

b. PERSON SERVED: PARTY IN ITEM 3A

4. c. ADDRESS: 14039 Sherman Way, Suite 201
   VAN NUYS CA 91405

5. I SERVED THE PARTY IN 3 A
   ON 5/23/2019 AT 4:15:00 PM
   a. BY PERSONALLY DELIVERING THE DOCUMENTS LISTED IN ITEM 2

6. THE "NOTICE TO PERSON SERVED" WAS COMPLETED AS FOLLOWS:
   a. ON BEHALF OF: AS AN INDIVIDUAL DEFENDANT
   SHAWN BIDSAL, an individual

UNDER THE FOLLOWING CODE OF CIVIL PROCEDURE SECTION : CCP 415.10

7a. Person Serving: Humberto Palacio

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

c. (714) 662-5555

d. The fee for service was $103.90

e. I am:
(1) not a registered California process server:
(3) X registered California process server:
(i) Independent Contractor
(i) Registration No: 2627
(i) County: LOS ANGELES

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Humberto Palacio

5/24/2019

X _____
SIGNATURE

PROOF OF SERVICE

Form Approved for Optional Use Judicial Council of California
POS-010 [REV Jan 1 2007]

CRC 982(A)(23)

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Electronically Filed
5/28/2019 1:50 PM
Steven D. Grierson
CLERK OF THE COURT

James E. Shapiro, Esq.
Nevada Bar No. 7907
jshapiro@smithshapiro.com
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
sherbert@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for 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. 27

PEREMPTORY CHALLENGE OF JUDGE

TO: Clerk of Court, Eighth Judicial District Court, and

TO: All Parties:

PLEASE TAKE NOTICE that Respondent SHAWN BIDSAL ("***Bidsal***") hereby tenders to the Clerk of the Supreme Court a filing fee of $450.00 and, pursuant to S.C.R. 48.1, exercises his right to a Peremptory Challenge of Judge Nancy L. Allf as the assigned Judge in this case.

DATED this 28th day of May, 2019.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 28th day of May, 2019, I served a true and correct copy of the forgoing **PEREMPTORY CHALLENGE OF JUDGE**, 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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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Electronically Filed
5/28/2019 5:36 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
*** * * ***

IN THE MATTER OF THE PETITION OF CLA PROPERTIES LLC	Case No.: A-19-795188-P DEPARTMENT 31

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to Judge Joanna S. Kishner.

☒ This reassignment follows the filing of a Peremptory Challenge of Judge Nancy Allf.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT. PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

Petition 7-02-19 at 9:00 AM

STEVEN D. GRIERSON, CEO/Clerk of the Court

By:/S/ Ivonne Hernandez
Ivonne Hernandez,
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 28th day of May, 2019

☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number A-19-795188-P.

/S/ Ivonne Hernandez

Ivonne Hernandez
Deputy Clerk of the Court

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James E. Shapiro, Esq.
Nevada Bar No. 7907
jshapiro@smithshapiro.com
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
acannon@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for 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

NOTICE OF ENTRY OF STIPULATION AND ORDER STAYING PROCEEDINGS

PLEASE TAKE NOTICE that a Stipulation and Order Staying Proceedings was entered on 20th day of June, 2019, a true and complete copy of which is attached hereto as Exhibit A.

DATED this 21st day of June, 2019.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2019, a copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER STAYING PROCEEDINGS** was served by e-service upon all parties 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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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EXHIBIT A

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EXHIBIT A

ORIGINAL

James E. Shapiro, Esq.
Nevada Bar No. 7907
jshapiro@smithshapiro.com
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
sherbert@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for 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 DEPARTMENT XXXI NOTICE OF HEARING DATE 8/27/19 TIME 9:00 am APPROVED BY JC31

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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STIPULATION AND ORDER STAYING PROCEEDINGS

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, and Petitioner CLA PROPERTIES, LLC, a California limited liability company ("***CLA***"), by and through its attorneys, LEVINE & GARFINKEL, hereby stipulate and agree as follows:

1. On or about April 9, 2019, Bidsal filed a motion to vacate arbitration award (the "***Motion to Vacate***") with the United States District Court for the District of Nevada (the "***Federal Court***"), being Case No. 2:19-cv-00605 (the "***Federal Case***").

2. On or about April 25, 2019, CLA filed a motion to dismiss in the Federal Case for lack of subject matter jurisdiction (the "***Motion to Dismiss***").

3. On or about May 21, 2019, CLA initiated this action with the Eighth Judicial District Court by filing a Motion to Confirm Arbitrator's Award and Entry of Judgment (the "***Motion to Confirm***") which is currently set for hearing on July 2, 2019 at 9:00 a.m.

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4. The parties agree that if the Federal Court does *not* dismiss the Federal Case, that Bidsal's Motion to Vacate currently pending in Federal Court will need to be resolved prior to any determination of whether to confirm the Arbitrator's Award.

5. If the United States District Court does grant CLA's Motion to Dismiss, Bidsal will likely file his Motion to Vacate in state court.

6. Either way, this matter should be stayed pending the Federal Court's decision on CLA's Motion to Dismiss.

7. As such, the July 2, 2019 hearing date on the Motion to Confirm should be vacated, to be rescheduled if necessary.

8. Upon issuance of the Federal Court's decision on CLA's Motion to Dismiss, the parties will notify this Court of the same.

9. If CLA's Motion to Dismiss is granted by the Federal Court, Bidsal's response and/or countermotion to the Motion to Confirm shall be due twenty (20) days after notice to this Court of the Federal Court's order granting CLA's Motion to Dismiss.

10. CLA's reply and/or response brief shall be due twenty (20) days thereafter.

11. Bidsal's reply brief in support of any countermotion shall be due twenty (20) days thereafter.

12. The hearing on the Motion to Confirm and any countermotion brought by Bidsal shall be set to be heard at the same time at the Court's convenience thereafter.

DATED this ____ day of June, 2019.

SMITH & SHAPIRO, PLLC

James E. Shapiro, Esq. (NV Bar #7907)
Sheldon A. Herbert, Esq. (NV Bar #5988)
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Respondent Shawn Bidsal

LEVINE & GARFINKEL

Louis E. Garfinkel, Esq. (NV Bar #3416)
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Attorneys for Petitioner CLA Properties, LLC

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SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

ORDER

GOOD CAUSE APPEARING:

IT IS HEREBY ORDERED that the forgoing stipulation by the parties is hereby GRANTED, ENTERED, and ORDERED.

IT IS FURTHER ORDERED that this matter is and shall be STAYED, pending notice of the Federal Court's decision on CLA's Motion to Dismiss.

IT IS FURTHER ORDERED that a status check will be held on August 27, 2019 at 9:00 am

Dated: June 17, 2019

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Respectfully submitted by:

SMITH & SHAPIRO, PLLC

James E. Shapiro, Esq.
Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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NEOJ
Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612
Fax: (702) 735-2198
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 MOTION TO DISMISS AND ENTRY OF JUDGMENT**

Pursuant to this Court's Order staying the proceedings, Petitioner CLA Properties LLC ("CLA") hereby gives notice to the Court and Respondent Shawn Bidsal that on June 24, 2019, United States District Court Judge Andrew P. Gordon entered an Order in the action entitled "*Shawn Bidsal v. CLA Properties LLC,*" United States District Court, District of Nevada, Case No. 2:19-cv-00605-APG-BNW granting CLA's motion to dismiss for lack of subject matter jurisdiction. A copy of the Order is attached as Exhibit"1".

Moreover, on June 24, 2019, a Judgment was also entered by the Clerk for the United

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States District Court, District of Nevada in Case No. 2:19-cv-00605-APG-BNW, a copy of which is attached hereto as Exhibit "2".

Dated this 25th day of June 2019.

LEVINE & GARFINKEL

By: _____

Louis E. Garfinkel, Esq. (Nevada Bar No. 3416)
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612 / Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

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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 25th day of June, 2019, I caused the foregoing to be **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO DISMISS AND ENTRY OF JUDGMENT** 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
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
Smith & Shapiro, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
T: (702) 318-5033 / F: (702) 318-5034
E: jshapiro@smithshapiro.com
sherbert@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

An Employee of LEVINE & GARFINKEL

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EXHIBIT "1"

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EXHIBIT "1"

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SHAWN BIDSAL,

Plaintiff

v.

CLA PROPERTIES, LLC,

Defendant

Case No.: 2:19-cv-00605-APG-BNW

Order Granting Motion to Dismiss

[ECF No. 25]

Plaintiff Shawn Bidsal filed a motion to vacate an arbitration award pursuant to the Federal Arbitration Act (FAA). ECF No. 1. Defendant CLA Properties, LLC moves to dismiss, asserting this court lacks subject matter jurisdiction because the parties are not diverse and there is no federal question. Bidsal responds that diversity jurisdiction exists because CLA is a Nevada limited liability company, it does business in Nevada, and it owns entities which own real property here.

A "petitioner seeking to confirm or vacate an arbitration award in federal court [under the FAA] must establish an independent basis for federal jurisdiction." *Carter v. Health Net of Cal., Inc.*, 374 F.3d 830, 833 (9th Cir. 2004) (citing *Southland Corp. v. Keating*, 465 U.S. 1, 15 n.9 (1984) (noting that "[w]hile the Federal Arbitration Act creates federal substantive law requiring the parties to honor arbitration agreements, it does not create any independent federal-question jurisdiction")). Bidsal does not identify a federal question independent of the FAA to support federal question jurisdiction.

There is no diversity jurisdiction either. Bidsal does not dispute that he is a California citizen. CLA is also a California citizen because its sole member, Benjamin Golshani, is a California citizen. ECF No. 25 at 26; *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d

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894, 899 (9th Cir. 2006) (stating that "an LLC is a citizen of every state of which its owners/members are citizens"). I therefore dismiss this case for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that defendant CLA Properties, LLC's motion to dismiss **(ECF No. 25) is GRANTED**. This action is dismissed for lack of subject matter jurisdiction.

DATED this 24th day of June, 2019.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

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EXHIBIT "2"

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EXHIBIT "2"

AO450 (NVD Rev. 2/18) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Shawn Bidsal,

Plaintiff,

v.

CLA Properties, LLC,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 2:19-cv-00605-APG-BNW

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

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X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

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IT IS ORDERED AND ADJUDGED

that judgment is entered this action is dismissed for lack of subject matter jurisdiction.

6/24/2019
Date

DEBRA K. KEMPI
Clerk

/s/ M. Reyes
Deputy Clerk

7

Electronically Filed
7/15/2019 4:55 PM
Steven D. Grierson
CLERK OF THE COURT

James E. Shapiro, Esq.
Nevada Bar No. 7907
jshapiro@smithshapiro.com
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
acannon@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for 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

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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SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Respondent,
Shawn Bidsal

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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,

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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".

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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)

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

(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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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).

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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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);

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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).

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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>.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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."

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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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3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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,

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Respondent,
Shawn Bidsal

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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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

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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Steven D. Grierson
CLERK OF THE COURT

James E. Shapiro, Esq.
Nevada Bar No. 7907
jshapiro@smithshapiro.com
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
acannon@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for 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

APPENDIX

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
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

PART	DESCRIPTION
1	Exhibit A - Federal Order Granting Motion to Dismiss
1	Exhibit B - Merits Hearing
1	Exhibit C – Articles of Organization – Green Valley Commerce, LLC
1	Exhibit D- Green Valley's Grant, Bargain and Sale Deed
1	Exhibit E – Chain's June 17, 2011 Email
1	Exhibit F – LeGrand's June 17, 2011 Email
1	Exhibit G – LeGrand's June 27, 2011 Email
2	Exhibit H – Le Grand's July 22, 2011 Email

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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2	Exhibit I – LeGrand's July 25, 2011 Email
2	Exhibit J – LeGrand's August 18, 2011 Email
2	Exhibit K – LeGrand's September 16, 2011 Email
2	Exhibit L – LeGrand's September 19, 2011 Email
2	Exhibit M – LeGrand's September 20, 2011 Email
2	Exhibit N – Golshani's September 22, 2011 Email
2	Exhibit O – Final Operating Agreement
2	Exhibit P – Golshani's October 26, 2011 Email
2	Exhibit Q – Demonstrative Flowchart of Section 4 of Operating Agreement
2	Exhibit R – LeGrand's November 10, 2011 Email
3	Exhibit S – Draft 2 of the Operating Agreement
3	Exhibit T – Demonstrative Exhibit from the merits hearing comparing drafts
3	Exhibit U – Golshani Email dated August 3, 2012
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3	Exhibit W – Green Valley Commerce Brochure
3	Exhibit X – LeGrand's June 19, 2013 Email
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3	Exhibit Z - Appraisal
4	Exhibit AA – CLAP Response Letter dated August 3, 2017
4	Exhibit BB – Bidsal's Response Letter dated August 5, 2017
4	Exhibit CC – CLAP Letter dated August 28, 2017
4	Exhibit DD – Arbitration Demand dated September 26, 2017
4	Exhibit EE – Merits Order No. 1
4	Exhibit FF – Proposed Interim Order
4	Exhibit GG – Attorney's Fee Application
4	Exhibit HH – Bidsal's Award Objection
5	Exhibit II – Bidsal's Attorney's Fees Objection
5	Exhibit JJ – Interim Award
5	Exhibit KK – CLAP Attorney's Fees Supplement
5	Exhibit LL – Bidsal's Interim Award Objection
5	Exhibit MM – Final Award
5	Exhibit NN – JAMS Rules
5	Exhibit OO – Additional Excerpts from Merits Hearing Transcript

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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EXHIBIT A

(Federal Order Granting Motion to Dismiss)

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EXHIBIT A

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SHAWN BIDSAL,

Plaintiff

v.

CLA PROPERTIES, LLC,

Defendant

Case No.: 2:19-cv-00605-APG-BNW

Order Granting Motion to Dismiss

[ECF No. 25]

Plaintiff Shawn Bidsal filed a motion to vacate an arbitration award pursuant to the Federal Arbitration Act (FAA). ECF No. 1. Defendant CLA Properties, LLC moves to dismiss, asserting this court lacks subject matter jurisdiction because the parties are not diverse and there is no federal question. Bidsal responds that diversity jurisdiction exists because CLA is a Nevada limited liability company, it does business in Nevada, and it owns entities which own real property here.

A "petitioner seeking to confirm or vacate an arbitration award in federal court [under the FAA] must establish an independent basis for federal jurisdiction." *Carter v. Health Net of Cal., Inc.*, 374 F.3d 830, 833 (9th Cir. 2004) (citing *Southland Corp. v. Keating*, 465 U.S. 1, 15 n.9 (1984) (noting that "[w]hile the Federal Arbitration Act creates federal substantive law requiring the parties to honor arbitration agreements, it does not create any independent federal-question jurisdiction")). Bidsal does not identify a federal question independent of the FAA to support federal question jurisdiction.

There is no diversity jurisdiction either. Bidsal does not dispute that he is a California citizen. CLA is also a California citizen because its sole member, Benjamin Golshani, is a California citizen. ECF No. 25 at 26; *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d

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894, 899 (9th Cir. 2006) (stating that "an LLC is a citizen of every state of which its owners/members are citizens"). I therefore dismiss this case for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that defendant CLA Properties, LLC's motion to dismiss **(ECF No. 25) is GRANTED**. This action is dismissed for lack of subject matter jurisdiction.

DATED this 24th day of June, 2019.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

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EXHIBIT B

(Merits Hearing)

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EXHIBIT B

In the Matter Of:

CLA Properties, LLC vs. Bidsal, Shawn

TRANSCRIPT OF PROCEEDINGS, VOLUME I

May 08, 2018

Job Number: 469894

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* * * * * *

CLA PROPERTIES,

Claimant,

vs.

SHAWN BIDSAL,

Respondent.

Reference No. 1260004569

TRANSCRIPT OF PROCEEDINGS

Taken Before the Honorable Stephen E. Haberfeld

Volume I

Las Vegas, Nevada

May 8, 2018

11:12 a.m.

Reported by: Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 469894

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APPEARANCES OF COUNSEL

For the Claimant:

RODNEY T. LEWIN, ESQ.
Law Offices of Rodney T. Lewin
8665 Wilshire Boulevard
Suite 210
Beverly Hills, California 90211
(310) 659-6771
(310) 659-7354 Fax
rod@rtlewin.com

For the Respondent:

JAMES E. SHAPIRO, ESQ.
Smith & Shapiro
3333 East Serene
Suite 130
Henderson, Nevada 89074
(702) 318-5033
(702) 318-5034 Fax
jshapiro@smithshapiro.com

- and -

DANIEL L. GOODKIN, ESQ.
Goodkin & Lynch, LLP
1875 Century Park East
Suite 1860
Los Angeles, California 90067
(702) 552-3322
(702) 943-1589 Fax
doodkinlynch.com

The Arbitrator:

Honorable Stephen E. Haberfeld, ESQ.
JAMS
3800 Howard Hughes Parkway
11th Floor
Las Vegas, Nevada 89169
(702) 457-5267
(702) 437-5267 Fax

* * * * * *

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WITNESS INDEX

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LAS VEGAS, NEVADA

Tuesday, May 8, 2018

11:12 a.m.

TRANSCRIPT OF PROCEEDINGS

* * * * * *

THE ARBITRATOR: On the record.

Good morning again, all. We have had off-the-record conversations prior to going on the record with the welcome arrival of our court reporter. This being JAMS arbitration reference No. 1260004569, CLA Properties, LLC vs. Shawn Bidsal.

May I have appearances, please.

MR. LEWIN: Yes. Rodney Lewin appearing on behalf of the claimant, CLA Properties.

MR. SHAPIRO: Jim Shapiro on behalf of Shawn Bidsal.

MR. GOODKIN: And Dan Goodkin, as well, for Shawn Bidsal.

THE ARBITRATOR: And may I also have the appearances of the other people in our hearing room, please.

MR. SHAPIRO: Shawn Bidsal is present.

MR. LEWIN: And -- go ahead.

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mean, we pointed out that there's some paragraphs that don't follow and whatnot. But when you go to the essence of the agreement and you really study it and find out why the -- what the purpose of -- for the remaining -- for this appraisal process, it begins -- it all makes sense.

Now --

THE ARBITRATOR: So you're basically saying that the key purpose -- the word "key" is the Arbitrator's addition to what you said -- that the key purpose of the appraisal is to protect the remaining member. Is that what you said?

MR. LEWIN: That's what I'm saying and that's what the evidence is going to show and that's what the document says because only the remaining member has the right to demand an appraisal, and it's clear. It's absolutely clear.

And if there's any issue about -- about how this came up, a point that the -- that the respondent wants to avoid -- like a lot of other things -- I mean, there -- I expect that we're going to have a lot of evidence in here which is -- which is going to be evidence to misdirect, to try to -- to try to throw a whole -- as my old boss used to say when I was -- he was -- used to

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70/30. And I was too far ahead in the game, number one, and then I thought, okay, I have come so far for that 10 percent, I better not make an issue out of it and all that. Let's try it and see what comes out of it.

And I agreed with that 70/30, and I did pay. And the 70/30 was that I would buy 70 percent of the property, he would buy 30 percent of the property, but the profit would be divided in half.

Q Okay. 50/50?

A Yes.

Q Okay. And was there -- and did Country Club close at the same time?

A About the same time with the same setup.

Q Same setup.

And take a look at -- let's take a look at Exhibit No. 1.

A Okay.

Q Now, these are articles of organization for Green Valley Commerce, LLC, which were filed on May 26th, 2011.

And you received a copy of these?

A Yes.

Q And did you receive a -- and I -- and I

Q Who found the properties?
A Both of us found them.
Q Okay. Now, when -- when you were testifying, it sounded like you purchased the properties on Auction.com.
A Correct.
Q And you purchased -- so you made a bid, and then they transferred the property to you. Is that your testimony?
A When you say "they," whom do you mean?
Q Whoever owned the property.
A That's right.
Q Okay. Do you recall that instead of purchasing the property, you actually purchased a promissory note?
A Yes, I do.
Q Okay. And -- and then after you purchased the promissory note, there was a deed in lieu of foreclosure that was negotiated; is that correct?
A Correct, yes.
Q Shawn handled the negotiations on the deed in lieu; correct?
A Most of it, yes.
Q He kept you up to date on what was going

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on; right?
A Well, we worked with each other, but most of it was done by myself and Shawn, yes.
Q Okay. And then ultimately the property was subdivided --
A Correct.
Q -- to separate parcels; correct?
A Yes.
Q And Shawn was the one who handled that subdivision process?
A He hired the surveyor, yes, he --
Q But he was the one working with the surveyors and everybody; correct?
A I worked with it too, but, he -- again, he did most of the work.
Q Okay. But certainly you were involved in the process and understood what was going on?
A To some extent, yes.
Q Okay. And then Shawn was the one who managed and leased the properties; correct?
A Correct.
Q And Shawn didn't receive a management fee for doing so; correct?
A Well, he received -- well, he received the money in turn -- that our agreement was that I

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pay him more. I mean, pay -- invest more and that would take care of his services.

Q Okay. So the compensation that Shawn was going to receive was essentially sweat equity to hypothetically equal the cash that you put in?

A Yes.

Q Okay. Now, if you could turn to Exhibit 2. This is a -- an exhibit that your attorney showed to you earlier.

A All right.

Q And if I understood your testimony correctly, you -- you testified that this was the initial deposit that you made?

A Correct.

Q Okay. Now, you were giving me a number of 400-and-some-odd thousand -- 404,000; correct?

A Yes.

Q Can you show me on Exhibit 2 where that number shows up?

A Isn't it, you know, at the last number in the left column, it says May 20, 2011, the number above that.

MR. SHAPIRO: Your Honor, I'm wondering if maybe my exhibit is not the same, because my exhibit is not showing that, so -- okay.

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A All right.

Q Does that make sense?

A Yes.

Q Okay.

A So the -- the definition probably came from the discussion of -- I had with Bidsal and Mr. LeGrand. And then the next change, I don't know. The next paragraph, I don't know. "The remaining members shall provide," we changed the "three MIA" to "two" because there was two -- I mean, it was overkill.

And, of course, when "buy" changed to -- "sell" changed to "buy," other things changed. The formula changed to reflect Mr. Bidsal's interest. And this is all I can tell you.

Q Okay. Now, as far as the individual who actually made the changes, this -- was it done on a computer?

A I think so, yes.

Q And were you the ones that were -- was making the changes on the computer?

A Yes, I was.

Q Okay. Now, if you could turn to Exhibit 23.

A Okay.

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Do you see that?

A Yes.

Q And this says the appraisal was prepared by Petra Latch for Benjamin Golshani?

A Uh-huh.

Q Do you see that?

A Yes.

Q Does that refresh your recollection as to whether or not you received a report on or about July 31st, 2017?

A That's what it says here. I probably received it, but I don't have right now my e-mail to take a look at --

Q Okay. All right.

So within a matter of 11 days, less than two weeks, you were able to obtain an appraisal of the property; correct?

A Well --

Q Is that yes or no?

A Yes, with --

Q Okay. Thank you.

A -- an explanation.

Q Why is it that you requested the appraisal?

A Variety of reason. Number one was that

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I -- you know, my partner wanted me -- wanted to buy me out, and I had to get money. And I went to a couple of friends to see if they would like to come and -- and take over. And one of them suggested the appraisal, and the appraiser was introduced by him.

The other was just to have an appraisal. So I wrote a letter to Mr. Bidsal that I would like to appraise the property and inform the broker to cooperate with me.

Q Okay. Did you ever provide a copy of the appraisal to Shawn?

A No, I didn't. This was a -- an appraisal that I paid for. He didn't ask. When we met in the coffee shop, he asked me how much the appraisal came. I was very busy and I was extremely sick in those times, and I hadn't even looked at it, but I heard that it was the number and I gave him the number.

Q Okay. Did you say you wrote Shawn a letter?

A Yes, I did.

Q Which letter are you referring to?

A A letter that I -- an e-mail I sent to him and I said I would like to appraise the

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property.

Q Have you produced a copy of that e-mail?

A I have given it to --

Q If I -- I can tell you that we haven't seen that e-mail in anything that your attorney produced.

MR. LEWIN: Well, we weren't -- I don't think we're obliged to produce it. If you want a copy of it --

MR. SHAPIRO: Well, I don't want a copy of it now.

MR. LEWIN: Well, because I don't think it --

MR. SHAPIRO: Okay.

MR. LEWIN: We were supposed to -- we were supposed to produce things that we intended to use at the time of the trial -- at the arbitration. This is not one of them --

MR. SHAPIRO: Okay.

MR. LEWIN: -- but I'll provide it for you if you want it.

MR. SHAPIRO: I'm not asking for it.

MR. LEWIN: Okay.

BY MR. SHAPIRO:

Q Okay. So it's your contention that you

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e-mailed Shawn and said you were going to appraise it, but you didn't give him a copy of the appraisal report?

A He didn't ask and he didn't need it. He didn't -- he just wanted to know how much it was and I said based on what I heard, yes.

Q And it's your contention that he never asked you for a copy of the appraisal?

A He never asked me for a copy.

Q Okay. Now, going back to Exhibit 353 --

A That -- if you're -- okay. I shouldn't --

Q If you could look at the first page of Exhibit 353.

A Okay. I'm there.

Q And I'm going back to paragraph five. I just want to be clear. It says, "On or about July 20th, 2017, Shawn Golshani contacted me."

That's -- that's your son. That's not Shawn Bidsal; right?

A That's right.

Q Okay. Just wanted to be clear.

A As I mentioned, I was very sick.

Q Now, you produced a declaration in this matter that was signed January 19th, 2018;

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in his office and he made a printout, and he gave -- we signed it and he gave me to sign.

I -- if you look at it, I see here that --

BY MR. SHAPIRO:

Q Okay. So I'm going to cut you off.

A Uh-huh.

MR. LEWIN: Well, he's explaining --

THE ARBITRATOR: Let him complete his answer.

MR. SHAPIRO: Okay.

THE ARBITRATOR: Complete your answer, sir.

THE WITNESS: If you look at page 28 of 28, my interest has changed from 70 percent to 30 -- 50 percent, and I don't believe LeGrand did that. None of his -- his operating agreement, it is 50/50. This is 70/30.

BY MR. SHAPIRO:

Q So you -- your statement was "I don't believe LeGrand did that"?

A I never saw in any of his operating agreement. And I remember he was telling you that to the end, I was not -- I was -- I didn't know. And this was something that LeGrand -- I mean,

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this was something I -- when I look at all the operating agreement LeGrand did, it was all 70/30. And when Mr. Bidsal took possession of it, it became 50/50. That's what I am saying.

Q You just said when you look at all of the operating agreements David LeGrand did.

Did you look at all of the operating agreements that David LeGrand prepared?

A Recently I looked at whatever I had, yes.

Q Okay. Did you look through the file that he produced?

A What file?

Q Did you look at the operating agreements that David LeGrand produced in his file?

A Yes.

Q Okay.

A Unless I missed, but I -- it's very easy to check again to see.

Q Okay. I'm just asking, because before you said you didn't look through his file, but now you did look at -- through all of them. I'm just trying to understand what you looked through.

A No, you said -- I said that I didn't look through every -- page by page. It is very

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bulky. But the things that caught my interest, I went and I looked at them.

Q Okay.

A That's not --

Q Did you see Shawn make changes to the operating agreement? Did you ever --

A I saw he was behind his computer doing things, but I am not sure. I didn't -- I didn't pry to see what he is doing.

Q Well, tell me about that. Tell me -- explain what happened when you saw Shawn behind his computer.

A And it's very normal thing. I mean, I went to his office, and he was doing his things. There are nothing unusual. But when he was printing that, he was working on that, he made the printout. He signed it. He gave it to me.

And because I haven't seen anything that -- I haven't seen LeGrand putting that 70 -- changing 70/30 to -- to 50/50, and he had no reason to -- for doing that, it make -- it gets me to the conclusion that Mr. Bidsal did it.

Q Okay. So you're drawing an assumption that Mr. Bidsal did?

A Yes.

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you were aware of all of this?

A Not necessarily, but when you work with someone, they -- he talks to other people, he treats other people, he treats -- you know, does other things. You get an idea, you know.

Q I guess I'm not following any answer.

So you --

A What's your question? And I will answer exactly that thing.

Q The question is, did Shawn keep you up to date through the process of selling these properties? Did he give you --

A For the most part, yes.

MR. SHAPIRO: Okay. With the Court's indulgence, I think I'm done, but I've got some notes that I'm not deciphering, so --

THE ARBITRATOR: Want to take a couple of minutes?

MR. LEWIN: Yeah.

MR. SHAPIRO: Yeah, that would be great.

THE ARBITRATOR: Okay. We have a request for a break, so it will be longer than that.

MR. SHAPIRO: For a Haberfeld five minutes?

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MR. LEWIN: You're looking at the wrong version.

MR. SHAPIRO: Yeah, maybe it's a different binder.

THE WITNESS: Okay.

BY MR. SHAPIRO:

Q Now, again, middle of the first page, this appears to be an e-mail from Shawn Bidsal to you dated October 30th, 2012, and it says, "Valuation for Green Valley and Horizon Ridge, Shawn."

Do you see that?

A Yes.

Q And then there's some documents attached that speak to the value of the Green Valley and Horizon Ridge.

Do you see that?

A Okay.

Q Was this typical for Shawn to send you e-mails like this?

A I don't think so.

Q You don't think so?

A You mean all the time he would --

Q Well, anytime that the information came up, would he send it to you?

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A I probably did, yes.

Q Okay. And isn't it true that after Mr. LeGrand sent you the draft of -- the draft of the Green Valley operating agreement, you told him that you needed to make some corrections to it?

A No. I didn't work on the Green Valley operating agreement.

Q Well, do you know -- did -- do you know why he's asking -- didn't you -- strike that.

Didn't you -- didn't you tell Mr. LeGrand that you were -- you had to make some revisions to the Green Valley operating agreement?

A No.

Q You see it is -- do you know why he's asking you, "Shawn, did you ever finish the revisions?"

A No.

Q Did -- did -- did you ever receive a draft of the Green Valley operating agreement from Mr. LeGrand where Mr. Golshani's percentage interest in the LLC was less than 70 percent?

A Unless you can show me an exhibit to look at it.

Q Do you remember -- do you remember that?

A I don't remember it.

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Q But didn't -- if you look at -- if you look at -- if you recall, if you look at -- did you -- did you change Exhibit B to this Green Valley operating agreement to change Mr. Golshani's percentage interest from 70 percent to 50 percent?

A No.

Q Did you ever have a discussion with Mr. Golshani about changing his percentage -- that's his ownership interest in the LLC; right? You understand the percentage interest in the ownership interest in the LLC?

A Can you go there?

Q Sure. Let's go to Exhibit 29.

So look at the last page of Exhibit B. And the last page of Exhibit B, and you see it says "members' percentage interest."

That means their ownership interest in the LLC; right?

A Correct.

Q Not the profits. That's the ownership interest.

A That was the right agreement.

Q Well, take a look at Exhibit 25. Let's take a look at the last page of Exhibit 25, which

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THE ARBITRATOR: Is there -- is there an e-mail?

MR. LEWIN: Not that I've seen.

THE ARBITRATOR: All right.

BY MR. LEWIN:

Q Is there an e-mail where you respond -- is there an e-mail where you respond to Mr. LeGrand's December 10 e-mail?

A I wouldn't know.

Q You've searched --

A Whatever -- whatever we found, we produced them.

Q But you've searched your e-mails. You've searched your e-mails to prepare for this; right?

A Yes.

Q You haven't found any response to this December 10 e-mail; right?

A No.

Q Is that correct?

A Correct.

Q Now, where did you sign the -- where did -- where did you sign the Green Valley operating agreement?

A In my office.

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Q And Mr. Golshani was there for -- was there?

A Yes.

Q And didn't you print out the agreement from your computer at that office?

A No.

Q Where did you get the agreement to sign?

A Mr. Golshani brought it in.

Q So Mr. Golshani brought the agreement in?

A Yes.

Q Okay. And did you ever talk to Mr. Golshani about changing the -- changing the 70 percent -- his 70 percent to 50 percent?

A That was our agreement.

Q Did you ever talk to -- well --

A We talked about --

Q We've now -- we've now -- we've now seen as late as November of 29, that there -- that his percentage interest was -- was 70 percent; right?

A That is a raw e-mail or a draft e-mail that LeGrand sent --

Q I can show you --

A -- if that's what you're referring to.

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exhibit -- for example, take a look at Exhibit 10, it has it. And that's from June 27. Take a look at Exhibit 10, the last page.

What does it say? For member's percentage interest for Ben, what does it say?

A 30/70.

Q 70 percent him?

A Right.

Q And so did you -- did you have a discussion with Mr. Golshani where you said, no, our percentages should be 50 -- our ownership interest should be 50/50?

A From beginning, yes.

Q Did you have a discussion about changing the Exhibit B on the operating agreement?

A That's reflected there, yes.

Q Well, how did it change? Who changed it from 70 to -- 70 to 50?

A You're referring to the membership --

Q The membership percentage interest on the final draft that was signed, who changed it?

A Mr. Golshani.

Q Oh, Mr. Golshani changed it?

A Yes.

Q Okay. And how do you know that?

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In the Matter Of:

CLA Properties, LLC vs. Bidsal, Shawn

TRANSCRIPT OF PROCEEDINGS, VOLUME II

May 09, 2018

Job Number: 469952

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J A M S

* * * * * *

CLA PROPERTIES,

Claimant,

vs.

SHAWN BIDSAL,

Respondent.

Reference No. 1260004569

TRANSCRIPT OF PROCEEDINGS

Taken Before the Honorable Stephen E. Haberfeld

Volume II

Las Vegas, Nevada

May 9, 2018

9:02 a.m.

Reported by: Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 469952

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APPEARANCES OF COUNSEL

For the Claimant:

RODNEY T. LEWIN, ESQ.
Law Offices of Rodney T. Lewin
8665 Wilshire Boulevard
Suite 210
Beverly Hills, California 90211
(310) 659-6771
(310) 659-7354 Fax
rod@rtlewin.com

For the Respondent:

JAMES E. SHAPIRO, ESQ.
Smith & Shapiro
3333 East Serene
Suite 130
Henderson, Nevada 89074
(702) 318-5033
(702) 318-5034 Fax
jshapiro@smithshapiro.com

- and -

DANIEL L. GOODKIN, ESQ.
Goodkin & Lynch, LLP
1875 Century Park East
Suite 1860
Los Angeles, California 90067
(702) 552-3322
(702) 943-1589 Fax
goodkinlynch.com

The Arbitrator:

Honorable Stephen E. Haberfeld, ESQ.
JAMS
3800 Howard Hughes Parkway
11th Floor
Las Vegas, Nevada 89169
(702) 457-5267
(702) 437-5267 Fax

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WITNESS INDEX

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LAS VEGAS, NEVADA

Wednesday, May 9, 2018

9:02 a.m.

TRANSCRIPT OF PROCEEDINGS

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THE ARBITRATOR: Back on the record. Good morning, everyone.

MR. LEWIN: Good morning.

THE ARBITRATOR: It's about 9:00, or a few moments after that, for a resumed evidentiary session of the merits hearing, the arbitration hearing in this matter. And we have resumed cross-examination.

MR. LEWIN: Thank you, Your Honor.

CROSS-EXAMINATION (Cont'd)

BY MR. LEWIN:

Q Mr. Bidsal, would you -- well, let me ask you, first of all, if you agree with this -- with this sentence in -- in your -- in your trial brief. It's on page 10, lines 17 through 18. It's at -- and it's under the heading "Under collapse interpretation, no buy/sell would ever occur."

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And it says, quote, "A party would never make an initial offer to buy if that offer could be transformed into an offer to sell," end quote.

Do you agree with that?

A Yes.

Q Okay. Well, take a look at Exhibit 16, would you, please. I'm sorry. I'm -- I'm sorry. I made the wrong -- it's 17.

Do you see where it says -- it's addressed to Shawn and Ben, and then it says, "We discussed that you want to be able to name a price and either get bought or buy at the offer price," end quote.

Isn't it true you had that discussion with -- that you and Mr. Golshani had that discussion with Mr. LeGrand at the July 21 meeting, about being able to name a price either you bought or sold -- or either you bought or buy at that same price?

A No, not under that format.

Q Well, but you -- you've had mandatory or forced buy/sell provisions in some of your other operating agreements, haven't you?

A We had buy/sell agreements in other operating agreements.

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Q Well, but then -- then -- and take a look at -- then let's take a look --

THE ARBITRATOR: Did you get an answer to your question?

BY MR. LEWIN:

Q Well, what other -- did you get -- I thought -- I thought -- you're right.

Did you -- did you have a forced buy/sell agreement in any other LLC in which you were a member? Yes or no, sir?

A As I said, we had buy/sell provisions in other LLCs.

Q Okay. I'm was talking about a -- a buy/sell provision where -- where someone was able to name a price and you either bought or buy at that offer price.

Did you have any provisions like that?

A Not under that -- the way you're describing it under the format. As I said, we had buy/sell agreements in other operating agreements.

Q The format I'm talking about is where one member names a price and the other member either has to sell at that price or buy him out at that price.

Yes or no, did you have other buy/sell

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A He told me he had heart problems when I met him in a coffee shop. That -- that was after the offer was made, and I think he also responded. So this was even after that he responded.

Q So -- okay. So -- so your testimony is that before July 7, you did not know that he was scheduled to have a heart surgery --

A I don't remember, no.

Q -- is that correct?

When you say you don't remember, you don't remember whether you were told that or that you didn't know?

A I don't remember such a conversation.

Q I see. Okay.

And you don't -- and you don't recall that he told you that when you asked him about investing in other properties that he was tight -- tight on cash or words to that effect?

A I think I answered that yesterday. There was no issue of money between us in terms of having the funds to buy or sell.

Q I didn't ask you about whether there was an issue of money.

Did you recall him telling you before July 7 in 2017 that he was tight on cash or short

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A No. It's around 4 million 7.

Q That's only for -- that's only for a portion of the properties; right?

A Right, for the Vegas properties.

Q And when you add in the other property, it's the -- when you add in the other property, the total value, which -- worth a million-five; right?

A That does not have an appraisal on it.

Q Well, you had an offer for a million-five?

A A million -- in the million-six, I think, and change.

Q Okay. So that would bring -- that would bring the value to more than 6.3 million; right?

A Correct.

Q Okay. So -- but when Mr. Golshani asked you if there was any deferred maintenance on the property, when he was considering how to respond to your offer, what did you tell him?

A He asked whatever document we have to be e-mailed to him, which I e-mailed to him.

Q Did Mr. Golshani ask you if there was any deferred maintenance on the properties when he was considering whether or not to --

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A Yes.

Q All right. And it -- it says -- it says in the context of what we're here about, you are the offering member; right?

A Yes.

Q And it says -- did you under -- when it said, "The specific intent of this provision is that once the offering member presents"-- "presented his or its offer to the remaining member, then the remaining member shall either sell or buy at the same offer price or fair market"-- "or FMV if appraisal is revoked and according to the procedures set forth in Section 4."

You read that before you signed that?

A Yes.

Q And when you said -- and when it said "the same offer price," what did you understand that meant?

A So you need to read this paragraph with the paragraphs above it.

Q No. I need you to tell me what you thought the "same offer price" meant.

MR. SHAPIRO: I'm going to object, Your Honor. He asked a question. The witness was

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answering the question, and he cut him off in the middle of the answer, not allowing the witness to answer. If he's going to ask a question, let the witness answer.

THE ARBITRATOR: I'm not going to respond to that except to say let's start with the beginning of Mr. Bidsal's answer without interruption, please, to its conclusion. Let's see whether it's responsive or helpful.

MR. LEWIN: Okay.

THE WITNESS: Okay. So basically you need to read that paragraph in conjunction with the paragraphs above it. So you need to read that with the -- the paragraph above that that says, the remaining member's option. The remaining member shall have 30 days within which to respond in writing to the offering member by either Roman Numeral I or II, making those elections, the first one or the second one.

If he makes the election on the first one, which means accepting the offering member's purchase, then when you go to the specific intent paragraph, the -- the offering member buys the -- their initial interest.

If the remaining member selects the

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Roman Numeral II, rejects it and makes a counteroffer, then at that time, based on his counteroffer, he needs to go to the FMV process, go through the appraisal process, cooperate with the offering member in selecting the appraisers, come to a conclusion of the appraisal. And then you go back to the paragraph of intent, and that's where you say, okay, the offering member would sell it to the remaining member based on the FMV obtained if the appraisal is involved.

So Roman numeral II is in conjunction with FMV if the appraisal is involved. So those two go together and the Roman numeral I goes with the first portion of the paragraph of intent. That means basically the offering member gets to buy it.

BY MR. LEWIN:

Q And the only person who can invoke the appraisal is the remaining member, right? Yes or no? Yes or no?

A Under that provision -- under that provision, yes.

Q Okay. Well, so when it says "buy or sell at the same offer price," paren, "or FMV if appraisal is invoked," if no appraisal is invoked,

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Q And -- and if a -- if an appraisal was invoked, what would be the -- let's start with what would be the FMV?

A That would be the -- FMV obtained based on the definition in Section 4.2.

Q In other words, the FMV, if an appraisal was invoked, the purchase price would be decided by appraisal; right?

A Correct.

Q Okay. And nowhere in this document does the -- does it give the offering member the right to invoke the appraisal process; is that correct?

A Yeah, independent, on his own, if the offering -- if the remaining member doesn't -- doesn't counteroffer, no. But as soon as the remaining member makes an election based on the Roman numeral II by giving the counteroffer, then he needs to continue with the rest of that sentence and complete an appraisal based on FMV.

Now, in this case, the -- the counteroffer did not -- did not -- was not complete. Because in order for it to be complete, it also needs to follow the rest of that procedure, meaning to obtain FMV based on appraisals. He just made a counteroffer without

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following the procedure.

Q Point out the language where it says -- or you believe it says that a -- that a counteroffer -- that if the remaining member accepts your price and chooses to buy instead of sell, that an appraisal is necessary.

A Because he --

Q Just point out the language, please.

A I'm going to -- I'm going to -- that's Roman numeral II. Because the letter that Ben sent, he said that, "I'm rejecting your offer, I'm making a counteroffer." So he's rejecting my offer, he's making a counteroffer. The only way that you can fit his counteroffer is Roman numeral II, saying -- in fact, that was in the language of Mr. Ben in his letter, saying that "I'm rejecting the" -- "your offer and we are making a counteroffer to buy your interest," blah, blah, "at fair market value."

FMV, according to the -- FMV is a defined word. It's defined in the above paragraph that's a medium of two appraisals. And it's further defined in Section 4.1, which refers, again, back to 4.2 as a defined term.

Q So what is -- what is the -- so what is

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A I have no direct recollection of the substance of that meeting. I can say that I believe so, because we subsequently worked on language for buy/sell, and I'm sure the topic came up. But I have no recollection today of the details of that conversation.

Q The issue about -- okay.

So is it fair to say that both Mr. Golshani and Mr. Bidsal wanted to have you include a force buy/sell in the agreements?

A I don't know what you mean by a forced buy/sell, but we unquestionably wanted to have buy/sell language in the operating agreement. It's a very normal provision to include when you have more than one partner in a -- in a company.

THE ARBITRATOR: Does it help at this point to have any clarification without the use of the word "forced" as -- let me just have a quick conversation with the witness.

Was the subject of conversation in drafting about a contractually-required election by the offeree member to buy or sell? That he had the election having been presented with an offer --

THE WITNESS: As of July 21 --

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THE ARBITRATOR: -- to elect to either buy or sell? Was there --

THE WITNESS: I don't believe --

THE ARBITRATOR: Was that the subject matter of what you were discussing? Or if that's not correct, give everybody your best understanding as to what was the subject of your conversation, negotiation, and drafting so we're all kind of on the same page.

THE WITNESS: Okay. Well, as of July 21, I don't believe our conversation addressed the concept you just described of a compulsory sale following an offer by a member. I believe, to the best of my recollection, that evolved in subsequent months. And basically I was drafting at that point what I would consider a fairly plain, vanilla style of buy/sell.

THE ARBITRATOR: Okay. Let's see what Mr. Lewin and other counsel want to do with that, if anything.

MR. LEWIN: Okay. So if I could -- I only have one copy. But I don't even think we have the original of his deposition back.

Did you ever get the original of his deposition back?

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provision is that the offering member shall be obligated to sell his or its member's interest to the remaining member or purchase the member interest of the remaining member based upon the fair market value of the company's assets."

That was your language?

A I wrote it.

Q Okay. And did that -- when you wrote this, this was -- you understood that this was to embody the intent that you understood the parties wanted, in other words, a mandatory buy/sell; is that correct?

A Yes.

Q Okay. Now, by this date, you had had conversations with both Mr. Golshani and Mr. Bidsal about this concept; right?

A Yes.

Q Okay. And Mr. Bidsal, did he give you any indication he didn't understand the format about one --

A Not to my recollection, no.

Q -- member -- meaning one member offers, the other member either buys or sells?

A I would say asked and answered; but to my recollection, no.

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e-mail.

BY MR. SHAPIRO:

Q So looking at DL95, do you see any buy/sell language in this?

A No.

Q Okay. Now, at some point, you prepared what you referred to as a Dutch auction; correct?

A Yes.

Q And that occurred -- if you could turn to Exhibit 311, that occurred in August of 2011; correct?

A To the best of my recollection, yes.

Q And the way that you used Dutch auction is not the way that Google defines it; correct?

A Yes. We've -- we've agreed on that.

Q Okay. But that was the way you described the concept that you had in your mind?

A Yes.

Q Okay.

A I'm not sure Google was so efficient back in the day -- at the time.

Q I don't think it was.

Now, your Dutch auction language ultimately was not used in the final operating agreement that was signed; correct?

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A Well --

MR. LEWIN: Objection. The documents speak for themselves.

MR. SHAPIRO: I didn't refer to the document.

THE ARBITRATOR: Overruled.

BY MR. SHAPIRO:

Q Okay. Go ahead.

THE ARBITRATOR: Have you answered the question? Do you understand the question? Because I have overruled the objection to it.

THE WITNESS: Well, the -- the language in the draft of August 18th is not exactly the language that appears in the final executed document. It changed over time.

BY MR. SHAPIRO:

Q Okay.

A I believe it contained some elements, but I'm not even sure, without looking through it. But it -- definitely it changed over time, yeah.

Q Okay. Well, let's -- I'm in Exhibit 311 --

A Okay.

Q And I'm looking at page DL211.

Now, this is your purchase and sale

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A I think that's a fair statement.
Q Okay.
A He was not satisfied. I won't say he wasn't happy. He wasn't satisfied with the language.
Q Thank you.
And at some point, Ben sent to you some language that he was proposing; is that accurate?
A Yes.
Q Okay. And I believe that you testified -- well, actually, turn to Exhibit 321.
Now, this has a Bates-stamp on it from DL; right?
A Yes.
Q This is from your file; correct?
A Yes.
Q And this is your revision to what Ben sent to you; correct?
A I believe that's correct.
Q Okay. And if you look at exhibit -- now I've got to go back to the original binder. I think it was Exhibit 22.
Now, the second and third pages of Exhibit 22, you were asked if this is what Ben sent to you, and your testimony was you think it

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was?

A Yes.

Q Okay. So now we've got rough draft two is what Ben sent to you; correct?

A Yes.

Q And then we've got a draft two, which is what you revised it to be.

A To the best of my recollection, that's correct.

Q Okay. Now, the font on this draft two, is that Times New Roman?

A I don't think so.

Q Okay. Now, I want to show you -- I took the liberty of attempting a red line of the -- let me try to get that -- of the changes between rough draft two and draft two. Now, I'm going to show you what I came up with, and I want you to tell me if this appears to be an accurate reflection of the changes between what Ben sent to you and the draft two that's here in Exhibit 321.

MR. SHAPIRO: There's two there, Your Honor.

THE ARBITRATOR: I'm handing this around the horn to Mr. Lewin.

MR. LEWIN: Thank you very much.

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THE ARBITRATOR: What number shall we make this?

MR. SHAPIRO: Let's see. Bear with me. I think it's going to be 360. Yes, 360.

MR. LEWIN: Yeah, three -- 360.

MR. SHAPIRO: Yes.

THE ARBITRATOR: And, once again, I'm going to be speaking to Mr. Shapiro that this appears to be a demonstrative exhibit.

MR. SHAPIRO: Correct.

THE ARBITRATOR: The witness is reviewing the document.

THE WITNESS: Without taking the time to go word for word, Mr. Shapiro, I would say this is a fair red line of the modifications to the rough draft two to draft two.

BY MR. SHAPIRO:

Q Okay. And these modifications would have been the modifications that you made; correct?

A To the best of my recollection, yes.

Q Okay. And just to be clear, on this demonstrative Exhibit 360, anything that is red with a line through it would have been something that you deleted, and anything that's blue with an

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underline would have been something that you added?

A Yes.

Q Okay. Now, this language -- I'm going to direct your attention in the top binder there. I want you to turn to Exhibit 29.

Now, this is a final signed copy of the operating agreement; correct?

A Yes.

Q Okay. And if you would turn to page 10 of the operating agreement.

The top of that page appears to be in Times New Roman, font 12; correct?

A Yes.

Q And the bottom appears to be something close to Arial and a smaller font type; is that accurate?

A Yes.

Q Is it accurate to say that you took your draft two, or some version of it, and put it into the document that you had previously prepared?

A Yes.

Q Okay. Now, of course, I took the liberty of red-lining the difference between your draft two and what is contained in the operating

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MR. SHAPIRO: No further questions.

THE ARBITRATOR: Anything further?

MR. LEWIN: Nothing.

Thank you very much, Mr. LeGrand.

THE ARBITRATOR: May I excuse the witness? Thank you, sir.

Off the record.

(Discussion off the record.)

THE ARBITRATOR: Back on the record.

Mr. Lewin, resume cross-examination of Mr. Bidsal.

CROSS-EXAMINATION (Cont'd)

BY MR. LEWIN:

Q Mr. Bidsal, looking -- would you please turn to Exhibit 30.

A Okay.

Q This is a letter that your lawyer sent on your behalf; is that correct?

A Yes.

Q And you reviewed this letter before it sent out?

A Yes.

Q And you approved it; right?

A Yes.

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A Based on the language used in Section 4.2, yes.

Q You understood that Mr. Golshani was the remaining member.

Yes or no?

MR. SHAPIRO: Your Honor --

THE WITNESS: I just answered it yes.

MR. SHAPIRO: -- this is getting repetitive.

THE ARBITRATOR: Overruled.

THE WITNESS: I just said yes.

BY MR. LEWIN:

Q Okay. Good. Thank you.

And that as a remaining member, so he had the option either to accept your $5 million and sell -- and I'm just going to say "he," because I -- I'm conflating Mr. Golshani and CLA, because I'm used to talking about Mr. Golshani.

But he had the option to accept your offer and sell his interest for $5 million or to buy your interest; is that correct?

A No. He could make a counteroffer. If he wouldn't be interested in selling it to me, he could make a counteroffer.

Q You understood that the remaining member

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had the right to buy your interest; isn't that correct?

A He could make a counteroffer.

Q You understood that Mr. -- that under the -- under the -- under the operating agreement, that Mr. Golshani could respond to your offer by either selling to you or could buy your interest?

A He could buy -- again, procedurally, according to Section 4.2, he could make a counteroffer to buy, yes.

MR. LEWIN: Can I just get a straight answer here, Your Honor?

THE WITNESS: I just answered it.

THE ARBITRATOR: That's his answer. Let's move on.

MR. LEWIN: Okay.

THE ARBITRATOR: I think it's going to take too much time and not necessarily leading to a clear result. Let's just move on.

MR. LEWIN: I will.

BY MR. LEWIN:

Q Is there a reason why you didn't consider the -- strike that.

Did the brokers provide you with an analysis of Green Valley in conjunction with

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THE ARBITRATOR: Direct.

MR. GOODKIN: May I proceed?

THE ARBITRATOR: Please.

DIRECT EXAMINATION

BY MR. GOODKIN:

Q Good afternoon, Mr. Bidsal.

MR. GOODKIN: And -- and just for the record, you guys, I'm going to continue using the word "Ben".

Rod, we're going to use the word Ben when referring to Mr. Golshani.

MR. LEWIN: That's fine.

BY MR. GOODKIN:

Q Mr. Bidsal, what do you do for a living?

A Property investment and management.

Q And when did you start doing that?

A As a full-time business, November of '96, but prior to that, I did a few other real estate things.

Q And tell us about the infrastructure you've set up for your ability to do real estate deals.

A I have a full accounting department, plus the softwares to deal with the rent rolls,

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collect rent from tenants, do their CAM reconciliations, create your own ledgers, do the accounting, send it to the outside CPA, do the taxes, review the taxes, and so forth. That's the accounting side.

I also have the connections with the broker community and with the lender community to -- to market properties for lease or for sale. And also to obtain loans for properties for financing or to financing. And also internally we have relationships with the contractors and subcontractors to -- to repair or do tenant improvements for the spaces so we can lease them.

Q Are those things you've been doing since 1996?

A Yes.

Q Now, tell us a little about your educational background.

A Graduated from UCLA, bachelor's of computer science and mathematics, double major. And worked for Lockheed Corporation. Software engineer for a while. And then I went into business for myself. In the computer business, I had several computer companies, starting with the company called Demo Pro, computer interface

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BY MR. GOODKIN:

Q Now, you were asked earlier about business ventures you have with Ben.

How many business ventures do you have with Ben?

A We have a Green Valley Commerce, LLC, properties; and we have a Mission Escort, LLC, which has a property in Phoenix, Arizona; and then we have a Country Club, LLC, which owns property in Henderson, Nevada.

Q And those are LLCs that are currently in existence?

A Yes.

Q Now, when did you first meet Ben?

A Well, he's a family member. He's my cousin, so we met at his sister's house, and then subsequently we met at his house and my home.

Q Approximately what year?

A 2009, '10.

Q And who approached who?

A For investment purposes?

Q Yes.

A Ben approached me.

Q And when did Ben first approach you?

A Well, the family gatherings, we were

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talking about what I do, my business deals, and Ben had capital to invest and he wanted to invest in what I do.

Q And at the time that Ben approached you to invest with you, did you have the infrastructure in place that you described earlier?

A Yes.

Q Now, how many -- how many times did you actually meet with Ben before you started actually investing?

A I met a few times.

Q And was there times when he actually came to your house?

A He did come to my house, but he also came to the office.

Q Now, did you ever visit him at his house?

A Yes.

Q And, now, there's some discussion about whether or not you needed money.

Did you need Ben's money to do investing?

A Not really, no.

Q So why did you let Ben in on your deals?

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A I used to do partnerships, to buy properties, because I do have the infrastructure. And whether I would take a fee or I would arrange the capital structure, the stacking of the structure -- the capital structure in a way that if I invest less money, the compensation for putting less money is the actual sweat equity of work.

Q Now, when you had these discussions when Ben approached you to invest with you, did you guys discuss what the business terms overall would be?

A Over a period of time, yes.

Q Tell us what you discussed.

A Well, whether he puts all the money, I do the work or whether we both participate at different ratios, they were the discussions.

Q Okay. And tell us how you got started with him on Green Valley.

A He -- he asked me what are the best ways that we can maximize the profit in buying something. It was a time where we were still in a downturned recession. And there were multiple platforms, auction platforms in the country, that I was registered with that we could purchase

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property from the different auctions at prices where -- much lower than we could buy from the open market. These are properties or notes that are either REOs or notes that are foreclosed by the special servicer, and they were auctioning them off.

Q And just for the record, what is REO?

A It's the -- it's a real estate schedule that is usually owned by a lender at the time.

Q Real estate owned it?

A Yeah.

Q Okay. Now, you guys identified the property we were talking about today.

Who -- who identified that property initially?

A Okay. So basically, I'm registered with all these different platforms, so I looked through the available auctions. The auctions are made every month, every two months, as -- as they come up. And based on our discussions to find out what's -- we both liked, we would bid.

Q Bid?

A B-I-D, bid. We participate in the auction.

Q We're in Vegas, you know.

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A Yeah.

Q Bid. Okay.

And did you identify this property on auction.com?

A Yes, I did.

Q Did Ben help with identifying this property on auction.com?

A No, I did that.

Q Once it was located, it was a note; right?

A It was a -- a note. It was a note that was foreclosed, and they usually sell the notes -- if you buy a note, you have a higher margin.

Q Yeah, tell us why it would be attractive to buy a note as opposed to buying a property after foreclosure.

A Usually notes have a risk element associated with them in a sense that there are defenses on the note until they become a fee simple. There's bankruptcy involved. There is defenses on the -- there are multiple defenses on a -- when you buy a note versus a -- a fee simple. There's a risk element involved and there's a great deal of process to convert that note eventually into a fee simple. It doesn't happen

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by itself. It could be adversarial or it could be in a friendly manner.

Q Now, you weren't able to fully explain when you were in cross-examination about the two deposits.

Tell us what you meant by the two deposits.

A So basically the procedure -- each platform has a different procedure. The procedure for auction.com is that you come up with a so-called -- either a credit card -- they have three methods of doing it. One is called indemnity agreement, one is called credit card, or you actually send them money.

And it's a small amount. It's 10- or 25- or 50,000 to be able to participate in the auction. And if you are the winner and you don't exercise your right to buy it, then that becomes -- that's a foreclosable amount. In other words, they take your money, 10,000 or 20,000.

So I bought a lot of properties, and every time, before 2011, dealing with Ben or even after, they performed. And so that's one component.

And you also need to have a registered

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company with them. LLC, it's all this paperwork. And also you need to have a proof of funds. And you need to fill out their forms. You basically need to be a part of that platform to be able to bid at the auction.

So I was bidding and purchased a few properties prior to buying Green Valley Commerce. And for that property, I was qualified to bid, so I did bid.

Now, I don't recall whether Ben put the so-called deposit money or myself. I'm assuming he did. And then once you are the winner -- but you have to always be prequalified to bid. In other words, if you are bidding 4 million, you need to be qualified to bid 4 million. And even -- the company was qualified.

You bid, and if you win, there are two procedures if it's a note versus property. Notes are usually a short, 10-day window of closing, because there's no due diligence. If it's a property, they give you 30 days to close. This was a note purchase, so we had to close quickly.

Q Okay. So let's --

A And once you -- once you -- once they approve you, you need to wire the money for the

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initial so-called 10 percent. And Ben's money was that first 10 percent.

Q Okay. And why did you use Ben's money?

A He wanted to be a partner, provide funds, that's what we did.

Q All right. And let's look at Exhibit 1.

Do you recognize what Exhibit 1 is?

A Yes. Yes.

Q I'm just waiting for everybody to catch up.

THE ARBITRATOR: I'm ready.

BY MR. GOODKIN:

Q Tell us what Exhibit 1 is.

A It's an article of organization in the state of Nevada for Green Valley Commerce, LLC.

Q And did you file this out?

A Yes.

Q Why did you do that?

A We bid -- when we bid, we don't have the company form, so I'm bidding under my own platform under my own entities, not under GVC. So -- because you don't know if you're winning or not yet. I mean, you bid on multiple deals, you win one of so many. So once I win, I know I have the deal in escrow with the platform, the auction.com.

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And this was a short version, a 10-day version or so. So I had to go and immediately form an article of organization and send it to the auction.com to show that them we are taking title or the vesting under this name.

Q Now, did you ultimately submit a document with the Secretary of State showing Ben to be a member?

A Absolutely. So what happens is, the procedure in Nevada, once you form the article, there is a -- the agency who has formed it for you sends you something called the Initial Members List of Managers/Members. So they usually send that a few days later. And once they send that, then I fill it out and I -- and I send it to them.

Q So as you sit here now, there is a document with the Secretary of State identifying Ben as an owner of the property?

A As one of the members/managers of the company.

Q Okay. Now, after you bought the note, did you ultimately subdivide the property?

A No. After we bought the note, we engaged the borrower to see if we can convert that into a property.

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Q Right. Let's go there. Sorry. I jumped the gun. Let's talk about the deed in lieu.

Did you ultimately obtain a deed in lieu?

A Yeah, we -- I worked on it pretty hard.

Q Tell us what you did to obtain a deed in lieu from the borrower.

A This was a CMBS loan, which was foreclosed. There were certain rules and regulations that we had to follow. It was not a balance sheet loan. And we had to follow, based on the CMBS guidelines, where the loan was initiated. So we had to send a letter, a very formal letter, to the borrower, which is probably one of the largest companies in Nevada, Greenspan family, who was the actual borrower, to notify them that -- it's called a letter of negotiation.

And we sent them that letter to formally engage in negotiations. This was --

Q Now, did Ben assist with that letter in any way?

A No. This is different than if it was a regular loan that you could pick up the phone and talk to the borrower.

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Q Now, what was your experience with what Ben was doing at this time with his own work? Was he in textiles?

A Yes.

Q Tell us what that means.

A From what I understand, he owns a company called Novatex at that time, which imports linen products, fabrics.

Q And in connection with this venture you were working with him, what involvement did he have with talking to the borrower to obtain a deed in lieu?

A He did not talk -- I don't think he did talk to the borrower. He might have, but I don't --

Q So tell us what you did.

A I found the deed through auction.com. I introduced it to Ben. He was okay with it. I -- I bid on the deal, of course. Ben was present when we were bidding; and got lucky, we won. And then we started the -- the purchase procedure of the note, which involves getting an Article of Organization, signing a purchase and sale for the purchase of note, wiring the initial deposit, and getting busy and understanding the deed or

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absorbing the deed.

And once we actually owned it, then we start engaging the borrower.

Q And you sent this CMBS loan letter to him?

A We sent the loan. And at that time, David LeGrand was hired to be the attorney to deal with the deed in lieu process.

Q Okay. And did you engage Mr. LeGrand to be the attorney for that?

A So what happened is, before we even start bidding on the Green Valley Commerce, I have a long-term broker in Vegas called Jeff Chain.

Q C-H-A-I-N?

A C-H-A-I-N. I introduced Ben and -- to Jeff in Jeff's office. So he knows that -- who the broker is. And also Jeff was finding us deals, too, and helping us in due diligence, providing broker's opinion of value, part of underlying analysis of the deal.

And he also is the one that when we met in his office -- this is prior to any of these purchases. He introduced us to -- we asked him, do you have an attorney for us? And he says, yes, I have a transactional attorney called David

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LeGrand. So he provided David LeGrand's, you know, business card information and he put him on the line saying that here, here is an attorney for you guys that you can use.

Q And who was on the line with you?

A It was Jeff, Ben was there, I was there, and I think David was on the line. I mean, he just called David to introduce him.

Q Now, let's open up the book to Exhibit 302.

THE ARBITRATOR: The Arbitrator just wants to push the pause button for a second.

MR. GOODKIN: Sure.

THE ARBITRATOR: Based on the testimony, it appears to the Arbitrator that the testimony of Mr. LeGrand was, was that first contact occurred on or about a document of June 27, 2011. We now have Exhibit No. 1, which are the articles of the LLC, where in the upper-right corner it appears that they were filed on 5/26/2011. It now appears, that based on what Mr. Bidsal just testified, that before the filing of the articles, he, Mr. Golshani, and Mr. LeGrand were on the phone having been introduced by Mr. Chain. That's what it appears in terms of connecting the dots.

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A To Ben? Yes. And also he was there present in Jeff's office when we talked -- when we all talked with Mr. LeGrand.

Q Now, we're talking -- we're not talking about the operating agreement yet. We're focusing just on what you did with respect to the -- the efforts to obtain the property and then later subdivide it. Okay?

A Yes.

Q So tell us approximately when you were able to obtain the deed in lieu for the property.

A I need to look at a document. It took a few months to do a -- a friendly negotiation between me -- part of it, David LeGrand handled the -- the actual grant deed and some of the assignments. I did the negotiations on the business side to -- with Chris Child, which was the attorney for the borrower, and Mr. Paulson, who was the general manager of the borrower.

Q So ultimately you obtained a grant deed for the property so that you didn't have to foreclose on the note, is what you're saying?

A We did a so-called friendly foreclosure. That's what we call it, a deed in lieu, deed in lieu of foreclosure.

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Q And did that happen before you finally signed the operating agreement with Ben?

A That -- yes, that happened before.

Q Now let's talk about what happened next after you obtained title of the property.

What did you do next?

A Okay. Just very briefly, through that negotiations we got a great deal of cash money and -- and the -- I negotiated --

Q Oh, yeah.

A -- that they pay us -- in order not to deal with the unfriendly approach to foreclosure, they have to give us all of the back rents they collected plus other fees. And we collected a good sum of money for the company, for the LLC, through my negotiations.

Q So are you saying, then, that you were able to negotiate not only getting title of the property, but some money paid by the borrower to the company as the lender?

A Correct.

Q Can you estimate approximately how much?

A I have to estimate. I do not remember. Between 70,000 to maybe 150, 200.

Q And what did you do with that money when

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you received it?

A Went to the pot in the LLC.

Q Now, after you got title of the property, what did you do next?

A Well, we worked with brokers, which the primary one was Jeff Chain, and to sell and lease the Green Valley Commerce. So we were able to lease a few of the units that were empty. We were able to also renew and save the rest of the tenants. Because as you go to a foreclosure proceeding, a lot of tenants either don't pay rent or they -- they are ignored by the borrower because the borrower is no longer there; it's a lender. And there's chaos. People do not pay much attention to the -- to the property.

So we cleaned house. We renewed leases. We leased some more. And we start selling -- tried to sell the whole thing. We would not get a good price, because at that time, when you sell the whole property -- especially you're talking 2012, which the market was very low -- you wouldn't -- two reasons: Market conditions, and the other reason is the property was, like, almost half full.

So the investors would dent the price a

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lot under that scenario. So I suggested to Mr. Golshani that the better and the best use of maximizing the return on investment is to subdivide this business part into each separate buildings. And there were eight buildings.

And then I started the process of subdividing it by obtaining surveys, by doing a reserve study, but creating the homeowner -- or in this case, business owner association, which I created a separate association for it. We did a service study work, we did a survey work, and through the help of the surveyor, passed it through the City to automatically subdivide it into eight buildings.

Q Well, let's turn now to Exhibit 334. Now, do you recognize what Exhibit 334 is?

A Yes.

Q What is Exhibit 334?

A It's basically an e-mail from Jeff Chain. Once the buildings were subdivided, we talked of selling the buildings that are full with the reserve in tenancy. The tenant is there and it's a good tenant and it stays there for some lease term, and try to sell it to capitalize on --

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A Yes. And then -- yes. Each building is there; there are eight of them.

Q Okay. So which buildings were you starting to sell after you subdivided the property?

A We sold building -- well, we marketed different buildings, because -- depending on who comes first and we are willing to sell. So we did market all of the buildings. The -- this is the brochure for building -- building D. On each building, Jeff Chain created a so-called brochure based on the broker's opinion of value, based on the lease term, the NOI, the expenses, and the cap rates you can get, and he priced it.

Q Now, how did the broker opinion of value assist you in selling the buildings?

A Basically he's a -- he's a veteran broker in town, a lot of experience, so his opinion we respect. And he came up with prices of how much to ask and he marketed it and we were able to sell one building.

Q And did you share all of that broker opinion of value information with Ben?

A Of course.

Q And did Ben assist you in deciding what

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amount to sell things for?

A No, but I consulted with him.

Q Okay. And ultimately what did you sell?

A We sold -- out of the eight buildings, we sold three of them: Building B, C, and E.

Q Now, in terms of how much money you received, are you able to estimate -- you said you bought it for $50 a square foot.

How much did you collectively sell these things for?

A Well, this building is sold around $121 a foot, almost 240 percent return. This was a full building.

The other two buildings, it was vacant, and we sold them, again, in the neighborhood of about $100, almost doubling the money.

Q And when the money came in, how did you account for it between you and Ben?

A One of the buildings, I think we did an exchange. If I -- I have to check the record. We did a 1031 exchange. I have to revisit the document. But the other buildings we basically used a procedure to pay back the capital and the profit to the partners.

Q And so when you did, in fact, return

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capital -- because, remember, we looked at the operating agreement -- we'll talk about the operating agreement in a second -- but there was a listing of a capital of what was actually put in between the two partners.

Do you remember that?

A Yes.

Q How much of that capital have you already returned to Ben of his capital.

A A good portion.

Q Approximately around 70 percent so far?

A I don't know the exact percentage, but pretty high number.

Q Okay. So a lot of his capital has already been returned to him?

A A combination of capital, plus building profit, plus rent.

Q Yet you still have now six buildings?

A We have five buildings here under this park.

Q And one more in?

A In Arizona.

Q Arizona.

THE ARBITRATOR: Can we push the pause button for clarification?

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these components.

When we sell a building, we return to the partners, based on the 30/70 ratio, the capital portion of that sale proceed. The remaining is profit, the remaining profit is returned 50/50.

So let's say we sell building E, as an example, and we sold it for a million dollars. Let's say the base cost for that building is 500,000. We return that 500,000, 30/70, two checks; one to me, one to Ben. Then we take the $500,000 profit remaining, we also cut two more checks, 50/50; we return that, too.

THE ARBITRATOR: I think I understand. Let's go back to your examination.

MR. GOODKIN: Thank you.

BY MR. GOODKIN:

Q Now, when you sold these properties, did you do it with the approval of Ben?

A Of course.

Q And why did you go to the open market as opposed to selling directly to Ben?

A We wouldn't be -- the idea or discussions we had with Ben was to maximize the profit to put in the open market.

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though.

THE ARBITRATOR: You may want to confer with Mr. Lewin. I did not hear what he said, but I think his body language --

MR. SHAPIRO: He said, "I want to accelerate it."

MR. GOODKIN: He doesn't mind.

THE ARBITRATOR: And Mr. Shapiro, I think, has also given an indication. Go ahead.

BY MR. GOODKIN:

Q All right. So, Mr. Bidsal, you testified that you received Exhibit 316.

Do you remember that?

A Yes.

Q And if you look at the first paragraph of Exhibit 316, the second page where it says "Rough draft," Section 7, it specifically says "is willing to sell."

Do you see that in the first line?

A Page 2?

Q Yeah.

A Yes.

MR. GOODKIN: No, the -- page 2 of the exhibit, page 1 of the document.

THE ARBITRATOR: Okay. Got it.

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BY MR. GOODKIN:

Q Okay. Right here it says "willing to sell" in the first line.

Do you see that?

A Yes.

Q Then go to the second page, and you see where it talks about "willing and able to sell"?

A Yes.

Q That's in the first two paragraphs?

A Yes.

Q Now, let's turn now to Exhibit 319. Now, I want to direct your attention to the exact same portions of the agreement.

MR. LEWIN: I don't want to make waves, but why are we using -- I had questions about our exhibits. These are all marked. Is there a reason why we're using two different sets, two different numbers?

THE ARBITRATOR: Let's let them do that. And it would be helpful at some point, maybe in the closing briefing, where if you feel it's helpful to say Exhibit so-and-so in claimant's is the same as Exhibit so-and-so in respondent's. That will make it easier. But let's let them have the prerogative of using their own numbering

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system.

MR. LEWIN: All right.

MR. GOODKIN: I want this to be as efficient as possible. The last exhibit we were using, Exhibit 316, is the same as Exhibit 20, for the record. And Exhibit 319 is the same as Exhibit 22.

BY MR. GOODKIN:

Q Now, referring to Exhibit 22/319, the exact same paragraphs that we're talking about before with respect to the -- the rough draft, now we're going to talk about rough draft two.

And in that first line where we said "willing to sell," it now says "is willing to purchase."

Do you see that?

A Yes.

Q Now, going down to the next paragraph, do you see where it says "Who offers to purchase"?

A Yes.

Q And if you go to the first page of Exhibit 319 or Exhibit 22, there's an e-mail that says, "Shawn, here is the agreement we discussed."

Do you see that?

A Yes.

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Q And the changes made in rough draft two from rough draft one were as a result of your conversation; right?

A We had conversations, yes.

Q Okay. And then you said you had conversations with Ben about the terms of the buy/sell provision. So I want to -- instead of going through the specific language here, just I want to explore what your conversations were.

When did you have conversations with Mr. -- with Ben about the terms of the buy/sell provision?

A We had it over a course of, like, a few months towards the end of 2011.

Q Where were those conversations?

A Either on the phone or in my office.

Q Was there a way of estimating how many conversations you actually had?

A I would say a few on the phone and two or three in person in my office.

Q Approximately what time would these meetings happen in your office?

A At the end of the day. Because during the day, you know, we were busy, so ...

Q Okay. And when you say "your office,"

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toward the end of the year, we were dealing with this plus a hard copy version of the latest operating agreement.

Q And how did you have a conversation with Ben about the hard copy version of the buy/sell?

A Of the buy/sell or the --

Q The buy/sell.

How did you bring it up? Would you discuss it by way of what is -- how did you discuss it?

A We discussed it, about different rights of the parties under different scenarios, the so-called -- we called it what if this happens, what if that happens, how would you -- how would you approach it.

Q And what do you remember discussing with Ben about the what-ifs?

A So basically he wanted to have protections for the other side and have a scenario of, you know, fairness, equity and fairness, so nobody loses out to the other one, so both people are kind of protected.

So basically, one tries to buy under this thing. So he makes an offer to buy. We call it purchase. So when a person makes an offer to

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purchase, he has a number in mind, whatever he's -- he's thinking, his estimate of value is, however he obtained it, that's his number. He's willing to buy it, he got the money, so that's his deal.

The other side looks at it. If he's willing to sell at that number, we are done. That's the end of the story. There's no problem.

He basically says, okay, you know what, I'm good with it. I'm going to sell it to you at this price.

If he's not -- if he's not happy with that number and he wants to get more money or make a counteroffer, then he would go -- he would go to an appraisal process. And initially we talked about having three appraisers, MIA appraisers, qualified appraisers; and one I select, one he selects, and then there's a third person selected.

Everybody gives -- two appraisers come in first, goes to the third one, and -- and he makes the final value, and then both parties buy at that value. That was too cumbersome; that's an overkill. As Ben puts it correctly, it's an overkill.

So we said, okay, why don't we go with

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two appraisers, one you choose, one I choose. And we got two numbers, we just basically -- rather than a third one, we take the medium of those two numbers. They shouldn't be that far apart. I mean, appraisals are appraisals. And we take the medium, that becomes the appraised value, and that becomes the FMV that the other party can look at.

Okay. So we massaged the language in our conversations, and that was -- there were meetings about that. So going back to where I started, if somebody wants to buy it, he makes an offer, the other side wants to sell at that number, we are done, it's over.

If the other side says, no, I'm going to make a counteroffer to you, I disagree with you, then we go to an appraisal process to determine the FMV, the fair market value, by appraisal. And that was the procedure put in to have two appraisers to create a happy medium and go to that number. So that way parties are protected.

There was no scenario where one person gives an offer to purchase at a number and the other side says, you know what, I'm twisting it around, and I'm going to make a counteroffer at that number, and I'm going to buy that from you,

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that same number. That was not agreed on. That was not discussed. There were safeguards put in. The safeguards, or so-called protections, was going to an appraisal.

Q Now, there is e-mail that was shown to you, Exhibit 41.

A Yes.

MR. LEWIN: It should be at the -- I think I put it at the end of the witness book.

THE WITNESS: Thank you.

MR. LEWIN: It's not tabbed. I'm not as efficient as Mr. Shapiro. We can't afford tabs.

THE WITNESS: Yes.

MR. SHAPIRO: You're being friendlier to the environment.

MR. LEWIN: That's right.

BY MR. GOODKIN:

Q Do you remember ever telling Mr. LeGrand that you personally were doing revisions as opposed to the collective both of you doing the revisions?

A I never told him I'm doing the revisions, no.

Q And when you said the operating agreements are finished, was that saying to him

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that you did personally any changes to the agreement?

A I did not make any changes to the operating agreement.

Q And tell us how you came to finalize the agreement with Ben.

A There were discussions when Mr. Lewin asked me that -- or actually, I think Ben testified that they used my computer to come up to the final signed draft. That is not the case. Mr. Ben brought in hard copies with him when we met. We would go over it, we would discuss it, we would comment back and forth, and he would take it back, come back a few days or a few weeks later, we would look at it another round, up to the point where it got -- we both were happy with it and it got signed in my office.

Q Okay.

A Okay. So I did not -- it was not a download from a computer. It was brought in by Mr. Golshani.

Q Okay. Now, let's turn to Exhibit 343.

THE ARBITRATOR: Is it a correct understanding of what you just testified that your computer never generated a draft or the signed

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downloading it so you can actually save changes to a document in your computer --

THE WITNESS: Yes, you can. You can --

THE ARBITRATOR: -- as a different document?

THE WITNESS: You can -- you can download the attachment and save it into your files.

THE ARBITRATOR: Did you ever save an attachment to -- in your computer?

THE WITNESS: I open it up, and when it opens it up and saves it, yes.

THE ARBITRATOR: Did you ever make any modifications in your computer of any attachment?

THE WITNESS: No.

THE ARBITRATOR: All right. That's the clarification. Thank you.

THE WITNESS: Which page?

MR. GOODKIN: We finally got there.

BY MR. GOODKIN:

Q Let's go to 343.

MR. LEWIN: Your Honor, I have an objection to this line of evidence, talking about a different agreement that's two years after the -- after this is signed. I don't see the

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base document. The revised version is based on the GVC OPAG that has Ben's language on buy/sell."

Do you see that?

A Yes.

Q What did you understand was being put in this agreement when it says "Ben's language on buy/sell"?

A It's the language that Ben, over the course of several drafts, perfected. Ben was basically in charge of these changes. He was spearheading these corrections and these revisions. So David is referring to -- Ben's language is referring to what Ben was doing with the revisions of the Section 4.2.

Q Did you ever receive any sort of e-mail objection from Ben to this being called "Ben's language on buy/sell"?

A No.

Q Now, when you sold properties that were part of the Green Valley group of properties, what formula, if any, did you use that was in the operating agreement to figure out how much to allocate between the two of you?

A That was Exhibit B, which is the last page of the operating agreement.

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Q Now, we talked a little bit about your offer to purchase a 5 million.

Now, that's not the final amount for the remaining member's share, is it?

A No, that's the company value.

Q Okay. And so if that was to be accepted by Ben to actually sell it to you at 5 million, how would the formula work?

A You basically return the capital, and -- based on what they put in. And again, when you return the capital, you return the remaining capital. And the -- the balance that is left over, you divide up 50/50.

Q Now, why did you initiate the process to buy the property?

A Basically, I wanted to, you know, finish this deal and move on to the next one. We are -- I didn't want to manage this property any longer.

Q And just so it's clear for the record, why did you use the $5 million number?

A I look at the -- I briefly looked at the financials of the property. I just made a -- an estimate of what I think was a fair value and came up with that.

Q And then there was a response to the

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letter, and then there was another response to the letter -- and we don't need to go to those because we all know what they say.

The question is, why did you say to Ben that he needed to initiate the appraisal process or that you were exercising a right to initiate the appraisal process?

A Because he made a counteroffer. And according to the operating agreement, Section 4.2, you make a counteroffer, you need to go to the FMV, and FMV is defined based on two appraisals.

Q Now, I want to make sure it's clear.

You had previously shared all this information that you looked at that you had from past history with Ben about efforts to try and sell the property and what they were worth; right?

A Yes.

Q And let's talk about this meeting at the coffee shop.

When did the meeting at the coffee shop happen?

A It happened sometime in -- I think July or August. Actually, I think it was probably in August. It was after Ben obtained the -- the appraisal, the one that he ordered.

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Q Now, let's turn to Exhibit 42.

MR. LEWIN: It's in the back of your book, Your Honor. The back of our Exhibit book, not tabbed, but it's the last page, I think.

BY MR. GOODKIN:

Q You received this e-mail on or about July 21, 2017.

A Right.

Q And this is before Ben got his appraisal?

A I don't know when he got his appraisal, but it looks that way.

Q And you provide the information relating to the condition of the property and financials in response to this e-mail; right? Do you see where it says "get some information for myself"?

A I don't recall whether it was in response to this one or -- or a telephone conversation, but, yes, he just asked for the property condition and he wanted financials, which are -- which my office e-mailed it to him and I wrote him an e-mail describing what I know about the property.

Q So you gave him all of the information about the financials that you had in the past, the

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condition of the property, yet when you asked for a copy of the appraisal, what did Ben say to you?

A He didn't provide it.

Q Did he say anything to you?

A No. I mean, we talked about it, and I asked for it, give me a copy of it, and he never did.

MR. GOODKIN: Okay. Your Honor, can we take a short break?

THE ARBITRATOR: Sure. Can you give me the reason for the break?

MR. GOODKIN: I'm almost done, and so I wanted to make sure with counsel that --

THE ARBITRATOR: Should we stay in place?

MR. GOODKIN: Yeah. I need two seconds.

THE ARBITRATOR: All right. Two minutes, staying in place. Off the record.

MR. LEWIN: Well, I'm going to want to take a five-minute break, so --

THE ARBITRATOR: Let's conclude --

MR. LEWIN: Okay.

THE ARBITRATOR: -- the direct --

MR. LEWIN: Then I'll just wait here.

THE ARBITRATOR: -- and then take -- if

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A I don't know his limit of sophistication. He has a lot of properties, too.

Q But you heard him say that one of the reasons that he invested with you is because he relied on your expertise and your experience and your knowledge. You heard him say that; right?

A Yes, but also a good portion of it is my infrastructure in the company, having the tools and having the personnel to do the management.

Q I see. Now, you said that right now you have about -- you only self-manage about 20 percent of your company. You hire outside management companies to manage your other properties?

A Yes, I do.

Q What is a typical management fee? Wouldn't it be in the range of 5 percent or 6 percent of gross income?

A Correct.

Q Okay. Now, in your dealings with Mr. Golshani, he agreed to give you 20 percent; right?

A How do you calculate that?

Q Well, if it was 50/50 -- let's talk about this in net profits. You know, capital is

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one thing; everyone has their capital. But the net profits, instead of being divided 70/30, are being divided 50/50; right?

A Yes.

Q And that 50 percent gives you a 20 -- gives you 20 percent more of the net profits than you would -- or be entitled to if you were just basing it on capital; right?

A Correct.

Q And that was -- that 20 percent was to compensate you for your sophistication, your skill, and your infrastructure; isn't it true?

A That's only one component. The management is only one component of what I did for the company.

Q That's right. So you got more than 5 percent. You got an additional 15 percent.

A Yes, but I also leased the vacancies in our -- in-house without charging the 6 percent of the entire gross income of -- of a tenant. So if a tenant signs a five-year lease and he's paying, I don't know, $5,000 a month for five years, that's -- that's a $300,000 contract; 6 percent of that, that's $18,000 which I'm saving the LLC. That's just one tenant. And I brought multiple

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formula where -- there's a formula there as to how to compute the actual price that is going to be paid depending on who buys.

Do you know what I'm talking about?

A Okay.

Q And you read that formula?

A Yes.

Q And you approved it?

A Yes.

MR. LEWIN: I have nothing else. Thank you very much, Mr. Bidsal.

THE WITNESS: Thank you.

THE ARBITRATOR: Anything on redirect?

MR. GOODKIN: Yeah, let me just clarify a couple of things.

REDIRECT EXAMINATION

BY MR. GOODKIN:

Q I want to focus now just on the 5 percent discussion you had.

You're familiar with asset management fees?

A Yes, I am.

Q And are they approximately about 1 percent of properties?

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A One or 2 percent of the properties, yes.

Q All right. In addition, people in your position sometimes make those asset management fees in addition to the property management fees?

A Yes. Basically that's the -- not off the -- it's actually off the gross number of the -- the value of the property.

Q Right. And then in addition, some people in your position get construction management fees?

A Yes.

Q And what are those typically running about?

A Construction management is about 5 to 10 percent of the amount of work you do on a property.

Q For construction?

A For construction. And if it's for a tenant improvement, our leases have another 10 percent built into the leases, in addition to the 5 percent, which we do collect both numbers.

We actually collect from our leases a 5 percent and a 10 percent, 10 percent being related to the actual material we buy or the expenditures. We collect 10 percent of that. And

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then we collect an additional 5 percent management fee. Both of them goes into the pot of the LLC.

Q And let me make that clear.

With respect to the 5 percent property management fee, that's a fee you actually pass on to the tenants; right?

A Yes.

Q And that 5 percent is paid by the tenants to you?

A To the LLC.

Q And, in fact, the LLC got this 5 percent to manage the property, but you didn't get that 5 percent, did you?

A Correct.

Q And, in fact, the 5 percent is something you get each year.

So you've owned this property approximately six years. That would be 30 percent; right?

A 30 percent of the collection of the rent, correct.

Q Right. Which is greater than -- 30 is greater than 20 percent?

A I think so.

Q Yeah. And so in addition to the fact

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that you didn't get property management fees, you didn't get asset management fees, you didn't get property -- broker commissions, and you didn't get any sort of construction management fees; is that right?

A That is correct.

Q So you're incurring all of these costs to market the property; right?

A Yes.

Q And you pay them out of your own pocket; right?

A From our own operation.

Q Your operation being the -- what?

A My company, not --

Q Right. And you don't charge that to the amounts that Ben is a part of; right?

A Until very recently --

Until very recently, 2017, we weren't charging that.

Q So all these years, Ben got the benefit of all of this marketing you did, you actually came out-of-pocket and never -- and didn't charge the LLC during all these years; right?

A Correct. And then there's also a finder's fee for finding the property and go

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CERTIFICATE OF REPORTER

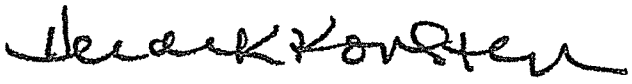
STATE OF NEVADA)
) ss
County of Clark)

I, Heidi K. Konsten, Certified Court Reporter, do hereby certify:

That I reported in shorthand (Stenotype) the proceedings had in the above-entitled matter a the place and date indicated.

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes.

IN WITNESS WHEREOF, I have set my hand i my office in the County of Clark, State of Nevada, this 25th day of May, 2018.



Heidi K. Konsten, RPR, NV CCR #845

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EXHIBIT C

(Articles of Organization - Green Valley Commerce, LLC)

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EXHIBIT C

ROSS MILLER
Secretary of State
206 North Carson Street
Carson City, Nevada 89701-4299
(775) 684 5708
Website: www.nvsos.gov

Filed in the office of	Document Number
Ross Miller Secretary of State State of Nevada	20110396703-22
	Filing Date and Time 05/26/2011 8:35 AM
	Entity Number E0308602011-0

Articles of Organization
Limited-Liability Company
(PURSUANT TO NRS CHAPTER 86)

USE BLACK INK ONLY - DO NOT HIGHLIGHT — ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Limited-Liability Company: (must contain approved limited-liability company wording; see instructions) GREEN VALLEY COMMERCE, LLC — Check box if a Series Limited-Liability Company ☐

2. Registered Agent for Service of Process: (check only one box)
☒ Commercial Registered Agent: GKL REGISTERED AGENTS/FILINGS INC (Name)
☐ Noncommercial Registered Agent (name and address below) OR ☐ Office or Position with Entity (name and address below)
Name of Noncommercial Registered Agent OR Name of Title of Office or Other Position with Entity
Street Address | City | Nevada | Zip Code
Mailing Address (if different from street address) | City | Nevada | Zip Code

3. Dissolution Date: (optional) Latest date upon which the company is to dissolve (if existence is not perpetual):

4. Management: (required) Company shall be managed by: ☐ Manager(s) OR ☒ Member(s) (check only one box)

5. Name and Address of each Manager or Managing Member: (attach additional page if more than 3)
1) Name: SHAWN BIOSAL
Street Address: 14039 SHERMAN WAY #201 | City: VAN NUYS | State: CA | Zip Code: 91405
2) Name:
Street Address | City | State | Zip Code
3) Name:
Street Address | City | State | Zip Code

6. Name, Address and Signature of Organizer: (attach additional page if more than 1 organizer)
Name: SHAWN BIOSAL — X SHAWN BIOSAL (Organizer Signature)
Address: 14039 SHERMAN WAY #201 | City: VAN NUYS | State: CA | Zip Code: 91405

7. Certificate of Acceptance of Appointment of Registered Agent: I hereby accept appointment as Registered Agent for the above named Entity.
X [signature] — 5-25-11
Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity — Date

This form must be accompanied by appropriate fees.

Nevada Secretary of State NRS 86 LLC Articles
Revised on 7-1-03

DL00 361

EXHIBIT D

(Green Valley's Grant, Bargain and Sale Deed)

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EXHIBIT D

Inst #: 201109220004298
Fees: $17.00 N/C Fee: $0.00
RPTT: $20400.00 Ex: #
09/22/2011 02:17:13 PM
Receipt #: 921874
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: MSH Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 161-32-810-001and 161-32-810-002
Recording requested by and when recorded mail to:
First American Title Company.
2490 Paseo Verde Parkway, Suite 100
Henderson, NV 89074

Attention: Julie Skinner

Mail Tax Statements to:

Green Valley Commerce, LLC
9155 Las Vegas Blvd. South
Suite 200
Las Vegas, NV 89123
498135

Space above this line for Recorder's use

GRANT, BARGAIN AND SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Green Valley Commerce Center, LLC, a Nevada limited liability company ("Grantor"), whose address is 901 N. Green Valley Parkway, Suite 200, Henderson, NV 89074 hereby grants, bargains and sells to Green Valley Commerce, LLC, a Nevada limited liability company ("Grantee"), whose address is 9155 Las Vegas Blvd. South, Suite 200, Las Vegas, NV 889123, all of its right, title and interest in and to the real property located in the County of Clark, State of Nevada, described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

This deed is an absolute conveyance, Grantor having sold the Property to Grantee for a fair and adequate consideration, such consideration, in addition to that above recited, being full satisfaction of the obligations secured by (i) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated July 17, 2007 (the "Deed of Trust"), executed by Grantor, as trustor, in favor of GOLDMAN SACHS COMMERCIAL MORTGAGE CAPITAL, L.P., as beneficiary, and recorded on July 17, 2007, in the Official Records of the Recorder of Clark County, Nevada in Book 20070717 as Instrument No. 04925,and subsequently assigned to GCCFC 2007-GG11 Sunset Office, LLC, as beneficiary, by assignment recorded in the Official Records of the Recorder of Clark County, Nevada on May 12, 2011 in Book 20110512 as Instrument No. 01222 and as subsequently assigned to Green Valley Commerce, LLC, as beneficiary, by assignment recorded in the Official Records of the Recorder of Clark County, Nevada on June 17, 2011 in Book 20110617 as Instrument No. 04926; and, (ii) a document entitled "Assignment of Leases and Rents" recorded July 17, 2007 in the Official Records of the Recorder of Clark County, Nevada in Book 20070717 as Instrument No. 04926 and a document entitled "Assignment of Assignment of Leases and Rents" recorded in the Official Records of the Recorder of Clark County, Nevada on May 12, 2011 in Book 20110512 as Instrument No. 01223 and a document entitled Assignment of Assignment of Leases and Rents" recorded in the Official Records of the Recorder of Clark County, Nevada on June 17, 2011 in Book 20110617 as Instrument No. 02964.

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APN: 161-32-810-001and 161-32-810-002
Recording requested by and when recorded mail to:
First American Title Company.
2490 Paseo Verde Parkway, Suite 100
Henderson, NV 89074

Attention: Julie Skinner

Mail Tax Statements to:

Green Valley Commerce, LLC
9155 Las Vegas Blvd. South
Suite 200
Las Vegas, NV 89123
498135

Recorded Electronically
ID
County
Date Time
Simplifile.com 800.460.6657

Space above this line for Recorder's use

GRANT, BARGAIN AND SALE DEED

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Dated: Sept. 19, 2011

"Grantor"

Green Valley Commerce Center, LLC,
a Nevada limited liability company

By: American Nevada Company, LLC,
a Nevada limited liability company
Its: Manager

By: P.N. Ralston

Name: PHILLIP N. RALSTON

Title: EXECUTIVE VICE PRESIDENT

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ACKNOWLEDGMENT

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STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On September 19, 2011; before me, EVELYN M. RULLIS, a Notary Public for said state, personally appeared PHILLIP N. RALSTON, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Evelyn M. Rullis
Notary Public

EVELYN M. RULLIS
Notary Public State of Nevada
No. 97-4588-1
My appt. exp. Nov. 24, 2013

Evelyn m rullis
no 97-4588-1
Exp 11-24-2013

Exhibit A

LEGAL DESCRIPTION

PARCEL ONE (1):

THAT PORTION OF LOT A, GREEN VALLEY BUSINESS PARK, AS SHOWN BY MAP THEREOF IN BOOK 25 OF PLATS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M.D.M.; THENCE NORTH 89°45'21" EAST ALONG THE SOUTH LINE THEREOF, 733.02 FEET; THENCE NORTH 37°55'09" WEST, ALONG THE CENTERLINE OF SUNSET ROAD, 203.17 FEET; THENCE NORTH 52°04'51" EAST, ALONG THE CENTERLINE OF SUNSET WAY, 350 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1800.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°23'56", AN ARC DISTANCE OF 232.44 FEET TO A POINT; THENCE NORTH 30°31'33" WEST ALONG A RADIAL LINE AND THE CENTERLINE OF BUSTER BROWN DRIVE, 473.12 FEET; THENCE NORTH 59°28'47" EAST 25.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 30°31'13" WEST, 120.15 FEET TO A POINT OF NON-TANGENCY ON A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 85°19'18" WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°21'06", AN ARC DISTANCE OF 10.63 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 70°18'40" WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 109°34'17", AN ARC DISTANCE OF 95.62 FEET TO A POINT; THENCE NORTH 00°07'03" EAST, ALONG A RADIAL LINE, 204.51 FEET TO A POINT; THENCE SOUTH 89°52'57" EAST, 509.44 FEET TO A POINT; THENCE SOUTH 00°07'03" WEST, 312.60 FEET; THENCE SOUTH 89°52'57" WEST 282.00 FEET TO A POINT; THENCE SOUTH 59°28'47" WEST, 140.00 FEET TO THE TRUE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF HENDERSON BY DEED RECORDED MAY 21, 1986 IN BOOK 860521 AS DOCUMENT NO. 00684 OF OFFICIAL RECORDS.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION PREVIOUSLY APPEARED IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 30, 1999 IN BOOK 19991130 AS INSTRUMENT NO. 00002 OF OFFICIAL

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EXHIBIT E

(Chain's June 17, 2011 Email)

000225

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EXHIBIT E

James E. Shapiro

From: shawn bidsal <wcico@yahoo.com>
Sent: Wednesday, March 14, 2018 5:44 PM
To: James E. Shapiro
Subject: Fw: Investment's LLC agreement
Attachments: Investment's LLC agreement.docx

[redacted]

Shawn Bidsal
West Coast Investments Inc
14039 Sherman Way, Suite 201
Van Nuys CA 91405
818-901-8800 p
818-901-8877 f

—— Forwarded Message ——
From: shawn bidsal <wcico@yahoo.com>
To: "bengol7@yahoo.com" <bengol7@yahoo.com>
Sent: Friday, June 17, 2011, 11:42:53 AM PDT
Subject: Fw: Investment's LLC agreement

long version of op

--- On **Fri, 6/17/11, Jeff Chain** ***<jeff@mpdnv.com>*** wrote:

From: Jeff Chain <jeff@mpdnv.com>
Subject: Investment's LLC agreement
To: "shawn bidsal" <wcico@yahoo.com>
Date: Friday, June 17, 2011, 11:33 AM

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THE INTERESTS IN THE COMPANY EVIDENCED BY THIS AGREEMENT AND THE ARTICLES OF ORGANIZATION OF THE COMPANY HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION, BUT HAVE BEEN ISSUED PURSUANT TO THE PRIVATE OFFERING EXEMPTION UNDER THE SECURITIES ACT OF 1933, AS AMENDED. ACCORDINGLY, THE SALE, TRANSFER, PLEDGE, HYPOTHECATION, OR OTHER DISPOSITION OF ANY OF SAID INTERESTS IS RESTRICTED AND MAY NOT BE ACCOMPLISHED EXCEPT IN ACCORDANCE WITH THIS AGREEMENT, AND AN APPLICABLE REGISTRATION STATEMENT OR AN OPINION OF COUNSEL FOR THE COMPANY THAT A REGISTRATION STATEMENT IS UNNECESSARY.

AMENDED AND RESTATED OPERATING AGREEMENT

OF

GC LLC

(a Nevada limited-liability company)

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This Operating Agreement of **GC LLC** ("**Agreement**") was initially entered into as of 1st day of October, 2001 by the members ("**Members**") of **GC LLC** (sometimes hereinafter referred to as the "**Company**").

WHEREAS, the Members formed **GC LLC** as a limited-liability company pursuant to the provisions of Chapter 86 of the Nevada Revised Statutes as amended from time to time ("**NRS Chapter 86**");

WHEREAS, the Members have caused the Company's Articles of organization to be filed with the Secretary of State of Nevada;

WHEREAS, the Members deem an operating agreement to be necessary and advisable to set out the agreement of the Members as to the conduct of business and the affairs of the Company, and desire to enter into such agreement, in form and content as set forth herein;

NOW, THEREFORE, the Members hereby agree as follows:

Article I. PURPOSE OF LIMITED LIABILITY COMPANY

Section 1.01 Limited Liability Company. The Company shall be operated as a limited-liability company pursuant to the provisions of NRS Chapter 86. The rights and obligations of the Members in the operation of the Company as herein provided shall be conducted and construed in accordance with NRS Chapter 86. If there is a conflict between the provisions of this Agreement and NRS Chapter 86, the provisions of NRS Chapter 86 shall control.

Section 1.02 Articles of Organization. The Members shall have caused the Articles of Organization for the Company to be filed in the Office of the Secretary of State of Nevada. The Members further agree to acknowledge, file, record, and/or publish, as necessary, such amendments to the Articles of Organization or to this Agreement as may be required by this Agreement or by law, and such other documents as may be appropriate to comply with the requirements of law for the formation, preservation, and/or operation of the Company.

Section 1.03 Name. The Company's business shall be conducted solely under the name of GC LLC or any fictitious name selected by the Manager (as hereinafter defined) and for which the appropriate certificate of fictitious name shall be filed with the appropriate government agency.

Section 1.04 Office Where Records Are Maintained. The office and place of business of the Company, at which Company records must be maintained in written form, is 3900 S. Hualapai, Las Vegas, Nevada 89147, or at such other place in the State of Nevada as the Manager shall from time to time determine.

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Section 1.05 Resident Agent; Registered Office. The name and address of the Company's agent for service of process in Nevada is Jeff Chain at 3900 S. Hualapai, Las Vegas, Nevada 89147. The foregoing address shall be the Company's registered office in the State of Nevada.

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Section 1.06 Purpose.

(A) The Company may engage in any lawful purpose, except for banking or insurance. The principal purpose of the Company shall be the acquisition of that certain real property, generally described as operation of a real estate company, and described more particularly on **Exhibit "A"** hereto (**"Property"**), obtaining development, construction, and/or permanent financing from third party lender (s), development of all or portion (s) of the Property, sale of all or portion(s) of the Property, construction of Improvements on other portion(s) thereof, and related purposes, all as approved by the Manager.

(B) It is the intent of the Members that the Company shall be taxed as a partnership, and the Company shall not enter into any business activity, take any action, or fail to take any required action, that would jeopardize taxation of the Company as a partnership.

Article II. DEFINITIONS

The following words and phrases used in this Agreement shall have the following meanings:

Section 2.01 "Articles of Organization" shall mean the articles of organization filed with the Nevada Secretary of State to form the Company, pursuant to NRS Section 86.151.

Section 2.02 "Capital Account" shall mean, with respect to each Member, a capital account maintained as follows:

(A) By increasing such account with:

(i) Such Member's Capital Contributions,

(ii) Such Member's distributive share of Profits and any items of or in the nature of income or gain, including gains from Capital Transactions, that are specially allocated pursuant to Article 5 to such Member, and

(iii) The amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member, and

(B) By decreasing such account with:

(i) The amount of any cash (not including decreases in such Member's share of Company liabilities pursuant to Section 752(b) of the Code) and the Gross Asset Value of any other Company property distributed to such Member pursuant to any provision of this Agreement.

(ii) Such Member's distributive share of Losses and any items of or in the nature of expenses or losses, including losses from Capital Transactions, that are allocated pursuant to Article 5 to such Members, and

(iii) The amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed to the Company by such Member.

Section 2.03 "Capital Receipts" shall mean the gross cash receipts of the Company, including proceeds from Capital Transactions (without deductions for depreciation or other non-cash charges), subject to deduction for: (i) the payment or accrual for payment of all operating expenses incurred in connection with the operation of the business of the Company, including, without limitation, Management Fees, Transaction Management Fees, any other management fees, principal, interest and any other charges or fees on any indebtedness of the Company (including indebtedness, if any, to a Member) or pursuant to any indebtedness encumbering the Property, real estate taxes, and similar charges, rents, fees and expenses of attorneys, accountants, or other persons rendering services to the Company, and any other ordinary and necessary Company expenses; and (ii) an allowance for cash reserves for working capital, as may be reasonably determined by the Manager. Capital Receipts shall include not only the profits of the Company for federal income tax purposes, but also all cash deemed by the Manager to be available for distribution.

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Section 2.04 "Capital Transaction" shall mean:

(A) Any sale, exchange, transfer, assignment, or other disposition, other than in the ordinary course of the Company's business, of all or any portion of Company property;

(B) Any financing or refinancing of any Company indebtedness;

(C) The condemnation or deed in lieu of condemnation for all or a portion of the Company property; or

(D) Any other transaction the proceeds of which are considered capital in nature under generally accepted accounting principles.

Section 2.05 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

Section 2.06 "Company Minimum Gain" shall have the same meaning as "Partnership Minimum Gain" which is defined in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

Section 2.07 "Contribution" shall mean anything of value, which a person contributes, to the Company as a prerequisite for or in connection with Membership, including cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property to perform services.

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Section 2.08 "Depreciation" shall mean, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period.

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Section 2.09 "Gross Asset Value" shall mean, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows: The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset as determined by the contributing Member and the Manager. Gross Asset Value may be adjusted pursuant to Code Sections 734, 743 and/or 754 whenever it is determined by the Manager, in consultation with the Company Accountant, that such adjustment is appropriate and advantageous.

Section 2.10 "Manager" shall mean Jeff Chain. The Manager shall have the sole right to make management decisions, and to incur obligations, on behalf of the Company, as set forth in this Agreement, subject to any and all provisions in this Agreement requiring the affirmative vote of the Members.

Section 2.11 "Member" shall mean a person, as defined in NRS 86.081, who owns an interest in the Company, but does not include the transferee of a Membership Interest unless such transfer is approved in writing by the Manager and otherwise is in accordance with Article 9 hereof. The non-Manager shall have no right to participate in the management of the business and affairs of the Company, except to the limited extent, if any, expressly set forth in this Agreement, or unless acting at the express direction of the Manager.

Section 2.12 **"Member Nonrecourse Debt"** shall have the same meaning as "Partner Nonrecourse Debt" as defined in Section 1.7042(b)(4) of the Regulations.

Section 2.13 **"Member Nonrecourse Debt Minimum Gain"** shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

Section 2.14 **"Member Nonrecourse Deductions"** shall have the same meaning as "Partner Nonrecourse Deductions" as defined in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

Section 2.15 **"Membership Interest"** shall mean the interests of each Member in the Company. Membership Interest shall be expressed in Units as defined in Section 2.22 below. Membership Interest shall determine a Member's share of the Profits and Losses of the Company and the right to receive distribution of the Company's assets. A Membership Interest is personal property.

Section 2.16 **"Net Cash Flow"** shall mean the Net Operating Income of the Company, plus all depreciation and amortization expenses used in determining the Net Operating Income of the Company.

Section 2.17 **"Net Operating Income"** shall mean the amount by which the receipts from operations of the Company exceed operating expenses, depreciation, and amortization.

Section 2.18 **"Nonrecourse Deductions"** shall have the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

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Section 2.19 **"Profits" and "Losses"** shall mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a). For such purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703 (a) (1) shall be included in taxable income or loss, with the following adjustments:

(A) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section 2.19 shall be added to such taxable income or loss;

(B) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss there shall be taken into account depreciation for such fiscal year or for the period, computed in accordance with Section 2.19 hereof; and No gain or loss from any Capital Transaction shall be included in determination of Profits and Losses.

Section 2.20 **"Property"** shall mean that any property that GC LLC acquires in the future.

Section 2.21 **"Regulations"** shall mean the income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

Section 2.22 "**Taxes**", unless the context clearly requires otherwise, shall mean all taxes properly payable by the Company but shall not include any income taxes payable by a Member.

Section 2.23 "**Unit**" shall mean a share of the total Membership Interests in the Company, entitled to one vote. The aggregate total of authorized Units in the Company shall be One Hundred (100).

Article III. MEMBERS AND MEMBERSHIP

Section 3.01 Members. The Members of this Company are those entities executing this Agreement, whose names, addresses and Membership Interests appear on **Exhibit "B"**, attached hereto. No other person may become a Member of this Company unless such person receives the express written consent of both the Manager and Members.

Section 3.02 Liability of Members. No Member shall have any personal liability whatsoever to the creditors of the Company for the debts of the Company or any losses beyond the Member's Capital Contribution. In accordance with Nevada law, a Member may, under certain circumstances, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Member as a return of Capital. For purposes of this paragraph, the Members intend that no distribution to any Member of distributable funds shall be deemed a return or withdrawal of Capital, even if such distribution represents, for federal income tax purposes or otherwise (in whole or in part) a return of Capital, and that no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company.

Section 3.03 Indemnification. Every person who was or is a party to, or threatened to be made a party to, or is involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he, or a person for whom he is the legal representative, is or was: (i) a Member, (ii) an affiliate of a Member, (iii) serving at the request of the Company, or (iv) serving as the Company's representative or agent in a partnership, joint venture, trust, other enterprise or any transaction, (hereinafter an "**Indemnifiable Person**") shall be indemnified and held harmless by the Company to the fullest extent legally permissible under the laws of the State of Nevada from time to time, against all expenses, liabilities, and losses (including attorneys' fees, judgments, fines, and amounts paid or to be paid in settlement) reasonably incurred or suffered by him in connection therewith, except to the extent such action, suit, or proceeding is caused by the negligence or intentional misconduct of, or a knowing violation of any applicable law by the Indemnifiable Person. Such right of indemnification shall be a contract right, which may be enforced in any manner desired by the Indemnifiable Person. The expenses of an Indemnifiable Person incurred in defending a civil or criminal action, suit, or proceeding must be paid by the Company as incurred, in advance of the final disposition of the action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the Indemnifiable Person to repay the amount if a court of competent jurisdiction ultimately determines that the Indemnifiable Person is not entitled to be indemnified by the Company. Such right of indemnification shall not be exclusive of any other right, which such Indemnifiable Person may have or hereafter acquire. Without limiting the generality of such statement, the Indemnifiable Person shall be entitled to his respective rights of indemnification under any agreement, affirmative approval of the Manager, provision of law, or otherwise, as well as his rights under this Agreement, if any. The Company may procure such insurance as is necessary to provide for the indemnification required by this Section 3.03.

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Section 3.04 Voting; Major Decisions. Any action that may be taken or is required to be taken by the Members of the Company shall be taken by vote; and, unless otherwise required by this Agreement, the affirmative vote of a majority of the Membership Interests shall prevail. Each Member shall be entitled to one vote for each Unit of Membership Interest owned. The Manager, or its designated representative, shall maintain a written record of all voting by the Members. A Member may vote at a meeting of Members either in person or by its duly authorized attorney-in-fact ("Proxy"). Any Member may designate another Member as its proxy. The non-Manager shall have the right to vote only on the following matters ("Major Decisions"):

(A) Substantial and material change in the nature of the business of the Company;

(B) Continuity or dissolution of the Company, pursuant to and as provided by Article IX herein; and

(C) Amendment from time to time of this Agreement or of the Articles of Organization, pursuant to, and as provided in, Section 11.02 herein.

(D) All elections or decisions relating to the allocations described in Section 5.07(E).

(E) The non-Manager shall have no right to vote on any matters which are not specifically set forth in this Section 3.04.

Section 3.05 Meeting of Members. If requested by a Member in writing the Members shall meet not less frequently than annually to review the business activities of the Company and to vote on any Major Decisions pursuant to Section 3. 4, above. The Manager shall notify the Members of Meetings not less than ten (10) days prior to the date of such meeting. All meetings shall be held at the principal place of business of the Company, unless otherwise designated by the Manager in the notice. A majority of the Membership Interests, represented in person or by proxy, shall constitute a quorum at any meeting of the Members.

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Article IV. CAPITALIZATION

Section 4.01 Capital Contributions.

(A) There will be no monetary initial Capital Contribution by Jeff Chain ("Chain") as Manager. The initial contribution of Chain shall be his covenant to serve as Manager for and on behalf of the Company, pursuant to this Agreement, without any compensation other than the Membership Interest as provided for in Exhibit "B" and the amounts as provided for in Section 5.03 & 6.01. Chain reserves the right to purchase Units as a Limited Member.

Section 4.02 Return of Contributions. Each Member shall look solely to the assets of the Company for return of such Member's Capital Contributions, and if the assets of the Company are insufficient to return such Capital Contributions, such Member shall have no recourse against any other Member for that purpose. No Member may withdraw any part of its Capital Contribution or receive any distributions from the Company, except upon dissolution of the Company or as specifically provided by this Agreement.

Section 4.03 Loans by Members. Except as otherwise set forth in this Agreement, no Member shall lend or advance money to or for the Company's benefit without the approval of the Manager. If any Member, with such approval of the Manager, lends money to the Company (in addition to its Capital Contribution to the Company), the loan shall be a debt of the Company to that Member, and shall bear interest at such commercially reasonable rate as may be agreed upon by the lending Member and the Manager. The loan shall not be deemed an increase of the lending Member's Capital, and shall not entitle the lending Member to any increased share of the Company's net income, distributions, or voting rights. Subject to the foregoing, any and all Member loans from time to time shall be repaid immediately, as soon as funds therefor are available.

Section 4.04 Additional Contributions. No Member shall be permitted or authorized to make any additional Capital Contribution without the prior written approval of the Manager.

Article V. PROFITS AND LOSSES; DISTRIBUTIONS

Section 5.01 Interest in Profits and Losses. Profits and Losses shall be allocated as provided in this Article 5, based on the Members' respective Membership Interests throughout the Company's fiscal year, pursuant to Section 706(d) of the Code.

Section 5.02 Allocation of Capital Receipts Distributions. Capital Receipts shall be distributed as follows:

(A) First, to payment of all current expenses of the Company;

(B) Second, to repayment of any loans from Members;

(C) Third, to repayment to each Member, pari passu, of his/her/its Capital Contribution; and

(D) finally, pari passu, to the Members, proportionately based upon their respective Membership Interests.

Section 5.03 Determination and Allocation of Profits and Losses. Subject to Section 5.02, above, profits and losses of the Company shall be allocated to the Members proportionately, based on the respective Membership Interests.

(A) First, to payment of all current expenses of the Company;

(B) Second, to repayment of any loans from Members;

(C) Third, 10% annualize preferred return on the outstanding capital account balance

(D) Fourth, seventy five percent (75%) of the net operating profits of the company pari passu, to the Members, proportionately based upon their respective Membership Interests.

(E) finally, Twenty five percent (25%) of the net profits of the company to the Manager,.

Section 5.04 Allocation of Losses and Deductions. Company losses and deductions shall be allocated as set forth in Section 5.03, above.

Section 5.05 Allocation of Profits and Income. Profits and income of the Company shall be allocated as set forth in Section 5.03, above.

Section 5.06 Transfer of Membership Interest. In the event Company pursuant to Article VIII, the Distributions and Net Profit or Net Loss of the Company allocable to the Membership Interest transferred shall be prorated between the transferor and the transferee for the fiscal year in which such transfer occurs. On the date of transfer, there will be an interim closing of the Company books, and the transferor will be allocated its share of Distributions and Net Profits or Net Loss through the date of transfer.

Section 5.07 Tax Status.

(A) Unless otherwise approved by the Manager, the Company, for tax purposes, shall utilize the method of depreciation, which will result in the greatest amount of deduction in each year.

(B) The Manager shall cause to be prepared and timely filed, all tax returns, which must be filed on behalf of the Company with any taxing authority, all at the expense of the Company.

(C) For accounting and federal income tax purposes, all income, deductions, credits, gains and losses of the Company shall be allocated to the members in proportion to their respective Membership Interests as of the end of the Company's fiscal year. Any item stipulated to be a Company expense under the terms of this Agreement, or which would be so treated in accordance with generally accepted accounting principles, shall be treated as a Company expense for all purposes hereunder, whether or not such item is deductible for purposes of computing net income for federal income tax purposes.

(D) In the event that the Company has taxable income that is characterized as ordinary income under the recapture provisions of the Code, each Member's distributive share of taxable gain or loss from the sale of Company assets shall include a proportionate share of this recaptured income, equal to the Member's share of prior cumulative depreciation deductions with respect to the assets which gave rise to the recapture income.

(E) In accordance with Code Section 704 (c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of Company shall, solely for tax purposes, be allocated between the Members so as to take account of any variation between the adjusted basis of such property to the Company in accordance with Section 2.09 hereof.

(i) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.09 hereof, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

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(ii) Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations made pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items of distributions pursuant to any provision of this Agreement.

(F) Any allocations of income, gain, loss, deductions or credits to the Members pursuant to this Agreement, which would conflict, with the requirements of Code Section 704(b) shall be ineffective, and all such allocations shall be made in compliance with Code Section 704(b). Without limiting the generality of the foregoing, a "qualified income offset," as provided in Regulation 1.704-1(b)(2)(d), shall be utilized.

(G) Except as otherwise provided in Section 1.704-2(f) of the Regulations, and notwithstanding any other provision of this Section 5.7, if there is a net decrease in Company Minimum Gain during any fiscal year, each Member shall be specially allocated such items of income or gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence shall be made in portion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.7042(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 5.7(G) is intended to comply with the minimum gain chargeback requirements in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

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(H) Nonrecourse Deductions for any fiscal year or other period shall be specially allocated between the Members in proportion to their Membership Interests. Any Member Nonrecourse Deduction for any fiscal year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i)(1) of the Regulations.

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(I) Except as otherwise provided in Section 1.7042 (i) (4) of the Regulations, and notwithstanding any other provision of this 0, if there is a net decrease in Member

Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any fiscal year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member

Nonrecourse Debt, determined in accordance with Section 1.7042(i)(5) of the Regulations, shall be specially allocated items of Partnership income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(4) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amount required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.7042(i) (4) and 1.704-2(j) (2) of the Regulations. This 0(I) is intended to comply with the minimum gain charge back requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

Section 5.08 Company Formation Expenses. All fees and expenses (except legal fees and expenses incurred by each non-Manager in reviewing and negotiating the formation and organization of the Company, which legal fees and expenses shall be borne solely by such Member) incurred in the formation of the Company and in any amendment to the Company's Articles of organization and/or Operating Agreement, and approved by the Manager, shall be deemed Company expenses and shall be reimbursed or paid out of Company funds.

Section 5.09 Fiscal Year. The Company's fiscal year shall be the calendar year, from January 1 to December 31, and shall operate on a cash basis.

Section 5.10 Company Accountant. The Manager, or its designated representative, bookkeeper, accountant or accounting firm, shall serve as company accountant ("**Company Accountant**"), to prepare all Company reports and returns, and to perform all other services required by the Company, as determined by the Manager.

Section 5.11 Company Books. The Manager shall cause the Company Accountant to keep detailed, complete and accurate records of all financial and business transactions of the Company, and shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately all transactions and other matters relative to the Company, s business as are usually entered into records and books of account maintained by persons engaged in businesses of a like character. Company books and records shall be prepared in accordance with generally accepted accounting practice consistently applied and shall be kept on a cash basis. Company books and records shall at all times be maintained at the principal place of business of the Company and shall be open to the inspection and examination of the Members or their duly authorized representatives.

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Section 5.12 Reports to Members. Subject to **Section 7**, below, as soon as is practicable in each particular case, the Manager shall cause to be delivered to each Member if requested by the Members:

(A) Monthly financial reports;

(B) Such information concerning the Company as shall be necessary for the preparation by such Member of its income or other tax returns upon a timely request by a Member;

(C) An unaudited statement, setting forth as of the end of and for each fiscal year: (a) the Company's federal income tax return for that year, b) a profit and loss statement, and (c) a balance sheet of the Company and a statement showing the amounts allocated to or against each Membership Interest during that year;

(D) If feasible, on or before October 15 of each year, a statement setting forth projected Company Profits or Losses for the current year; and

(E) Such other information as in the judgment of the Manager shall be reasonably necessary for the Members to be advised of the results of the operations of the Company.

Section 5.13 Capital Accounts. The Company Accountant shall maintain records of all required Capital Accounts and provide all required capital accounting for the Company and the Members.

Section 5.14 Bank Accounts. Funds of the Company shall be deposited in a Company account or accounts in such financial institutions (including any state or federally chartered bank or savings and loan association) as approved by the Manager, taking into consideration the financial stability of the financial institution and the availability of FDIC insurance coverage for the Company funds to be deposited. Only the Manager or its designated representative shall make all withdrawals from and/or checks written on such bank accounts.

Section 5. 15 Title to Property. Title to the assets and property of the Company shall be held in the name of the Company.

Article VI. PROPERTY ACQUISITION & DEVELOPMENT

Section 6.01 Property Acquisition.

(A) The Company shall seek to acquire fee simple title to the Properties subject only to the permitted Exceptions (as defined below).

(B) All real property taxes and other assessments shall be prorated through the date the Property is conveyed to the Company.

Section 6.02 Project. The Company shall sell all or portions of the Property ("Project") in accordance with the provisions of Section 3.04 with respect to obtaining the requisite approval of the Members.

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Section 6.03 Property Loans. The Company shall obtain any and financing approved by the Manager. The proceeds of such financing shall be used to pay all costs necessary to complete acquisition of future real property ("**Improvements**"). The Company shall also obtain any and all permanent financing approved by the Manager. Any and all financing shall be in such principal amounts, at such interest rates, with such origination fees, and upon such other terms as are commercially reasonable and approved by the Manager. Such financing may be secured by a first deed of trust encumbering the Property, including all Improvements, and the Company may also pledge and hypothecate all Company personal property to lender(s) as security for financing. The Company shall make interest payments from time to time when and as due under such financing.

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Section 6.04 Limitations on Contracts. Notwithstanding any other provision of this Agreement, all contracts pertaining to the Project shall require execution by the Manager.

Article VII. MANAGEMENT

Section 7.01 Management. Except as otherwise expressly provided in this Agreement, management and control of the business and affairs of the Company shall be vested solely in the Manager, and all decisions of the Manager with respect to the management and control of the Company shall be binding on the Company and the Members.

Section 7.02 **Authority of Manager.** The Manager shall have the authority to manage the affairs of the Company and to make decisions regarding the business of the Company. Any action taken by the Managing shall constitute the act of, and shall serve to bind the Company. In dealing with the Member acting on behalf of the Company, no person shall be required to inquire into the authority thereof. The persons dealing with the Company are entitled to rely exclusively on the power and authority of the Manager, as set forth in this Agreement.

Section 7.03 **Powers of Manager.** The powers of the shall include, but not be limited to, the authority and power to:

(A) Supervise and coordinate the financing and operation of the business of the Company;

(B) Employ and dismiss from employment any and all employees, agents, independent contractors, Manager, brokers, attorneys, and accountants;

(C) Operate, maintain, finance, improve, construct, own, buy, sell, grant options with respect to, sell, convey, assign, mortgage, and lease, any real estate or any personal property necessary, convenient, or incidental to the accomplishment of the purposes of the Company;

(D) Execute any and all agreements, contracts, documents, certifications, and instruments necessary or convenient in connection with managing the affairs of the Company.

(E) Borrow necessary funds and issue evidences of indebtedness necessary, convenient, or incidental to the accomplishment of the purposes of the Company and secure the same by mortgage, pledge, or other lien on any property of the Company;

(F) Institute, prosecute, defend, settle, compromise, and dismiss lawsuits or other judicial or administrative proceedings brought on behalf of or against the Company or the Members in connection with activities arising out of, connected with, or incidental to this Agreement, and to engage counsel or other advisers in connection therewith;

(G) Take such action on behalf of the Company as may be necessary to acquire real or personal property for the Company as the Members deem advisable or beneficial to the purposes and goals of the Company;

(H) Be reimbursed for all expenses reasonably incurred in conducting the Company business, all taxes paid by the Manager in connection with Company business, and all costs associated with the development, organization, and initial operation of the Company;

(I) Deposit Company funds in an account or accounts with financial institutions as set forth and authorize withdrawals of those funds by such persons at such times and in those amounts as the Manager may designate;

(J) Place record title to any property in the name of the Company or in the name of a nominee or a trustee for the purpose of mortgage financing or any other convenience or benefit of the Company;

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(K) Cause the Company to carry public liability insurance and such other insurance as the Manager shall determine is necessary to fully protect the Company, the Members, the owners or representatives of the Members which are not natural persons, the Manager, and any other Indemnifiable Persons as the Manager may determine;

(L) Keep or cause to be kept full and accurate records of all transactions of the Company;

(M) Cause an Certified Public Accountant to prepare, file, and distribute, or cause to be prepared, filed, and distributed to Members all tax returns and reports for the Company and in connection therewith make any tax elections that the Members deem advisable, including, but not limited to, the election referred to in Section 754 of the Code, and designate one of the Members to act as "tax matters partner" for the Company within the meaning of Sections 6221 through 6232 of the Code;

(N) Prepare, or cause to be prepared, and deliver to each Member, reports and other information required by this Agreement and such other information as in the judgment of the Manager shall be reasonably necessary for the Members to be advised of the results of operations of the Company; and

(O) Execute, acknowledge, and deliver any and all instruments to effectuate any and all of the foregoing.

(P) To enter into a listing agreement with a licensed real estate broker for the sale of the property and to pay a customary brokerage fee.

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Section 7.04 **Reimbursement.** Notwithstanding any other provision of this Agreement, the Company will reimburse the Manager for all costs and liabilities paid or incurred in connection with the formation of the Company, and in connection with the Company's business, together with interest on such amounts thereon, from the date such amounts were paid through the date of full reimbursement.

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Section 7.05 **Time Devoted to Business.** The Manager shall be required to devote only such time to its duties on behalf of the Company as shall be reasonably necessary to perform such duties as contemplated hereby. The Manager shall not be liable, responsible or accountable in damages or otherwise to the Company or to the Members for any act performed by the Manager, provided such act is performed in good faith and without willful misconduct.

Section 7.06 **Related Business Interests.** All activities undertaken by the Manager, which relate to the business of the Company, shall be conducted by the Company for the benefit and profit of the Company. Subject to the foregoing, each Member understands and agrees that the Manager may be interested, directly or indirectly, in various other businesses and undertakings not included in the Company. The Members hereby agree that the creation of the Company and the assumption by the Manager of its duties hereunder shall be without prejudice to its rights to have such other interests and activities and to receive and enjoy profits or compensation therefrom, and each and every Member hereby waives any rights which the Members might otherwise have to share or participate in such other interests or activities. The Manager may engage in or possess any interest in any other business venture of any nature or description independently or with others, and neither the Company nor the Members shall have any right by virtue of this Agreement in and to such venture or the income or profits derived therefrom.

Section 7.07 Limits on Powers of Manager. Anything in this Agreement to the contrary notwithstanding, the Manager shall not cause or permit the Company to:

(A) Do any act expressly prohibited or restricted by this Agreement or by law, or which would make it impossible to carry on the ordinary business of the Company.

Section 7.08 Limited Role of Members. Except as otherwise expressly provided in this Agreement and by law, the Members shall take no part in nor interfere with the management or conduct of the Company's business. Individual Members, acting alone, and without express authorization of the Manager, shall have no right, authority or responsibility to act for or bind the Company. Notwithstanding the foregoing, the Members shall not be deemed to take part in the conduct or control of the business of the Company if, on the request of the Manager, the Members vote on any Major Decisions.

Section 7.09 Replacement of Manager. Only upon a super majority written approval of all Members (which shall specifically exclude the Membership Interests owned by the Managing Manager), shall have the right by affirmative vote, to determine the number of Manager or Manager, remove any Manager(s) or Manager(s) and appoint any Manager or Manager, and when any vacancy occurs among Manager by reason of death, resignation, removal, retirement, disqualification, or other cause, Members holding a super majority in interest of Members' interests shall have the right, by affirmative written vote, to appoint any replacement Manager.

Article VIII. TRANSFER OF MEMBERSHIP INTEREST

Section 8.01 General Restrictions on Transfer.

(A) This Article VIII shall apply to all Transfers of a Membership Interest (now owned or hereafter acquired) by a member (**"Transferring Member"**), whether voluntary, involuntary, by operation of law, or resulting from death, disability or otherwise, and shall include assignment, encumbrance, pledge, disposal, sale, exchange, delivery, hypothecation, and transfer (all referred to as **"Transfer"**). For all purposes of this Agreement, an involuntary lifetime Transfer shall include the entry of a final order of a court in a divorce proceeding that is not subject to appeal, directing Transfer of a Membership Interest, or any Transfer occasioned by a separation agreement in a divorce proceeding that is not subject to appeal.

(B) No Membership Interest may be Transferred to any transferee (**"Transferee"**), except by the written consent of the Manager, and then only in accordance with this Article VIII. If any Transfer is not approved by the Manager, or is not otherwise made in accordance with this Article VIII, the transferee of the Membership Interest shall have no right to become a Member and shall have no right to participate in the management and affairs of the Company. The transferee in such case shall only be entitled to receive the share of the profits or other compensation by way of income, and the return of capital contributions, to which the Transferring Member would have been entitled.

(C) Notwithstanding the provisions of this Section 8.01 or any other provision of this Agreement, a Member can transfer a Membership Interest without the prior written consent of the Manger for:

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(i) an assignment by a Member for his/her estate planning purposes; or (ii) a transfer to corporate entities that are majority owned by the transferring Member, provided, that notice is delivered to the Manager of such assignment with the name, address and tax identification information for the new Member within twenty (20) days after such transfer is completed.

Section 8.02 **Members' Rights of First Refusal.**

(A) A Transferring Member who receives an offer to purchase, or who desires to sell any or all of its Membership Interest to a prospective Transferee, shall first offer in writing such interest for sale to the other Members ("Remaining Members"). The Remaining Members will have the first right of refusal, at the same price and terms offered by the prospective Transferee. The terms and conditions of the purchase offer shall be fully revealed to the Remaining Members by written notice, duly given, specifying such information, including but not limited to:

(i) Name and address of the prospective Transferee;

(ii) Relationship of the prospective Transferee to the Transferring Member (and to its principals, trustees, owners or affiliates);

(iii) Price; and

(iv) Mode and terms of payment.

(B) Each Remaining Member shall have the right to purchase the Transferring Member's Membership Interest, upon the terms and conditions offered to the prospective Transferee. (In the event that more than one of the Remaining Members shall elect to exercise such right of first refusal, their respective rights shall be prorated on the basis of such electing Remaining Members' respective Membership Interests). In the event that the aforementioned offer is not accepted by any Remaining Member within ten (10) days after receipt of said written offer, the Transferring Member shall have the right to sell said interest only to the person disclosed as the prospective Transferee, and only upon such terms as specified in the notice herein above referenced. Such sale must be made within thirty (30) days after the expiration of such ten (10) day period or within thirty (30) days after the written refusal of the Remaining Members to accept such offer. In the event such sale is not completed as aforesaid, it may not thereafter be made or effectuated. The restrictions imposed by this Article VIII shall then remain in force and continue to be effective as if no offer to sell had been made.

(C) In the event such sale is properly completed as hereinabove described, and the Remaining Members have consented in writing to the Transfer, the Transferee shall become a Member of the Company, provided that no such Transfer shall be made or shall be effective to make the Transferee a Member or to entitle the Transferee to any benefits or rights hereunder, unless and until the Transferee (and spouse, if applicable) agrees in writing to assume and be bound by all the obligations of the Transferring Member and to be subject to all the restrictions to which the Transferring Member would have been subject under this Agreement. If the Remaining Members have not consented in writing to the Transfer, the Transferee shall not become a

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Member of the Company, shall have no right to become a Member and shall have no right to vote or to participate in the management and affairs of the Company. The Transferee in such case shall only be entitled to receive the share of the profits or other compensation by way of income, and the return of capital contributions to which the Transferring Member would have been entitled.

Section 8.03 Involuntary Transfers, Death or Disability. Upon the bankruptcy or insolvency of a Member or the appointment of a receiver of the assets of a Member (if said appointment is not vacated within sixty (60) days after same becomes effective), the death of a Member, or upon the disability of any Member (if such disability continues for a period in excess of ninety (90) days) (said Member subject to any of the foregoing events, for purposes of this Section 8.03, hereinafter referred to as the **"Transferring Member"**), the Company shall dissolve unless the remaining Members (for purposes of this Section 8.03, **"Remaining Members"**) , by written consent or affirmative vote, by a majority of the Membership Interests, shall elect to continue the business of the Company, in which event (hereinafter referred to as an **"Event of Continuation"**) (a) the Membership Interest of the Transferring Member shall be Transferred to a transferee, subject to the provisions of Section 8.01 and Section 8.02, above, approved in writing by the Manager (for purposes of this Article VIII, referred to as a "Transferee") , pursuant to the provisions of this Article VIII; and (b) the Transferee shall purchase, and the bankrupt or disabled Member, or the receiver or the estate of the deceased or disabled Member (**"Transferring Member/Representative"**), as the case may be, shall sell, all of the Membership Interest now owned or hereafter acquired by such Transferring Member, and (c) the purchase price shall equal the value of the Membership Interest, computed in accordance with the provisions of Section 8.04 below, and shall be paid pursuant to Section 8.05 below.

Section 8.04 Purchase Price of Interest.

(A) Upon an Event of Continuation (as set forth in Section 8.03, above), in the absence of a third party bona fide offer, the purchase price of a Transferring Member's Membership Interest shall be determined by agreement of the Transferring Member/Representative and the Manager. If such agreement cannot be reached, then a valuation of the Membership Interest shall be determined by the Transferring Member/Representative and Manager each select an appraiser to value the Membership Interest being offered. The appraisers so selected shall then appoint another, neutral appraiser. Each appraiser shall conduct and submit its appraisal of the Membership Interest within sixty (60) days from the selection of the neutral appraiser. The date on which the last appraisal is received shall be the **"Appraisal Date"**. The average of the appraisal by the neutral appraiser and the next closest appraisal shall be conclusively deemed to be the value of the Membership Interest.

(B) It is understood and agreed by the Members that, in the absence of a third party bona fide offer, the purchase price determined in accordance with Section 8.04(A) above shall be the full agreed-upon value of the Transferring Member's Membership Interest subject to this Article 8; that, except as otherwise provided in this Article VIII, such value shall in no manner be altered; and that all Company assets (both tangible and intangible, including the proceeds of any insurance held by the Company), as well as all liabilities (including mortgages, liens, or other encumbrances of any kind whatsoever) have been considered in determining said value.

Section 8.05 Payment Terms. Pursuant to this Article VIII, in the event that the Membership Interest of a Transferring Member is purchased by the Company or the Manager, there shall first be credited against such purchase price the amount of any indebtedness due and payable to the Company by the Transferring Member (which indebtedness shall be assumed by the Manager), and the balance shall be paid to the Transferring Member/Representative as follows:

(A) Twenty percent (20%) of the purchase price shall be paid within twenty (20) days following the Appraisal Date or twenty (20) days following the exercise of the Manager's right of first refusal.

(B) The balance of the purchase price shall be paid in the form of a promissory note (with monthly payments of principal and interest) with sixty (60) equal installments (but if the Company final accounting and dissolution distributions shall occur before the end of said sixtieth (60th) month, then the balance of the purchase price shall be paid at the time of dissolution distributions) from the date of such note with an annual interest rate of twelve (12%). The promissory note of the Manager or designated Transferee, as applicable, shall be delivered to the Transferring Member/Representative, concurrent with the tender of the initial payment and payments shall be made monthly thereafter. The Manager/designated Transferee, as applicable, shall have the right to prepay without penalty all or any portion of the balance of the purchase price at any time. Notwithstanding the foregoing portion of this Section 8.05(B) and any other provision in this Agreement, in no event shall the Transferring Member be entitled to receive more than an amount equal to what the aggregate of its distributions following the purchase of the Membership Interest, up to and including prorated dissolution distributions, would have been under this Agreement without taking into consideration this Article VIII, and downward adjustment to the purchase price shall be made at the time of Company final accounting and dissolution, or earlier, if appropriate, to give effect to this limitation.

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Section 8.06 Transferee Restrictions. Except for transfers pursuant to Section 8.01(c), any Membership Interest transferred at any time or from time to time during the term of this Agreement pursuant to the provisions of this Article VIII, the Transferee shall take such Membership Interest pursuant to all provisions, conditions, and covenants of this Agreement including this Article VIII, and as a condition precedent to the Transfer of such Membership Interest, the Transferee shall agree and acknowledge (for and on behalf of himself or itself, his or its legal representatives, and his or its transferees and assigns) in writing that Transferee is bound by all provisions of this Agreement, including this Article VIII, as a party hereto.

Section 8.07 Closing Requirements.

(A) Upon the closing of any purchase of any Membership Interest pursuant to this Article VIII, the seller shall deliver to the purchaser such assignments, certificates of authority, tax releases, consents to Transfer, instruments, and evidences of title of the seller and of his (or its) compliance with this Article VIII as may be reasonably required by the purchaser (or by counsel for the purchaser).

(B) Any purchase by the Manager or its designated Transferee pursuant to any of the terms and provisions of this Article VIII contemplate that any said Transfer of Membership Interest shall be free and clear of all taxes (including seller's income tax liability), debts, claims, or encumbrances of any kind whatsoever, except for those represented by promissory note, if any, given

hereunder. The Manager or designated Transferee shall be entitled to offset against the purchase price any obligations of the Transferring Member to the Company.

(C) In the event the offer is being made by the estate of a decease Member, upon receipt by the estate of the redemption price in cash and promissory note pursuant to this Article VIII, the estate fiduciary shall endorse and deliver to the Company all of the interest of the deceased Member.

(D) Any closing of the Transfer of a Membership Interest pursuant to this Article VIII shall be held at the offices of the then counsel to the Company.

Section 8.08 Admission of Additional Members.

(A) No additional member may be admitted to the Company without advance written consent of the Manager except as provided for in Section 8.02(C); and

(B) Any and all such additional members promptly shall execute, acknowledge (if required), and deliver such documents as the Manager may require, including, without limitation, any amended Articles of Organization and Operating Agreement.

Article IX. TERM AND TERMINATION

Section 9.01 Duration. Subject Section 9.02 below, the period of duration of the Company shall be thirty (30) years from the date of filing of the Company's Articles of Organization with the Nevada Secretary of State.

Section 9.02 Dissolution of Company. The Company shall be dissolved only upon the occurrence of any of the following events:

(A) The written consent or affirmative vote to dissolve the Company by Members owning more than seventy five (75%) percent of the Membership Interests;

(B) The disposition or sale of all interest in the Company assets;

(C) The occurrence of the date which is thirty (30) years after the filing of the Articles of organization with the Nevada Secretary of State;

(D) The entry of a dissolution decree or judicial order by a court of competent jurisdiction or by operation of law; or

(E) The death, retirement, resignation, expulsion, dissolution, bankruptcy, or continued disability, of a Member, or the occurrence of any other event which terminates a Member, continued membership in the Company (subject to the right of the remaining Members, by a majority of their Membership Interests, to elect to continue the Company).

Section 9.03 Winding Up of Company. On dissolution and termination of the Company under this Agreement or applicable law, except as otherwise provided in this Agreement, the continuing operation of the Company's business shall be confined to those activities reasonably necessary to wind up the Company's affairs, discharge its obligations, and either liquidate the Company's assets and deliver the

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proceeds of liquidation, or preserve and distribute its assets in kind promptly on dissolution. A notice of dissolution shall be published under applicable Nevada law or as otherwise appropriate.

Section 9.04 Distribution Upon Termination. Upon dissolution and termination, the Manager shall wind up the affairs of the Company, shall sell all the Company assets as promptly as consistent with obtaining, insofar as possible, the fair value thereof after paying all liabilities, including all costs of dissolution. The proceeds from the liquidation of the assets of the Company and collection of the receivables of the Company, together with the assets distributed in kind, to the extent sufficient therefor, shall be applied and distributed in the following descending order of priority:

(A) to the payment and discharge of all of the Company's debts and liabilities (including, but not limited to, any accrued but unpaid Management Fees or Transaction Management Fees) and the expenses of liquidation;

(B) to the creation of any reserves which the Manager deems necessary for any contingent or unforeseen liabilities or obligations of the Company;

(C) to the payment and discharge of all of the Company's debts and liabilities owing to Members, but if the amount available for payment is insufficient, then pro rata in proportion to the amount of the Company debts and liabilities owing to each Member; and

(D) then, to the members, pari passu, proportionate amounts in reduction of their respective Capital Accounts until reduced in full.

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Article X. REPRESENTATIONS AND WARRANTIES

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Each Member warrants and represents the following:

(A) That it has been provided with access to all documents, contracts and other records relating to the company;

(B) That it has been advised that its Membership Interest may not be sold, transferred, or otherwise disposed of except as provided herein;

(C) That it understands that the securities being purchased hereby have not been registered under the Securities Act of 1933 (the "Act"), or any State securities laws, in reliance on an exemption of private offerings and, therefore, the securities cannot be resold unless they are registered under the Act and applicable State securities laws or unless an exemption from such registration is available;

(D) That it is a "sophisticated investor" with substantial prior experience in high-risk business investments and is aware of and familiar with the risks associated with a private limited liability company and would qualify as an "accredited investor" as such is defined in Rule 501 of Regulation D, as enacted pursuant to Sections 3(b) and 4(2) of the Act;

(E) That it is purchasing the Membership Interest for its own account, for investment only and with no intention of distributing, reselling, pledging, or otherwise disposing of its Interest;

(F) 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;

(G) That it is familiar with the type of investment which the Membership Interest in the Company constitutes and has reviewed the purchase of the Membership Interest with its tax and independent legal counsel and investment representatives to the extent it deems necessary; and

(H) That the representations and warranties contained herein are true and correct as of the date of this Agreement and shall remain true and correct thereafter.

(I) Has read and accepts the risk factor attached hereto as Exhibit C.

Article XI. MISCELLANEOUS

Section 11.01 Governing Law. This Agreement is intended to be performed in the State of Nevada and the laws of that State shall govern its interpretation and effect. The Members consent to the jurisdiction of any Federal or State court located in the County of Clark, State of Nevada for any action commenced hereunder.

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Section 11.02 Amendments. This Agreement may be amended at any time and from time to time, only with the written consent or affirmative vote by Members owning more than seventy five (75%) percent of the Membership Interests. The Articles of Organization similarly may be amended at any time and from time to time only by unanimous prior written consent of the Members; provided, however, that each Member hereby agrees to execute and deliver any amendment to the Articles of Organization required by Nevada statute as a result of any circumstances approved by the Manager or contemplated by this Agreement, or any action of the Manager permitted by this Agreement.

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Section 11.03 Notices. Any written notice to one or both of the Members required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally or by confirmed telecopy ("fax") transmittal on the party to whom notice is to be given, or on the second day after mailing if mailed to the party to whom notice is to be given, by registered or certified mail, postage prepaid, and addressed to the party at its address set forth in Exhibit "B" hereto. Notices to the Company shall be similarly given and addressed to the Company at its principal place of business.

Section 11.04 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Section 11.05 Entire Agreement. This Agreement contains the entire agreement of the members relating to the rights granted and obligations assumed under this Agreement. Any oral representations or

modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent unanimous written modification signed by the Members.

Section 11.06 Binding Effect. Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferee, and assigns as authorized by this Agreement.

Section 11.07 Construction. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member.

Section 11.08 Time. Time is of the essence with respect to this Agreement.

Section 11.09 Heading. Article, section, and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

Section 11.10 Incorporation by Reference. Any exhibit or schedule attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

Section 11.11 Variation of Pronouns. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural as the identity of the person or persons may require.

Section 11.12 Waiver Or Action for Partition. Each of the Members irrevocably waives any right that it may have to maintain any action for partition with respect to any of the Company property.

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Section 11.13 Counterpart Execution; Facsimiles. This Agreement may be executed in any number of counterparts with the same effect as if the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Fax signatures shall be deemed original signatures.

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Section 11.14 Further Documents. Each member agrees to perform any further acts and to execute and deliver any further documents reasonably necessary or proper to carry out the intent of this Agreement.

Section 11.15 Attorneys' Fees. If an action is instituted to enforce the provisions of this Agreement, the prevailing party or parties in such action, including appeals, shall be entitled to recover from the losing party or parties its or their reasonable attorneys' fees and costs as set by the court.

Section 11.16 Elections Made by Company. All elections required or permitted to be made by the Company under the Code shall be made by the Manager in such manner as in their judgment will be most advantageous to the Members.

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first above written.

Manager

By: _____
Jeff Chain

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EXHIBIT "A"

PROPERTY DESCRIPTION

To be provided when a suitable acquisition has been acquired

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