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 12
PAGES 2751–3000

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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:

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

A. BACKGROUND.

Petitioner CLAP and Respondent Bidsal are the sole members of Green Valley Commerce, LLC ("***GVC***"). GVC owns and manages commercial property in Las Vegas, Nevada. CLAP is solely owned by its principal Benjamin Golshani ("***Golshani***"). On or about June 15, 2011 CLAP and Bidsal entered into an Operating Agreement ("***OPAG***") for GVC. A true and correct copy of the OPAG is attached hereto as ***Exhibit "A"*** and is incorporated herein by this reference.

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

Article III, MEMBERS' MEETINGS AND DEADLOCK, Section 14, Deadlock, subsection 14.1, Dispute Resolution, is the only section of the OPAG that addresses attorney's fees and costs arising out of an internal dispute. The pertinent section of subsection 14.1 reads "[t]he 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 arbitration previously advanced and the fees and expenses of attorneys, accountants and other experts to the prevailing party." *See* pages 7-8 of Exhibit "A" (emphasis added). As will be discussed later, the forgoing language, which clearly limits any award of attorney's fees to the award made by the arbitrator, is important.

B. PROCEDURAL HISTORY.

On or about September 18, 2017, CLAP represented to the courts, and to Bidsal, that CLAP was a "…Nevada limited liability company conducting business in Clark County, Nevada." *See* page 4:13-14 to Answer and Counterclaims of Benjamin Golshani and CLA Properties, LLC in Case Number A-17-759982-C, a true and correct copy of which is attached hereto as ***Exhibit "B"*** and is incorporated by this reference herein.

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From on or about May 8, 2018 to May 9, 2018 Bidsal and CLAP participated in an arbitration to resolve the Impasse. Arbitrator Stephen E. Haberfeld ("***Arbitrator***") was appointed to hear the matter. Nearly eleven months later, on or about April 5, 2019, the Arbitrator entered an arbitration award in favor of CLAP (the "***Arbitrator's Award***").

On or about April 9, 2019, Bidsal filed his Petition/Motion to Vacate Arbitration Award (the "***Federal Motion to Vacate***") with the United States District Court, District of Nevada (the "***Federal Court***"). On or about April 25, 2019, CLAP filed its Motion to Dismiss (the "***Federal Motion to Dismiss***"). On or about June 24, 2019 the Federal Court dismissed the matter for lack of subject matter jurisdiction (the "***Federal Order to Dismiss***").

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

On July 3, 2019, CLAP filed a Motion for Attorney's Fees in Federal Court ("***Federal Motion for Attorney's Fees***"). A true and correct copy Federal Motion for Attorney's Fees is attached hereto as ***Exhibit "C"*** and incorporated herein by this reference. On or about July 22, 2019 Bidsal filed an Opposition to the Federal Motion ("***Federal Opposition***"). A decision on the Federal Motion for Attorney's Fees is still pending in the Federal Court.

The Petition and the Counterpetition were heard on November 12, 2019 in the District Court. On or about December 6, 2019 the District Court rendered a decision granting the Petition ("***District Court Order***").

CLAP filed the present Motion on January 3, 2020, twenty-eight (28) days after the District Court Order was rendered.

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II.

STATEMENT OF AUTHORITIES

As is set forth next, not only does CLAP lack both a factual and legal basis to recover attorneys' fees, but CLAP's Motion is untimely, and as such, CLAP's Motion should be denied.

A. CLAP'S ARGUMENTS REGARDING THE FEDERAL MOTION TO VACATE ARE IRRELEVANT.

In its Motion, CLAP makes numerous references and arguments relating to the Federal Motion to Vacate. However, not only are these arguments without merit, they are moot given the fact that CLAP has a pending Motion for Attorney's Fees with the Federal Court.

1. Bidsal Was Neither Frivolous nor Vexatious in Appealing the Final Arbitration Award to Federal Court.

In this case, the Operating Agreement states that it is governed by the provisions of "the United States Arbitration Act, 9 U.S.C. § 1, *et seq.*" *See* page 8 of Exhibit "A". According to 9 U.S.C. § 10, under the FAA, arbitration awards may be vacated by filing an action 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—

9 U.S.C. § 10(a) (emphasis added). Thus, on April 9, 2019, Bidsal, a "party to the arbitration", made application to vacate the Final Award by filing his Motion to Vacate with this Court, which is the "United States court in and for the district wherein the award was made." Bidsal was attempting to comply with the terms of the Operating Agreement and the clear statutory terms of the FAA in initiating this action.

Although the Court did find that CLAP is a California citizen, because Benjamin Golshani is a California citizen, at the time of filing, CLAP's citizenship was in question. CLAP successfully argued that the Court lacked subject matter jurisdiction over this matter. CLAP's argument relied upon Bidsal being unable to show some basis for subject matter jurisdiction, independent of the FAA. *See* page 5 of the Motion to Dismiss (*citing* Carter v. Health Net of California, Inc., 374 F.3d 830, 833 (9th Cir. 2004)). CLAP further argued that there was no such independent basis for subject matter jurisdiction because there was no diversity among the parties under 18 U.S.C. § 1332. The

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argument relied upon Bidsal living in the State of California, and CLAP being a citizen of the State of California. *See* Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006). However, courts determine a party's domicile on a "case by case basis, considering all of the circumstances surrounding an individual's situation." *See* Bloom v. Library Corp., 112 F. Supp. 3d 498, 502 (N.D. West Va. 2015).

In this case, Bidsal was taking into account additional circumstances that brought the citizenship of CLAP into question. Specifically, that CLAP has previously represented to the courts, and to Bidsal, that it was organized in the State of Nevada and that it did business in Clark County, Nevada. *See* page 4:13-14 of Exhibit "B". CLAP's assertion led Bidsal to believe that CLAP was actually a citizen of Nevada for diversity jurisdiction purposes, thereby giving rise to diversity jurisdiction. Thus, Bidsal's decision to appeal the Arbitration Award to Federal Court was appropriate under the circumstances and was clearly not frivolous or vexatious.

2. The Federal Action is Irrelevant to CLAP's Present Motion.

Regardless of CLAP's assertion that the action in the Federal Court was a waste of time, CLAP has already filed the Federal Motion for Attorney's Fees. Allowing CLAP to claim they are entitled to attorney's fees for the work performed in responding to Bidsal's action filed in Federal Court would result in two competing orders addressing the same attorney's fees. Additionally, as that matter is one in front of the Federal Court, asking the District Court to make a decision on a matter already pending in Federal Court is asking the District Court to usurp the power of the Federal Court.

CLAP has asserted through its affidavits, numerous fees that were incurred in the Federal Court matter. Those fees are not properly in front of the District Court as they are already the subject of the Federal Motion for Attorney's Fees.

B. CLAP'S MOTION MUST BE DENIED AS UNTIMELY.

CLAP's Motion was untimely, being filed a full seven (7) days after the deadline imposed by NRCP 54(d)(2)(B). Further, under NRCP 54(d)(2)(C), the time cannot be extended and as such, the Motion should be summarily denied.

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1. The Deadline to File a Motion for Attorney's Fees.

NRCP Rule 54(d)(2) governs requests for attorney's fees and provides that the same may be sought so long as: (i) the motion is filed no later than **21 days after the judgment**, (ii) the motion specifies the judgment **and statute, rule or other grounds entitling the movant to the award**, (iii) the motion states the amount sought or a fair estimate of it; and (iv) the motion discloses, if the court so orders, the terms of any agreement about fees for the services for which the claim is made. (emphasis added.) Further, NRCP Rule 54(d)(2)(B)(v) states that a motion for attorney fees must be supported by (a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable; (b) documentation concerning the amount of fees claimed; and (c) points and authorities addressing the appropriate factors to be considered by the court in deciding the motion. Finally, NRCP Rule 54(d)(2)(C) states that "**[t]he court may not extend the time for filing the motion after the time has expired**." (emphasis added).

2. CLAP Failed to File the Motion in a Timely Manner.

The District Court Order was electronically filed on December 6, 2019; thus, triggering the 21-day filing period for a motion for attorney's fees under NRCP Rule 54. According to NRCP 6(a)(1)[1] December 6th is not counted. The twenty-first day after the District Court Order was filed was December 27, 2019. December 27th was a Friday and was not a holiday. The present motion was not filed by CLAP until January 3, 2020, seven days after the deadline to file had already expired.

On December 26, 2019, one day prior to the expiration date, CLAP's attorney emailed Bidsal's attorney and stated that there "…are only a few more days within which for us to move for those [attorney's] fees." A true and correct copy of CLAP's December 26, 2019 email is attached hereto as ***Exhibit "D"*** and is incorporated herein by this reference. Two things are clear from this email. First, CLAP's counsel was well aware that there was a deadline. *Id*. Second, that CLAP had

[1] NRCP Rule 6(a)(1) governs the computation of time and it states that, when a period is stated in days or a longer unit of time then you exclude the day of the event that triggers the period; count every day, including intermediate Saturdays, Sundays, and legal holidays; and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

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made a poor calculation as to the deadline, thinking that on December 26, 2019, it had more than one day left during which it could file a Motion for Attorney's Fees. *Id*. Counsel for CLAP indicated in that same email that it was seeking an agreement from Bidsal to pay attorney's fees and needed a response no later than December 30, 2019, which would have been three days after the deadline had passed. *Id*.[2]

NRCP Rule 54(d)(2)(C) states that "[t]he court may not extend the time for filing the motion after the time has expired. Given that CLAP failed to either (1) file the Motion in a timely manner and/or (2) secure an extension of its filing deadline prior to the expiration thereof, the court may not now extend the time for filing. Further, while there were some initial discussions amongst counsel regarding a possible extension, nothing was agreed upon and CLAP filed the present motion without addressing the proposed extension further and certainly without securing any type of an extension of the deadline.

Because CLAP's Motion was unquestionably untimely, it should be denied in its entirety.

C. CLAP'S MOTION LACKS A STATUTE, RULE OR OTHER GROUNDS ON WHICH TO BASE ITS MOTION AS REQUIRED BY NRCP RULE 54(d)(2).

NRCP Rule 54(d)(2), which governs requests for attorney's fees, requires that any party seeking attorney's fees must: "specif[y] the judgment **and statute, rule or other grounds entitling the movant to the award**…" (emphasis added). The statute upon which CLAP relies is the Nevada Uniform Arbitration Act, found in NRS Chapter 38. However, the Nevada Uniform Arbitration Act does not apply.

1. The Operating Agreement is Clear; the Provisions of the United States Arbitration Act, 9 U.S.C. § 1, et seq. Govern.

In this case, the Operating Agreement clearly and unequivocally states that it is governed by the provisions of "the United States Arbitration Act, 9 U.S.C. § 1, *et seq.*" *See* page 8 of Exhibit "A". This fact was confirmed by CLAP in its demand for arbitration. *See* a true and

[2] In an email sent on December 30, 2019, Shawn's counsel responded that "I'm fine stipulating to move the deadline to give us some breathing room," but CLAP's counsel never provided any proposed stipulation, and never brought the issue up again. Further, by the time that Shawn's counsel responded, the deadline had already expired and under NRCP 54(d)(2)(C), it was already too late to extend it.

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correct copy of the Demand for Arbitration Form attached hereto as ***Exhibit "E"*** and incorporated herein by this reference at Page 3. Thus, the Nevada Uniform Arbitration Act, as contained in NRS Chapter 38, simply does not apply.

2. <u>There is No Basis for an Award of Attorney's Fees Under the United States Arbitration Act</u>.

Having established that the arbitration was conducted per the United States Arbitration Act, 9 U.S.C. § 1, *et seq.*, the next question is whether or not the United States Arbitration Act allows for an award of attorney's fees. The answer is that it does not.

Article II, Section 14.1 of the OPAG states that "…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." *See* Exhibit A at Page 8 (emphasis added). However, nowhere in the OPAG does it address attorney's fees and costs of any subsequent appeal and/or motion to vacate.

The court in <u>Crossville Medical Oncology, P.C. v. Glenwood Systems, LLC</u> 610 Fed. Appx. 464, 2015 WAL 1948329 (6th Cir. May 1, 2015) addressed this very scenario and affirmed the lower court's finding that "[b]ecause the FAA does not provide for an award of attorney's fees in a confirmation action, and because the [a]greement does not authorize additional attorney's fees, …there is no basis for departing from the American rule…" <u>*Id*</u>. The <u>Crossville</u> court found, "[b]ecause we find that the parties' contract does not authorize a court to award attorney's fees beyond those issued by an arbitrator" no further award of attorney's fees was warranted. <u>*Id*</u>.

Because, under the plain terms of the OPAG, an award of attorney's fees is only allowed by the arbitrator, and because the United States Arbitration Act, 9 U.S.C. § 1, *et seq.* does not otherwise provide for an award of attorney's fees to the prevailing party, "there is no basis for departing from the American rule" and CLAP's Motion must be denied. <u>*Id*</u>.

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D. CLAP'S REQUESTED ATTORNEY FEES ARE NOT JUSTIFIED.

Even if CLAP is able to get past the fact that their Motion was clearly untimely, the fact that the deadline cannot be extended, and the fact that there is no basis under the United States Arbitration Act, 9 U.S.C. § 1, *et seq.* to award attorney's fees, CLAP's requested attorney's fees are not justified.

1. CLAP Is Seeking a Double Recovery.

One problem for CLAP is that it is seeking a double recovery. CLAP is asking this Court to award the very same attorney's fees that it is currently asking the Federal Court to award. *See* Exhibit "C". The total amount sought in CLAP's Federal Motion for Attorney's Fees is $8,604.40. The Garfinkel Affidavit also includes charges on June 18, 24 and 25, 2019 for Garfinkel reviewing the Federal Court Order and the Notice of Entry of Order for the Federal Court Order. Again, these entries are not justified, as these tasks are unrelated to the District Court case and either were or should have been asserted in the Federal Motion for Attorney's Fees. These unreasonable and unjustified entries amount to $281.25. It would be entirely inappropriate for this Court to award any attorney's fees relating to the Federal action, particularly when the Federal Motion for Attorney's Fees is still pending.

2. CLAP's Billing Records Are Too Vague.

Although CLAP did provide affidavits and billing statements with its Motion, many of the entries are ambiguous as to whether or not they relate to the District Court matter. In numerous entries throughout the billing statements, CLAP lists that it "drafted correspondence." However, these entries do not align with correspondence received by Bidsal's counsel, nor do the entries highlight who the correspondence was intended for or what it was in reference to. Given the nebulous nature of these entries it cannot be assumed that these fees were reasonably incurred. These unreasonable and unjustified entries amount to $2,141.13 in charges that should not be included in any award for attorney's fees.

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3. The Requested Amount includes monies for unnecessary research.

Likewise, many entries on the billing statements refer to "research" and then redact what was being researched. Given the redacted nature of these entries it is impossible to ascertain if the research was reasonably related to the District Court matter.

The Garfinkel Affidavit includes an entry for an attorney fee for Garfinkel having a conference with "Jack Liev." Jack Liev is not a name with which Bidsal is familiar and nowhere in the affidavit is it explained or justified how or why this conference was reasonably or justifiably related to the present matter. This unreasonable and unjustified entry amounted to $178.12.

Additionally, the Lewin Affidavit asserts attorney's fees for research for the Petition **after** the Petition was filed, but **before** the Opposition was filed. These unreasonable and unjustifiable fee entries occurred on May 22, 28, 29, and 30, 2019 and June 2 and 12, 2019. The total for these unreasonable and unjustifiable fee entries is $3,829.50.

The Lewin Affidavit goes on to assert attorney's fees on May 28, 2019 and June 13, 2019 for researching California case law. There is simply no reason why CLAP should have been researching California law when California law clearly does not apply. These unreasonable and unjustifiable fee entries amount to $770.25.

The Lewin Affidavit also makes an unreasonable and unjustifiable fee entry for "Review Answer" on May 30, 2019 although no answer was filed in this matter around that date. This unreasonable and unjustifiable fee entry amounts to $417.38.

None of the forgoing amounts should, under any circumstance, be imposed upon Bidsal.

4. The Requested Amount Includes Fees Incurred Solely as a Result of CLAP's Failure to Comply with the Rules.

This Court originally scheduled the hearing to occur on September 10, 2019. While counsel for both parties appeared on that date, the hearing was ultimately continued due to CLAP's failure to comply with EDCR 2.20(g) ("Whenever a motion is contested, a courtesy copy shall be delivered by the movant to the appropriate department at least 5 judicial days prior to the date of the hearing, along with all related briefing, affidavits, and exhibits."). *See* the Minute Order, attached hereto as ***Exhibit "F"*** and incorporated herein by this reference.

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From September 3, 2019 to September 18, 2019 counsel for CLAP asserts charges for hearing preparation, hearing attendance and events after the hearing needed to rectify a failure on the part of CLAP to present courtesy copies of their documents to the Court. Had CLAP not failed to produce the required courtesy copies, the hearing would have taken place as scheduled. However, CLAP's failure to do so caused the District Court to postpone the hearing. Bidsal should not be punished for CLAP's failure to abide by the District Court's requirements, nor should Bidsal be forced to reimburse the attorney's fees CLAP incurred as a result of CLAP's own failure to comply with the rules. These unreasonable and unjustified entries amount to $4,275.00 for Garfinkel and $4,351.00 for Lewin, for a total of $8,626.00.

Based upon the forgoing, in the event an award of attorney's fees is entered in favor of CLAP and against Bidsal, it should be reduced by at least $24,848.03. However, because CLAP's Motion is both untimely and unsupported by any legal authority under the United States Arbitration Act, 9 U.S.C. § 1, *et seq.*, it should be outright denied.

III.

CONCLUSION

For all the foregoing reasons, the Motion for Attorney's Fees should be denied.

Dated this 17th day of January, 2020

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

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CERTIFICATE OF SERVICE

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

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

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EXHIBIT A

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EXHIBIT A

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

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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

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.

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.

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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.

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

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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;

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

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(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 wholly or partly, by cash, by personal property, or by real property, or servic unanimous consent of the Members, other forms of contributions to capital of a l company authorized by law may he authorized or approved. Upon receipt of the to contribution to capital, the contribution shall be declared and taken to be full paid further call, nor shall the holder thereof be liable for any further payments on account of that contribution. Members may be subject to additional contributions to capital as determined by the unanimous approval of Members.

Section 02 Transfer or Assignment of Membership Interest.

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

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

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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.

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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.

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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

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Section 01 Amendment of Articles of Organization.

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.

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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.

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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.

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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:

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

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

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

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

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ARTICLE XII
INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION

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

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

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

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

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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.

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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:

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.

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EXHIBIT B

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EXHIBIT B

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Attorneys for Defendant and Counterclaimant
Benjamin Golshani and Counterclaimant, CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SHAWN BIDSAL, an individual,

Plaintiff,

v.

BENJAMIN GOLSHANI, an individual; DOES 1-10, and ROE ENTITIES 1-10,

Defendants,

BENJAMIN GOLSHANI AND CLA PROPERTIES, LLC,

Counterclaimants,

v.

SHAWN BIDSAL, an individual, and DOES 10-20, AND DOE ENTITIES 11-20,

Counter- Defendants.

Case No. A-17-759982-C
Dept. No. 14

ANSWER AND COUNTERCLAIMS OF BENJAMIN GOLSHANI AND CLA PROPERTIES, LLC

BUSINESS COURT REQUESTED
(Claims Arising From the Sale of a Business)

ARBITRATION EXEMPTION REQUESTED:
DECLARATORY RELIEF

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COMES NOW Defendant BENJAMIN GOLSHANI, an individual ("Golshani"), by and through his attorneys of record, Louis E. Garfinkel, Esq. of Levine, Garfinkel & Eckersley, and hereby files his Answer to the Complaint as follows:

ANSWER OF GOLSHANI TO COMPLAINT

1. Golshani admits the allegations in paragraphs 1, 2, 4, 7, 8, 9, 13, 16, 17, 18, 19, 20, 21, 22, and 23 of the Complaint.

2. Golshani denies the allegations in paragraphs 3, 11, 14, 24 and 25 of the Complaint.

3. Answering paragraph 5 of the Complaint, Golshani admits that Plaintiff and Golshani executed the Operating Agreement of Mission Square, LLC (" Mission Square") with an effective date of May 26, 2013 ("Operating Agreement"), and that although the Operating Agreement identifies Golshani as a manager and the 50% owner of Mission Square, it was acknowledged and agreed that (i) CLA Properties, LLC ("CLAP") was the actual owner of the membership interest, (ii) that the identification of Golshani as the member/manager was a mistake, and that (iii) Golshani would be the agent and placeholder for CLAP until the Operating Agreement was amended. Golshani further alleges that in conjunction with said agreement and understanding, all government tax returns prepared by and/or approved by Plaintiff reflected CLAP as the 50% member and owner of Mission Square.

4. Answering paragraph 6 of the Complaint, Golshani admits that Bidsal owns a 50% membership interest in Mission Square, but alleges that Golshani is an agent and placeholder for CLAP, which is the true and actual owner of the other 50% membership interest.

5. Answering paragraph 10 of the Complaint, Golshani admits that on August 3, 2017, Golshani responded to Bidsal's Offer to Purchase by providing notice of CLAP's election to purchase Bidsal's membership interest.

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6. Answering paragraph 12 of the Complaint, Golshani admits that Bidsal responded to CLAP's August 3, 2017 response, but denies Bidsal had the right to establish a different fair market value by appraisal.

7. Answering paragraph 15, Golshani repeats and realleges each of his answers contained in or relating to paragraphs 1 through 14, inclusive, and incorporates the same by reference as though fully set forth herein.

8. As to any remaining allegations not specifically responded to, Golshani denies the same.

AFFIRMATIVE DEFENSES

1. Plaintiff is estopped to deny that CLAP is the owner of a 50% membership interest in Mission Square and entitled to exercise all rights as the owner of said membership interest under the Operating Agreement.

2. Plaintiff's claims are barred by the doctrine of waiver.

3. Plaintiff's claims are barred by the doctrine of laches.

4. Plaintiff's claims that CLAP does not own a 50% interest in Mission Square LLC and is not entitled to exercise rights under the Operating Agreement, are barred by the doctrine of unclean hands due to Plaintiff's failure to deal with Golshani and CLAP fairly and in good faith.

6. There is a superseding agreement between Plaintiff, Golshani and CLAP whereby it was agreed that Golshani would act as the agent/placeholder for CLAP, and that CLAP was the actual owner of the 50% membership interest in Mission Square entitled to exercise the rights as an owner under the Operating Agreement, which agreement has been relied upon by the parties, including in connection with the tax and other governmental filings submitted by Plaintiff and Mission Square.

7. Golshani has employed counsel to defend this action, and is entitled to an award of reasonable attorneys' fees and costs.

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8. All possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available to Golshani upon reasonable inquiry upon the filing of this Answer, and therefore Golshani reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation so warrants.

COUNTERCLAIMS OF GOLSHANI AND CLAP

Counterclaimants Golshani and CLA Properties, LLC ("CLAP") hereby submit their Counterclaim against Counterdefendant Shawn Bidsal as follows:

PARTIES

1. Counterclaimant Golshani is a resident of Los Angeles, California, doing business in Clark County, Nevada.

2. Counterclaimant CLAP is a Nevada limited liability company conducting business in Clark County, Nevada. Golshani is the sole member and manager of CLAP.

3. Counterdefendant Shawn Bidsal ("Bidsal") is a resident of Los Angeles, California, and is conducting business in Clark County, Nevada.

4. On information and belief, the true names and capacities, whether individual, corporate, associate, or otherwise of DOES 11-20, and DOE Entities 11-20, who are members of Mission Square, are unknown to Counterclaimants who therefore sue said Counterdefendants by such fictitious names. Counterclaimants will seek leave to amend this Counterclaim to show their true names and capacities when the same have been ascertained.

STATEMENT OF FACTS

1. Golshani, through CLAP, and Bidsal own several limited liability companies together which own and operate commercial properties in the States of Nevada, California and Arizona.

2. In or about April 26, 2013, Mission Square's Articles of Organizations were filed with the Nevada Secretary of State.

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3. Mission Square was initially formed to acquire and manage real property known as 1933 E. University Drive, Mesa, Arizona, which CLAP had obtained the rights to through an auction. Subsequently, a neighboring Lot, 1961 E. University Drive, Mesa, Arizona, was acquired by another LLC owned by Bidsal and CLAP (Gilbert and University, LLC) which property was later transferred to Mission Square.

4. The Operating Agreement for Mission Square mistakenly listed Golshani as the 50% owner and a manager of Mission Square. When the mistake was noticed, Bidsal and Counterclaimants agreed that the parties would execute an Amendment showing CLAP as the member and manager, and that until that occurred, Golshani would be the placeholder and agent on behalf of CLAP, with CLAP having full rights and authority to act as the 50% owner of Mission Square under the Operating Agreement.

5. The agreement of the parties regarding CLAP being the true member and owner was memorialized in numerous documents prepared by and/or approved by Bidsal, and relied upon by Counterclaimants. Such documents include, without limitation, K-1 tax documents submitted to the United States Government and the Arizona tax authorities, all of which identified CLAP as being the 50% owner and member of Mission Square, as well as distribution payments paid to CLAP.

6. Article V, Section 4 of the Operating Agreement sets forth the procedure to be followed in the event that either of the members of Mission Square makes an offer to purchase the membership of the other member.

7. On or about July 7, 2017, in accordance with Article V, Section 4.2 of the Operating Agreement, Bidsal gave notice of Bidsal's offer to purchase the Golshani/CLAP's membership interest in Mission Square for the amount as set forth in the notice.

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8. On or about August 3, 2017, Golshani on behalf of CLAP responded to Bidsal's offer, giving notice that CLAP elected to purchase Bidsal's membership interest in Mission Square at the price offered by Bidsal.

9. On or about August 5, 2017, contrary to the procedure in the Operating Agreement Bidsal responded to CLAP's notice, claiming that he did not have to sell for the price as stated in his offer, but instead claimed that he had the right to establish the price by appraisal.

10. CLAP/Golshani responded that Bidsal had no right to utilize the appraisal process once they agreed to pay Bidsal the price that he had set. Counterdefendant's response was to file the above-captioned lawsuit.

11. As a direct and proximate result of Counterdefendant's actions, Counterclaimants have retained legal counsel to enforce the terms of the Operating Agreement and are entitled to recover attorneys' fees and costs.

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FIRST CAUSE OF ACTION

(For Declaratory Relief)

12. Counterclaimants repeat and reallege the allegations contained in paragraphs 1-11, inclusive, of this Counterclaim and incorporate the same by this reference as though fully set forth herein.

13. Under and pursuant to NRS Sections 30.040, there is a justiciable controversy between Counterclaimants on the one hand and Counterdefendants on the other hand. Counterclaimants claim that (i) CLAP is the actual and true owner of a 50% membership interest in Mission Square, with all of the rights and obligation sunder the Operating Agreement, (ii) that the parties have always treated CLAP as the actual owner of a 50% membership interest in Mission Square and that Counterdefendants are estopped from denying that CLAP is the owner, and cannot exercise rights under the Operating Agreement, including the exercise of the option to buy the Bidsal membership

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interest, (iii) that the exercise of the option to purchase Mr. Bidsal's interest by CLAP is effective and binding and gives CLAP the right to buy Bidsal's membership interest in Mission Square as set forth in the Operating Agreement and that Counterdefendants have no right to the appraisal process in connection with such purchase, and (iv) that the Operating Agreement should be amended or reformed to reflect CLAP as the member-manager instead of Golshani.

14. Counterdefendants deny the foregoing and claim that Golshani is the owner of the membership interest and CLAP has no right to purchase the membership interest and that he is entitled to establish the fair market value of Mission Square by appraisal.

15. Counterclaimants have retained legal counsel to prosecute this matter and should be reimbursed for their attorneys' fees and costs incurred therein.

SECOND CAUSE OF ACTION

(For Reformation)

16. Counterclaimants repeat and reallege the allegations contained in paragraphs 1-15, inclusive, of this Counterclaim and incorporate the same by this reference as though fully set forth herein.

17. The Operating Agreement should be reformed to reflect CLAP as the owner of the 50% membership interest, now nominally shown as being owned by Golshani.

THIRD CAUSE OF ACTION

(For Injunction)

18. Counterclaimants repeat and reallege the allegations contained in paragraphs 1-17, inclusive, of this Counterclaim and incorporate the same by this reference as though fully set forth herein.

19. Once the option to purchase Bidsal's membership interest was exercised, the *status quo*

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as to Mission Square had to be maintained since the purchase price represented the value of all of the assets of Mission Square as of the date of the exercise. Accordingly, no distributions or any other contracts should have been entered into without the consent of CLAP.

20. Upon information and belief, Bidsal has threatened to improperly attempt to continue to make distributions and enter into contracts, despite CLAP'S demand that the *status quo* will be maintained. In addition, Bidsal has threatened to unilaterally file amended tax returns and other governmental filings for Mission Square to reflect Golshani as the member, instead the prior tax returns and filings which had been approved and agreed to by Bidsal and which report CLAP as the member, over the objections of CLAP and Golshani, which filings would possible subject CLAP and Golshani to penalties, interest and possible audit. The purpose of such amended filings by Bidsal would be to attempt to gain an improper litigation advantage in this lawsuit.

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21. Absent an injunction preventing Bidsal from making distributions, entering into contracts or amending any tax filing or other governmental filings without Counter- Claimants written consent, both Mission Square and Counterclaimants shall suffer irreparable harm.

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22. Counterclaimants lack an adequate remedy at law.

23. Based upon the foregoing, Counterclaimants are entitled to injunctive relief preventing Bidsal from improperly making distributions, entering into contracts or amending any tax filing or other governmental filings without Counter- Claimants written consent.

24. Counterclaimants are entitled to a preliminary injunction preventing Bidsal from altering the *status quo*, making distributions, entering into new contracts or amending any tax filing or other governmental filings without Counterclaimants written consent.

WHEREFORE, Counterclaimants pray for relief as follows:

1. For a judicial declaration that (i) CLAP is the actual and true owner of a 50% membership interest in Mission Square, with all of the rights and obligations under the Operating

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Agreement, (ii) that the parties have always treated CLAP as the actual owner of a 50% membership interest in Mission Square and that Counterdefendants are estopped from denying that CLAP is the owner, and cannot exercise rights under the Operating Agreement, including the exercise of the option to buy the Bidsal membership interest, (iii) that the exercise of the option to purchase Mr. Bidsal's interest by CLAP is effective and binding and gives CLAP the right to buy Bidsal's membership interest in Mission Square as set forth in the Operating Agreement and that Counterdefendants have no right to the appraisal process in connection with such purchase, and (iv) that the Operating Agreement should be amended or reformed to reflect CLAP as the member-manager instead of Golshani.

2. For a decree reforming Mission Square's Operating Agreement to reflect CLAP as the owner of the 50% interest therein;

3. For a temporary restraining order and preliminary injunction enjoining Counterdefendant from making distributions, entering into contracts or amending any tax filing or other governmental filings without Counter- Claimants written consent.

4. For a dismissal of the Complaint;

5. For costs of suit incurred herein;

6. For reasonable attorneys' fees according to proof; and

7. For such other and further relief as the Court deems just or proper.

DATED: September 18th, 2017

LEVINE, GARFINKEL & ECKERSLEY

Louis E. Garfinkel

LOUIS E. GARFINKEL, ESQ.
Nevada Bar No. 3416
Las Vegas, Nevada 89148
Attorneys for Defendant and Counterclaimant Benjamin Golshani and Counterclaimant 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 & ECKERSLEY, and that on the 18th day of September, 2017, I caused the foregoing **ANSWER AND COUNTERCLAIMS OF BENJAMIN GOLSHANI AND CLA PROPERTIES, LLC** to be served as follows:

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

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

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

James E. Shapiro, Esq.
Andrew S. Blaylock, Esq.
Smith & Shapiro, PLLC
2520 St. Rose Parkway, Suite #220
Henderson, NV 89074
Attorneys for Plaintiff / Counterdefendant
Shawn Bidwell.

Cory Hershman, an Employee of
LEVINE GARFINKEL & ECKERSLEY

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Ans 6/13/19

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Attorneys for Petitioner CLA Properties, LLC

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

DATED this 21st day of May, 2019.

LEVINE & GARFINKEL

By: _____
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Attorneys for Petitioner CLA Properties, LLC

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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

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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: _____

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Attorneys for Petitioner CLA Properties, LLC

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EXHIBIT "1"

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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.

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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.

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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.

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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.

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."

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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.

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

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

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

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

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

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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

[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.

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.

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.

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

[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.

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--- 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)

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

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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.

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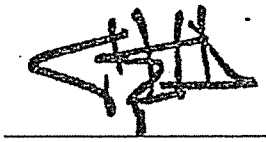
6. This Final Award resolves all claims, affirmative defenses, requests for relief (including requests for reconsideration) and all principal issues and contentions between the parties to this arbitration.

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

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James E. Shapiro Esq.
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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.

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

The resident agent shall be appointed by the Member Manager.

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

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

Section 02 Limited Liability Company Offices.

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

Section 03 Records.

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

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

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

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

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

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

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

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

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

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

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

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

Section 04 Inspection of Records.

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

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

Article III.
MEMBERS' MEETINGS AND DEADLOCK

Section 01 Place of Meetings.

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

Section 02 Annual Meetings.

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

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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.

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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.

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

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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 be 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.

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.

I. 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.

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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 Golshani, 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)(f) of Section 1.704-1 of the Income Tax Regulations, each Member's Capital Account shall be adjusted in accordance with paragraph (b)(2)(iv)(g) of Section 1.704-1 of the Income Tax Regulations as to allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes with respect to such property.

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

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

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

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ALLOCATION OF PROFITS AND LOSSES; TAX AND ACCOUNTING MATTERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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EXHIBIT C

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EXHIBIT C

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 Defendant CLA Properties LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SHAWN BIDSAL,

Plaintiff/Movant,

vs.

CLA PROPERTIES, LLC, a California limited liability company,

Defendant.

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

CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES

Pursuant to FRCP 54(d) and LR 54-14, Defendant CLA Properties, LLC ("CLA") hereby moves the Court for an Order awarding it attorney's fees.

This Motion is made and based on all the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, the attached Affidavit of Louis E. Garfinkel, Esq. and any other such argument the Court may entertain.

Dated this 3rd day of July, 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 Defendant CLA Properties LLC

MEMORANDUM OF POINTS AND AUTHORIITIES IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

I.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiff/Movant Shawn Bidsal ("Bidsal") is a resident of the State of California.

Defendant CLA is a California limited liability company. The sole member of CLA is Benjamin Golshani who is a resident of the State of California.

Plaintiff Bidsal and Defendant CLA are members of Green Valley Commerce, LLC ("Green Valley"), a Nevada limited liability company. Attached as Exhibit "A" is a true and correct copy of the Operating Agreement of Green Valley which has an effective date of June 15, 2011.

Article III, Section 14.1, of the Operating Agreement of Green Valley is entitled "Dispute Resolution" and contains an arbitration clause along with an attorney's fee provision. Under Section 14.1, if a dispute arises, Plaintiff Bidsal and Defendant CLA are first required to mediate the dispute, but if the dispute is not resolved, the parties agree that the dispute will be resolved exclusively by arbitration. Section 14.1 states as follows:

> 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 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 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. . . . 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 "A", pp. 7-8.

Article X, Section d, of the Green Valley Operating Agreement contains a choice of law provision. Pursuant to Article X, Section d, the Operating Agreement states that in all respects the Operating Agreement is governed and construed with the laws of the State of Nevada. See, Exhibit "A", p. 16.

A dispute arose between Plaintiff Bidsal and Defendant CLA, and on September 26, 2017, CLA filed a Demand for Arbitration with JAMS in accordance with the Green Valley Operating Agreement. The Demand for Arbitration asserts a claim for declaratory relief under Nevada law. The dispute involved the interpretation of buy-sell provision contained in the Green Valley Operating Agreement.

The Arbitration was held on May 8-9, 2018. On April 4, 2019, the Honorable Steven Haberfield entered a Final Award. Arbitrator Haberfield found in favor of CLA with respect to the buy-sell dispute, and further awarded CLA's attorney's fees and costs in the amount of $298,256.00. Attached as Exhibit "B" is a true and correct copy of the Final Award entered by Arbitrator Haberfield.

This action was commenced on April 9, 2019 by Plaintiff Bidsal when he filed his Motion to Vacate Arbitration Award (the "Motion to Vacate") [ECF 1].

Because the Motion to Vacate was in excess of twenty-four pages, Plaintiff Bidsal then filed a Motion for Leave to File Motion in Excess of Twenty-Four Pages Re: Motion to Vacate Arbitration Award (the "Motion for Leave") [ECF 2].

Plaintiff Bidsal then filed an Appendix to the Motion to Vacate, consisting of six volumes [ECF 3-17, 20].

On April 15, 2019, Defendant CLA was served with the Summons, the Motion for Leave, and the Motion to Vacate [ECF 23].

/ / /

On April 25, 2019, Defendant CLA filed its Motion to Dismiss for Lack of Subject Matter Jurisdiction (the "Motion to Dismiss") [ECF 25].

On May 1, 2019, Plaintiff Bidsal and Defendant CLA filed a Stipulation with the Court agreeing to stay the Motion to Vacate and Motion for Leave pending a decision by the Court regarding the Motion to Dismiss [ECF 28], which was granted by the Court on May 2, 2019 [ECF 30].

On May 13, 2019, Plaintiff Bidsal filed his Opposition to the Motion to Dismiss [ECF 33].

On May 13, 2019, Plaintiff Bidsal also filed his Motion to Remand to State Court (the "Remand Motion") [ECF 34].

On May 20, 2019, Defendant CLA filed its Reply in Support of Motion to Dismiss [ECF 35].

On May 24, 2019, Defendant CLA filed its Opposition to Remand Motion [ECF 36].

On May 31, 2019, Plaintiff Bidsal filed his Reply in Support of Remand Motion [ECF 37].

On June 13, 2019, the Court entered an Order denying Plaintiff Bidsal's Remand Motion [ECF 38].

On June 24, 2019, the Court entered an Order granting Defendant CLA's Motion to Dismiss on grounds that it lacked subject matter jurisdiction [ECF 40].

On June 24, 2019, the Clerk entered Judgment in favor of Defendant CLA and against Plaintiff Bidsal dismissing the matter for lack of subject matter jurisdiction [ECF 41].

Because Defendant CLA is a prevailing party, Defendant CLA now moves this Court for an Order awarding it attorney's fees.

II.

ARGUMENT

A. The Court Should Enter An Order Awarding CLA Its Attorney's Fees.

1. Applicable Law Regarding Attorney's Fees.

a. FRCP 54(d) and Local Rule 54-14.

Pursuant to FRCP 54(d)(2), a party may seek an award of attorney's fees and related

nontaxable expenses. Under FRC 54(d)(2), a party seeking an award of attorney's fees must satisfy the following requirements: (1) file a motion no later than fourteen days after the entry of judgment; (2) specify the judgment and the statute, rule, or other grounds entitling an award of attorney's fees; (3) state the amount sought or provide a fair estimate of the amount sought; and (4) disclose the terms of any agreement about fees for which the fees are made. See, FRCP 54 (d)(2).

Under Local Rule 54-14(b), any motion for attorney's fees must include the following:

1. A reasonable itemization and description of the work performed;
2. An itemization of all costs sought to be charged as part of the fee award and not otherwise taxable pursuant to LR 54-1 through 54-15;
3. A brief summary of the following:
   - A. The results obtained and the amount involved;
   - B. The time and labor required;
   - C. The novelty and difficulty of the questions involved;
   - D. The skill requisite to perform the legal service properly;
   - E. The preclusion of other employment by the attorney due to acceptance of the case;
   - F. The customary fee;
   - G. Whether the fee is fixed or contingent;
   - H. The time limitations imposed by the client or the circumstances;
   - I. The experience, reputation, and ability of the attorney(s);
   - J. The undesirability of the case, if any;
   - K. The nature and length of the professional relationship with the client;
   - L. Awards in similar cases; and,
4. Such other information as the Court may direct.

Further, pursuant to Local Rule 54-16(c), a motion for attorney's fees must be accompanied by an affidavit from the attorney responsible for the billings in the case authenticating the information in the motion and that the fees and costs are reasonable.

b. Nevada Law.

In Nevada, attorney's fees are available when authorized by rule, statute or contract. Flamingo Realty, Inc. v. Midwest Development, Inc., 110 Nev. 964, 991 (1994). NRS 18.010 addresses the award of attorney's fees under Nevada law. NRS 18.010 states as follows:

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> 1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
> (a) When the prevailing party has not recovered more than $20,000; or
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.
> 3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.
> 4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

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NRS Chapter 38 governs mediation and arbitration under Nevada law. NRS 38.243 addresses an award of attorney's fees and litigation expenses to a prevailing party by the court after entering an order confirming, vacating, modifying, or correcting an award. NRS 38.243 states as follows:

> 1. Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.
> 2. A court may allow reasonable costs of the motion and subsequent judicial proceedings.
> 3. On application of a prevailing party to a contested judicial proceeding under NRS 38.239, 38.241 or 38.242, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying or correcting an award.

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2. Basis For An Award of Attorney's Fees.

On June 24, 2019, the Court entered an Order granting Defendant CLA's Motion to Dismiss on the grounds it lacked subject matter jurisdiction [ECF 40], and on that same date, the Clerk entered Judgment in favor of Defendant CLA against Plaintiff Bidsal dismissing the matter for lack of subject matter jurisdiction [ECF 41]. As such, Defendant CLA is a prevailing party.

This litigation should have never been filed in Federal Court. The first issue that arises any time a party considers litigating in Federal Court is subject matter jurisdiction. Federal Courts are courts of limited jurisdiction. If Plaintiff Bidsal had performed the most basic research, he would have determined that even though arbitration under the Operating Agreement is governed by the Federal Arbitration Act, he nevertheless had to establish an independent basis for federal jurisdiction. Based on clear and unambiguous Ninth Circuit precedent and the factual record, Plaintiff Bidsal should have immediately determined that diversity jurisdiction or federal question jurisdiction did not exist.

CLA is entitled to an award of attorney's fees under the Operating Agreement or Nevada law.

Article III, Section 14.1 of the Operating Agreement contains an arbitration clause along with an attorney's fees provision. Under Section 14.1 of the Operating Agreement, the arbitrator shall award attorney's fees and costs to the prevailing party which occurred in this case. Section 14.1 also contemplates that the award entered by the arbitrator would be final, not subject to judicial review, and any court of competent jurisdiction could enter a judgment on the award. See, Exhibit "A", pp. 7-8. Based on Section 14.1, CLA, as a prevailing party, is entitled to an award of attorney's fees under the Operating Agreement.

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CLA is also entitled to an award of attorney's fees under Nevada law. Article X, Section d, of the Operating Agreement contains a choice of law provision. Pursuant to Article X, Section d, the Operating Agreement states that the Operating Agreement is governed by Nevada law. See, Exhibit "A", p. 16. Since Nevada law applies, the Court can award Defendant CLA attorney's fees pursuant to NRS 18.010(2)(b), which states that when a court finds that a claim was brought or maintained without reasonable ground or to harass the prevailing party, the court may award attorney's fees to the prevailing party. A frivolous or groundless claim is one "not supported by any credible evidence" at the time the claim was brought. See, Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals, 114 Nev. 1348, 1354, 971 P.2d 383, 387 (1998) (quotations omitted). Moreover, NRS 18.010(2)(b) states that the court shall liberally construe the provisions of NRS 18.010(2)(b) in awarding attorney's fees in all appropriate situations. Based on the clear and unambiguous Ninth Circuit precedent and the factual record, the Court can unquestionably conclude that this lawsuit was brought or maintained without reasonable ground or to harass CLA.

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If this lawsuit was properly filed in State Court, CLA would have the opportunity to pursue an award of attorney's fees and costs. NRS Chapter 38 governs mediation and arbitration under Nevada law. NRS 38.243 allows the court after entering an order confirming, vacating, modifying or correcting an award, to award a prevailing party reasonable fees and other expenses incurred in the proceedings after the award is made.

In sum, Defendant CLA is entitled to an award of attorney's fees pursuant to the Operating Agreement or under Nevada law.

3. CLA is Entitled To Award Of Attorney's Fees In The Amount of $8,604.40.

Attached as Exhibit "C" is the Affidavit of Louis E. Garfinkel, Esq. which is incorporated in this Motion by reference. Mr. Garfinkel's Affidavit is submitted pursuant to Local Rule 54-14, and addresses each of the items enumerated in Local Rule 54-14(b) and satisfies Local Rule 54-14(c). In accordance with Local Rule 54-14(b)(4), CLA will provide the Court with any such additional information it may require to decide this Motion.

Pursuant to Mr. Garfinkel's Affidavit, Defendant CLA seeks attorney's fees in the amount of $8,604.40. In addition to addressing each of the matters listed in Local Rule 54-14(b), Mr. Garfinkel's Affidavit establishes the attorney's fees sought by CLA are reasonable.

III.

CONCLUSION

For the above and foregoing reasons, Defendant CLA's Motion for Attorney's Fees should be granted. Defendant CLA should be awarded attorney's fees in the amount of $8,604.40.

Dated this 3rd day of July, 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 Defendant CLA Properties LLC

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CERTIFICATE OF SERVICE

I certify that I am an employee of Levine & Garfinkel and that on this 3rd. day of July, 2019, I served a true and correct copy of the foregoing **CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES** via CM/ECF Services 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 Plaintiff/Movant Shawn Bidsal

An Employee of LEVINE & GARFINKEL

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EXHIBIT D

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EXHIBIT D

From:	Aimee Cannon
To:	Aimee Cannon
Subject:	FW: motion for attys fees
Date:	Thursday, January 16, 2020 1:59:21 PM

From: James E. Shapiro
Sent: Thursday, December 26, 2019 5:33 PM
To: rod@rtlewin.com
Cc: 'Louis Garfinkel' <LGarfinkel@lgealaw.com>; rda@rtlewin.com; Dan Goodkin <dgoodkin@goodkinlynch.com>
Subject: RE: motion for attys fees

Thanks Rod.

A number of weeks ago, I asked you Ben's calculation on the payoff. Without that information, we won't be able to provide a response to your latest demand. What is your ETA on that?

Also, if you were to file a motion for attorneys fees, you will have to attach a copy of your billing statements. Please provide that to me ASAP.

Finally, given the fact that this is a holiday weekend, your demand for a quick turnaround is not very professional, particularly when you indicated you would have this information to me much earlier.

Sincerely,

James E. Shapiro, Esq.
jshapiro@SmithShapiro.com

SMITH & SHAPIRO
ATTORNEYS AT LAW
3333 E. Serene Ave., Suite 130, Henderson, NV 89074
702.318.5033 | 702.318.5034
smithshapiro.com

From: Rodney T. Lewin <rod@rtlewin.com>
Sent: Thursday, December 26, 2019 3:01 PM
To: James E. Shapiro <JShapiro@smithshapiro.com>
Cc: 'Louis Garfinkel' <LGarfinkel@lgealaw.com>; ben@claproperties.com; rda@rtlewin.com
Subject: motion for attys fees
Importance: High

James,

We have calculated the time spent in the State court proceeding to confirm (or vacate). The total charges for both Louis' firm and ours is (not counting December time to prepare motion some of which we have already incurred and which we would waive if agreement can be reached) is $67,922.35.

We need a quick response because it is our understanding that there are only a few more days within which for us to move for those fees. **So unless you can agree by Monday the 30th at the latest we will have no alternative but to move for those fees, and once again the time spent on such motion is compensable.**

Please advise.

Thanks.

Rodney T. Lewin
Law Offices of Rodney T. Lewin, APC
8665 Wilshire Blvd
Suite 210
Beverly Hills, California
90211-2931
Tele: 310-659-6771
Fax: 310-659-7354
E-Mail: rod@rtlewin.com

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EXHIBIT E

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EXHIBIT E

Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

TO RESPONDENT (PARTY ON WHOM DEMAND FOR ARBITRATION IS MADE)

Add more respondents on page 6.

RESPONDENT NAME: Shawn Bidsal

ADDRESS: 14309 Sherman Way Boulevard, Suite 201

CITY: Van Nuys STATE: California ZIP: 91405

PHONE: 818-901-8800 FAX: EMAIL: wcico@yahoo.com

RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY: James E. Shapiro

FIRM/COMPANY: Smith & Shapiro

ADDRESS: 2520 St. Rose Parkway, Suite 220

CITY: Henderson STATE: Nevada ZIP: 89074

PHONE: 702-318-5033 FAX: 702-318-5034 EMAIL: jshapiro@smithshapiro.com

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FROM CLAIMANT

Add more claimants on page 7.

CLAIMANT NAME: CLA Properties, LLC

ADDRESS: 2801 South Main Street

CITY: Los Angeles STATE: California ZIP: 90007

PHONE: 213-718-2416 FAX: EMAIL: bengol7@yahoo.com

CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY: (1) Rodney T. Lewin and (2) Louis Garfinkel (info on attached)

FIRM/COMPANY: Law Offices Rodney T. Lewin, APC

ADDRESS: 8665 Wilshire Boulevard, Suite 210

CITY: Beverly Hills STATE: California ZIP: (90211

PHONE: 310-659-6771 FAX: 310-659-7354 EMAIL: rod@rtlewin.com

Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

MEDIATION IN ADVANCE OF THE ARBITRATION

☐ If mediation in advance of the arbitration is desired, please check here and a JAMS Case Manager will assist the parties in coordinating a mediation session.

NATURE OF DISPUTE / CLAIMS & RELIEF SOUGHT BY CLAIMANT

CLAIMANT HEREBY DEMANDS THAT YOU SUBMIT THE FOLLOWING DISPUTE TO FINAL AND BINDING ARBITRATION.
A MORE DETAILED STATEMENT OF CLAIMS MAY BE ATTACHED IF NEEDED.

Claimant and Respondent are the sole members of Green Valley Commerce, LLC, a Nevada limited liability company ("Green Valley"), each witha 50% membership interest. Green Valley is governed by its Operating Agreement dated June 15, 2011. Article V Section 4 of the Operating Agreement is captioned Purchase or Sell Right among Members. In effect the provisions of Section 4 are buy-sell rights whereby one member can offer to buy out the other (the former called "Offering Member" and the latter called "Remaining Member) at a formulad price based on the fair market value of Green Valley (called "FMV"). The Remaining Member then has the right either (1) to sell at the price based on the FMV stated by Offering Member, (2) demand an appraisal to determine FMV or (3) buy out the Offering Member at the same FMV.

On July 7, 2017 Respondent through his counsel (and there labelled "Offering Member") offered to buy out Claimant (there labelled "Remaining Member") at a price based on $5,000,000 fair maket value of Green Valley (there labelled "FMV"). In a timely fashion Claimant responded (directlly to Respondent) in part that it "elects and exercises its option to purchase your 50% membership interest in the Company on the terms set forth in the July 7, 2017 letter based on your $5,000,000 valuation of the Company." Respondent has refused to sell his interest, but instead has demanded an appraisal to determine FMV.

In fact Section 4.2 in part provides that "If the offered price is not acceptable to the Remaioning Member(s), within 30 days of receiving the offer, the Remaining Members (or any of them) can erquest to establish FMV. . ." It does not provide that the Offering Member can after setting the FMV himself can then demand an appraisal; that was the sole right of the Remaining Member (option (2) above). But Claimiant did not exercise that option. Rather it elected the third option, to buy out Respondent based on the FMV that Respondent established.

Any doubt in this regard is removed by the concluding paragraph of Section 4.2 which states: "The specific intent of this provision is that once the Offering Member preseented 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) . . .In the case that the Remaining Member(s) decide topurchase, then Offering Member shall be obligated to sell his or its Member Intersts to the remaining Member(s)."

AMOUNT IN CONTROVERSY (US DOLLARS) _____

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Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

ARBITRATION AGREEMENT

This demand is made pursuant to the arbitration agreement which the parties made as follows. *Please cite location of arbitration provision and attach two copies of entire agreement.*

ARBITRATION PROVISION LOCATION

Article III, Section 14.1 of the Operating Agreement in part states:

"Dispute Resolution. [After providing for possible resolution through representatives which has taken place without success it states] [A]ny controversy, dispute or claim arising out of or rlating in any way to this Agreement or the transactions arising herunder shall be seettled exclusively by arbitration in the City of Las Vegas, Nevada. Such arbitration shall be administered by JAMS in accordance with its then prevailing expeidted 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 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 con;clusion of the arbitration, the arbitrator shall award costs and expenses (including the costs of the arbiration previously advanced and ~~teh~~ the fees and expenses of attorneys, accountants and other experts) to the prevailing party." (Other details follow within the section.)

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RESPONSE

The respondent may file a response and counter-claim to the above-stated claim according to the applicable arbitration rules. *Send the original response and counter-claim to the claimant at the address stated above with two copies to JAMS.*

REQUEST FOR HEARING

REQUESTED LOCATION Las Vegas, Nevada

ELECTION FOR EXPEDITED PROCEDURES (IF COMPREHENSIVE RULES APPLY)

See: Comprehensive Rule 16.1

☑ By checking the box to the left, Claimant requests that the Expedited Procedures described in JAMS Comprehensive Rules 16.1 and 16.2 be applied in this matter. Respondent shall indicate not later than seven (7) days from the date this Demand is served whether it agrees to the Expedited Procedures.

SUBMISSION INFORMATION

SIGNATURE _____ DATE September 26, 2017

NAME (PRINT/TYPED) CLA Properties. LLC, by Rodney T. Lewin, its attorney

ATTACHMENT

The information for Louis Garfinkel is as follows:

Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
Levine, Garfinkel & Eckersley
8880 W. Sunset Road, Suite 390
Las Vegas, NV 89148
Tel: (702) 673-1612
Fax: (702) 735-2198

The relief sought is as follow: Respondent be ordered to transfer his interest in Green Valley Commerce, LLC ("Green Valley") to Claimant upon payment of the price determined in accordance with Section 4 of the Operating Agreement for Green Valley using five million dollars as the fair market value of Green Valley.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8665 Wilshire Boulevard, Suite 210, Beverly Hills California 90211-2931.

On September 26, 2017, I served the foregoing document described as **DEMAND FOR ARBITRATION FORM** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

James E. Shapiro
Smith & Shapiro
2520 St. Rose Parkway, Suite 220
Henderson, Nevada 89074

Shawn Bidsal
14309 Sherman Way, Suite 201
Van Nuys, California 91405

X **BY MAIL:** I caused such envelope to be deposited in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after the date of deposit for mailing in affidavit.

___ **VIA OVERNITE EXPRESS** I caused such packages to be placed in the Overnite Express pick up box for overnight delivery.

___ **VIA E-MAIL TO:** _____

___ **BY FACSIMILE.** Pursuant to Rule 2005. The fax number that I used is set forth above. The facsimile machine which was used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), the machine printed a transmission record of the transmission

___ **BY PERSONAL SERVICE** I personally delivered such envelope by hand to the addressee(s).

X **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

___ **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 26, 2017 at Beverly Hills, California.

Barbara Silver

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EXHIBIT F

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EXHIBIT F

A-19-795188-P

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filings (Petition) **COURT MINUTES** **September 10, 2019**

A-19-795188-P In the Matter of the Petition of CLA Properties LLC

September 10, 2019 09:00 AM All Pending Motions (9/10/2019)

HEARD BY: Kishner, Joanna S. COURTROOM: RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

James E. Shapiro	**Attorney for Respondent**
Louis E. Garfinkel	**Attorney for Petitioner**

JOURNAL ENTRIES

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

Court noted non-compliance with EDCR 2.20 (g) and EDCR 7.26 having occurred by counsel, due to courtesy copies of pleadings not having been provided by counsel to the Court, as required. Mr. Garfinkel acknowledged the non-compliance; and apologized to the Court for not providing courtesy copies in a timely manner. Court reminded the parties everybody needs to comply with the rules. Statements by counsel as to the conversation made to the law clerk by himself regarding his experience and views on courtesy copy requirements, prior to today's hearing. Court provided an analysis on the rules and requirements. Mr. Garfinkel requested to continue the hearing, to provide exhibits to the Court, and to set a new date on the matter; and argued in support of relief requested. Mr. Garfinkel apologized to opposing counsel for having him come down for the hearing today. Mr. Shapiro made no objection. Discussions as to this matter having been heavily litigated at arbitration. Matter OFF CALENDAR, as parties agreed to not proceed forward today with the hearing, and will get a new date to have the matter set on calendar. Counsel for Petitioner to provide exhibits to the Court within 5 days before such scheduled hearing.

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RIS
Louis E. Garfinkel, Esq.
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LEVINE & GARFINKEL
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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 **PETITIONER CLA PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS** Date of Hearing: February 4, 2020 Time of Hearing: 10:00 a.m.

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Petitioner, CLA Properties, LLC ("CLA or Petitioner"), hereby submits its Reply in Support of Motion for Attorney's Fees and Costs.

This Reply is made and based on all of the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, the Affidavits of Rodney T. Lewin, Esq. and

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Louis E. Garfinkel, Esq., and any such argument the Court may entertain.

DATED this 27th day of January, 2020.

LEVINE & GARFINKEL

By: Louis E. Garfinkel

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS

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I. INTRODUCTION

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Petitioner CLA responds to each of the claims made in Respondent Shawn Bidsal's Opposition to Motion for Attorney's Fees and Costs (the "Opposition"), each of which is, at the risk of being understated, outrageous.

CLA first addresses a point Bidsal raises in his Introduction to the Opposition. Apropos of absolutely nothing (other than to create a distraction), the Opposition in ¶ I.B. and later at p. 5, line 6 states that on September 18, 2017 Petitioner in another case ("Mission Square Case") represented that it was a Nevada limited liability company. What Bidsal conceals is that on December 12, 2017, the Declaration filed in the Mission Square Case of the sole member of CLA corrected that error and stated it was a California LLC. Nor does Bidsal reveal that in the Federal Case CLA in its Reply Memorandum filed May 20, 2019 stated in footnote 1,

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> "CLA admits that it mistakenly alleged in its Answer and Counter-claims filed in the State Action [meaning Mission Square Case] that it was a Nevada limited liability company. However, the Declaration executed by Benjamin Golshani in the State Action corrected the error."

In fact, whether Petitioner is a Nevada or California LLC was never relevant to CLA's Motion to Dismiss for lack of subject matter jurisdiction filed in the Federal Case. As that same footnote continued,

> "Regardless of whether CLA is a California or Nevada liability company, what is critical is the citizenship of CLA's sole member Benjamin Golshani who is a resident of California and not disputed by the Opposition. [Ed. Note: In fact Bidsal's Mission Square Case Complaint alleges just that.] As discussed in Johnson, for the purpose of establishing citizenship, a limited liability company is treated like a partnership and citizenship is determined by its members, which in this case is Benjamin Golshani and he is a resident of California."

And the Final Award issued by Judge Haberfeld in the Arbitration in part states:

> "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 . . ." p. 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. . .are residents of Southern California." p. 2, footnote 2.

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Those expressions appeared in the Arbitrator's Interim Award to which Bidsal responded, but never objected to those statements. But the Opposition reveals none of that.

II.

THE MOTION IS TIMELY

Starting at p. 5, line 25 of the Opposition, Bidsal argues that the Motion is untimely citing NRCP 54(d)(2)(B). To get to this conclusion, BIDSAL MISQUOTES THE SECTION! What Bidsal claims the section says (Opposition p. 6, line 1) is that to be timely "(i) the motion is filed not later than **21 days after the judgment**." (Emphasis by Bidsal.) From that, Bidsal argues that since the judgment was "filed on December 6, 2019" (Opposition p. 6, line 14) the twenty-one days expired on December 27, 2019 and the Motion was not filed until January 3, 2020. Bidsal's mathematics is impeccable. His logic is compelling. His truthfulness, not so much.

That is because what the section in fact says is that "the motion must (i) be filed no later

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than 21 days after **written notice of entry of judgment is served.**" (Emphasis added.) Opposing counsel simply omitted the words "notice of entry of." Not unexpectedly, opposing counsel does not reveal when that notice of entry was served. It was served on December 16, 2019. Twenty-one days from then is January 6, 2020.[1]

The actual judgment or order when received is not treated as "Notice of Entry," but rather the latter must be a separate paper is made clear by the authorities. For example, in *Hung Phuc Duong v. The State of Nevada*, 118 Nev. 920, 59 P.3d 1210 (2002) the receipt of the order from which the appeal was taken was ruled not to satisfy the requirement for "separate written notice of a judgment."

Bidsal's argument that the Motion was untimely has no basis in law or fact and must be rejected.

III.

LAW AUTHORIZING ATTORNEYS FEES STATED

Under a caption claiming the Motion lacks a basis such a statute or rule as is required by NRCP 54(d)(2), the Opposition starting at p. 7, line 16 acknowledges that the Motion cites NRS but fails to cite the actual statute relied on by CLA. Actually, on page 6 of the Motion, NRS 38.243 is quoted and relied on by CLA as the basis for an award of attorney's fees and costs. What Bidsal then does is to claim that fees are not available under federal law (Petitioner does not concede that) and that Nevada law is not applicable, even though as just noted he before said Nevada law controls. Bidsal reaches this conclusion once again based on concealment.

Bidsal begins by quoting a portion of Article III, Section 14 of the Operating Agreement that, "The arbitration shall be governed by the United States Arbitration Act ('FAA'), 9 U.S.C. § 1 et seq," however, what he does not reveal is that Article X, Section d states, "In all respects this Agreement shall be governed and construed in accordance with the laws of the state of Nevada."

[1] Bidsal's argument made as though entry of judgment satisfies the requirement of written notice of entry of judgment is ironic. Bidsal is now estopped from denying that his appeal is untimely and should be dismissed since it was filed on January 9, 2020 more than 30 days after the entry of judgment. (See Nevada Rules of Appellate Procedure 4(a)(1)).

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As CLA before noted in footnote 10 of its Memorandum of Points and Authorities In Support of Petition For Confirmation of Arbitrator's Award and in Opposition to Counter-Petition to Vacate Award filed August 5, 2019 (so hardly could Bidsal have not been aware), the reconciliation of these seemingly inconsistent provisions regarding the law to apply was resolved by the Nevada Supreme Court in *WHP Architecture, Inc. V. Vegas* VP, LP, 131 Nev Adv Op 88, 360 P.3d 1145,1147 (2014) which relied on the Supreme Court's decision *in Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52,63-64, 115 S.Ct. 1212 (1995). It held that in order to give effect to both provisions the substantive provisions of the contract would be determined by state law and the procedural aspects of the arbitration would be governed by the FAA.

The Nevada Supreme Court in *WHP* then at 360 P.3d at 1148 stated this: "Federal courts have found state laws awarding attorney fees to be substantive. For example, the Ninth Circuit Court of Appeals has stated that '[s]tate laws awarding attorney[ ] fees are generally considered to be substantive laws.'" Then after citations it went on to say, "We see no reason to disagree with the federal courts on this issue." The *WHP* court therefore, then went on to discuss certain Nevada rules involving attorney's fees, all of which would have been irrelevant if only the FAA were applicable.

In light of *WHP*, Petitioner CLA's reliance on NRS 38.243 as a basis for an award of attorney's fees in this case is appropriate.

IV.

PETITIONER HAS NOT ASKED FOR DOUBLE RECOVERY

Both at Opposition p. 5, line 14 and starting at p. 9, line 7, Bidsal argues that CLA is seeking $281.25 in fees for billings related to the Federal Case. As detailed in the accompanying Affidavit of Louis Garfinkel, Esq., there is no time for which Petitioner seeks recovery included in this Motion that was previously included in the Motion for Attorney's Fees in the Federal Case. All the time for which Petitioner seeks recovery of fees in this case was incurred for this case.

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V.

BILLINGS ARE MORE THAN SUFFICIENTLY DETAILED

Starting at p. 9, line 17 of the Opposition, Bidsal argues that the statements are not sufficiently detailed in describing the services rendered. Bidsal complains that the addressee of correspondence and subject matter are not identified. There is no requirement that that level of detail, especially when the charge for such time is small (less than for one hour cumulatively), must be included. More than that, it is noteworthy that Bidsal does not present any of the billings by his counsel. The only conclusion from that concealment is that they would reveal far less detail than what Petitioner's counsel has provided.

Additionally, Bidsal repeats the claim that the services related to the Federal Case which was addressed in the preceding section of this Memorandum.

Bidsal then repeats his claim that time was included dealing strictly with the Federal Case Motion for Attorney's Fees, and further argues that such entries yield a total of $2,141.13, carefully not stating whose time that is, and even more egregiously not identifying the entries which yield that amount.

As to the Federal Case motion, the accompanying Affidavit of Louis Garfinkel, Esq. details how this case was stayed while the Motion to Dismiss the Federal Case was pending, but with the requirement that this Court be notified when that motion was concluded. It was in that context that Louis Garfinkel, Esq. incurred time with regard to the stipulation and order to stay this proceeding and to remove that stay for which we have sought recovery.

VI.

RESEARCH RELATED TO THIS MOTION

On p. 10, line 1 of the Opposition, Bidsal argues that the entries regarding research are redacted (to avoid divulging the work product and indeed attorney-client privilege), and thus cannot be associated with this proceeding. What Bidsal ignores is that the Affidavits in support of the Motion affirm that each of the charges for which reimbursement from Bidsal is requested was incurred in this action.

In part, Bidsal complains (Opposition p. 10, line 5) that with respect to an entry for

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$178.12 he does not know who Jack Liev is. The answer is that that is the nom de plume of Jack Margolin whose description as a legal assistant is provided in the Affidavit of Rodney T. Lewin, Esq. accompanying the Motion.

Then Bidsal in two separate paragraphs regarding research (treated next) complains of entries between the filing of the Petition and the Opposition thereto (Opposition p. 10, lines 9 and 17). Bidsal conveniently ignores that that was already explained in ¶ 6 of Mr. Lewin's Affidavit accompanying the Motion:

> "Some of the time spent in resisting Bidsal's Counterpetition to Vacate was spent ahead of its filing because the Counterpetition to Vacate the Award by Bidsal was anticipated, given that he had filed a Motion to Vacate previously in the Federal Court, and therefore we were able to commence preparation of opposition to that Counterpetition to Vacate ahead of its actual receipt."

Next, Bidsal argues that entries totaling $770.25 were improper because there could be no research for research of California law. The fact is that Bidsal himself was the first to cite California law and argued that Nevada frequently relies upon California authority. In his Opening Brief in the Arbitration dated January 8, 2018, Bidsal when arguing from California law said, "[A]lthough Nevada law controls, Nevada courts do consider California cases . . ." There were some points Petitioner wished to pursue but was unable to find Nevada authority to support so a brief attempt to find California authority was made. The time for that research and the $770.25 charge for it that Bidsal disputes was entirely proper.

VII.

NO TIME WAS CHARGED FOR CONTINUANCE

Finally, on p. 10, line 23 of the Opposition, Bidsal argues that CLA has charged for time incurred solely as the result of a failure to provide a courtesy copy. The accompany Affidavit of Louis Garfinkel, Esq. demonstrates that there was no charge either to the client or for which reimbursement is sought from Bidsal by reason of that continuance or the initial failure to provide the courtesy copy.

But one should just look at what Bidsal does. Bidsal spends two paragraphs with fourteen lines starting at Opposition p. 10, line 21 under a caption referring to "CLAP's Failure to Comply

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with the Rules." Then at the end of the second paragraph, he states "These unreasonable and unjustified entries amount to $4,275.00 for Garfinkel and $4,351.00 for Lewin, for a total of $8,626." The natural (and indeed the legal) interpretation of a pronoun, here the word "These," is to use the last antecedent which in this case was the lengthy discussion of the courtesy copy continuance. And indeed, we were about to complain that Bidsal did not identify the entries leading to these amounts. But then we realized that even though by placing this statement at the end of that second paragraph Bidsal wanted it to appear that those amounts applied to the courtesy copy issue, in fact, what he was talking about was all the entries mentioned in his Opposition.

In fact, Bidsal never identifies what entries he attributes to the continuance, and adding the amounts he states in the Opposition for which he identifies a task or entries does not come up with his "total of $8,626."

VIII.

CONCLUSION

CLA's Motion noted that up until the filing on January 3, 2019 the charges for Petitioner's fees were $72,174.81. There was further time incurred for which only an estimate was made in the Motion. That estimate has now been more definite. By reason of the Opposition to the Motion an additional $6,814.66 in fees has been incurred by CLA for the time of the Law Offices of Rodney T. Lewin, Esq. and an additional $2,400.00 for the time of Louis Garfinkel, Esq..[2] In addition we estimate that the hearing preparation and attendance will consume another four hours of time for Louis Garfinkel, Esq. which amounts to $1,500.00 in fees. That amounts to $10,714.66 in fees related to this Motion after its filing. Adding that to the $72,174.81 gives a total of $82,889.47 which CLA now seeks.

CLA emphasizes that none of the fees now claimed includes any of the time arising from planning execution on the Judgment, the appeal by Bidsal or to his requested stay, but rather CLA

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[2] The time for Law Offices of Rodney T. Lewin after dictation of the Affidavit for Rodney T. Lewin has been estimated; his time entries stopped at January 22, 2019.

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has deferred that to a later motion given that the time will be ongoing after the submission of this Reply.

DATED this 27th day of January, 2020.

LEVINE & GARFINKEL

By: _____

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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 21st day of January, 2020, I caused the foregoing **CLA PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS**:

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

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

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

James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
Smith & Shapiro, PLLC
3333 E. Serene Ave, Suite 130
Henderson, NV 89074
T: (702) 318-5033/F: (702) 318-5034
Email: jshapiro@smithshapiro.com
acannon@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

Melanie Bruner

Melanie Bruner, an Employee of
LEVINE & GARFINKEL

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Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES LLC, a limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No.: A-19-795188-P Dept.: 31 **AFFIDAVIT OF LOUIS E. GARFINKEL, ESQ. IN SUPPORT OF CLA PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS**

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, Louis E. Garfinkel, Esq., being first duly sworn depose and says:

1. I am a partner of the law firm of Levine & Garfinkel. I have been licensed to practice law in the State of Nevada since 1988. I make this Affidavit in Support of CLA Properties, LLC's ("CLA") Reply in Support of Motion for Attorney's Fees and Costs.

2. I have knowledge of the facts stated herein, except as to matters based upon information and belief, which I believe to be true, and am competent to testify to the same and would testify if called as a witness.

3. On January 3, 2020, CLA filed its Motion for Attorney's Fees and Costs ("Motion"). In support of the Motion, I submitted an Affidavit (the "Garfinkel Affidavit").

4. On January 17, 2020, Respondent Shawn Bidsal ("Bidsal") filed his Opposition to Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs ("Opposition").

5. On Page 9 of Bidsal's Opposition, Lines 6-16, Bidsal argues that CLA is seeking double recovery. Specifically, Bidsal argues that CLA is asking the Court to award the same attorney's fees that CLA is asking the Federal Court to award. In support of this argument, Bidsal cites the Garfinkel Affidavit that includes charges for June 18, 24 and 25, 2019 for reviewing the Federal Court Order and preparing a Notice of Entry of the Order for the Federal Court Order. CLA claims that the sum of $281.25 is unjustified. This claim is without merit because no time included in this Motion was also included in the Motion for Attorney's Fees filed in Federal Court.

6. As discussed in the Garfinkel Affidavit, the present matter was filed while the Federal Court litigation was pending. When this matter was filed, undersigned counsel and CLA's counsel agreed to stay this matter pending a ruling by the Federal Court on CLA's Motion to Dismiss. A copy of the Stipulation and Order Staying the Proceedings is attached as Exhibit "1". As part of the stay, the parties agreed that upon the issuance of the Federal Court's decision on CLA's Motion to Dismiss, the parties would notify this Court. If the Federal Court ruled in CLA's favor, then the briefing schedule agreed to by the parties commenced.

7. On June 24, 2019, the Federal Court granted CLA's Motion to Dismiss and in accordance with the Stipulation entered into by the parties in this case, CLA provided notice to the Court and Bidsal of the Federal Court's Order. A copy of the Notice of Entry of Order Granting Motion to Dismiss and Entry and Judgment filed and served on June 25, 2019 is attached as Exhibit "2". The entries complained of by Bidsal are for the entries incurred in this action to satisfy the requirement of advising the Court that the reason for the stay had been removed because the Federal Court concluded the case.

8. On Page 9 of Bidsal's Opposition, Lines 17-25, Bidsal argues that the billing records are too vague as to whether or not they relate to this matter and therefore $2,141.13 in charges should not be included in any award for attorney's fees. This argument is without merit. As I set forth in the Garfinkel Affidavit, I reviewed all of the firm's invoices to determine

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whether or not any services pertained to the Federal Court action. In doing so, I reviewed all entries closely and where appropriate, I reviewed e-mails with CLA's counsel's firm and also e-mails with Mr. Lewin's firm. If the Court reviews the Garfinkel Affidavit, Exhibits 1-4, the Court will see that I made substantial redactions with respect to matters that related to the Federal Court action and these charges were not included in CLA's Motion.

9. On Page 10 of Bidsal's Opposition, Lines 2-8, Bidsal argues that the sum of $178.12 should be excluded from the fee request because the Garfinkel Affidavit includes a conference with Jack Liev and is not justified or related to the present matter. This argument is also without merit. Mr. Liev was an employee of my co-counsel, Rod Lewin, Esq., and I consulted/worked with Mr. Liev in the filing of CLA's Appendix in support of CLA's Opposition to the Counter-Petition to Vacate the Arbitrator's award. As the Court may recall, CLA's Appendix consisted of 6 volumes totaling approximately 1,000 pages.

10. On Page 10-11 of Bidsal's Opposition, Bidsal argues that CLA's Motion for Attorney's Fees includes fees incurred solely as a result of CLA's failure to comply with the rules. Specifically, Bidsal notes that the Court originally scheduled the hearing on the Petition to Confirm Arbitrator's Award and Counter-Petition to Vacate Arbitrator's Award for September 10, 2019, but the hearing was continued because CLA's counsel did not provide a courtesy copy. Bidsal argues that my fees totaling $4,275 were unreasonable and should not be included in a fee award. This argument is also without merit.

11. The original hearing was scheduled for September 10, 2019, but was continued because a courtesy copy was not provided to the Court. On October 3, 2019, I sent CLA a firm invoice which included time for the September 10, 2019 hearing. Because of the continuation of the September 10, 2019 hearing, I discounted my bill, did not charge for certain time, and the total bill was discounted by the sum of $1,012.50. ***See*** Garfinkel Affidavit, p.4, ¶ 21, Exhibit 5.

12. The September 10, 2019 hearing was continued to October 22, 2019. However, the Court sent counsel a memo advising that the Court was in trial and the October 22, 2019 hearing would have to be rescheduled. On November 6, 2019, I sent CLA a firm invoice for services rendered during October 2019. The invoice reflects 2.3 hours for preparation for the

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October 22, 2019 hearing, but I did not charge the client for this time, which would have totaled $862.50. ***See*** Garfinkel Affidavit, p.4, ¶ 22, Exhibit 6.

13. On November 12, 2019, the Court conducted a hearing on CLA's Petition to Confirm Arbitrator's Award and Bidsal's Counter-Petition to Vacate the Arbitrator's Award. On December 5, 2019, I sent an invoice to CLA that included, among other things, some preparation time for the hearing and attendance at the hearing. The time spent preparing for the hearing and attendance of the hearing was reasonably and necessarily incurred but I did give CLA a courtesy discount of $681.80 on the invoice. ***See*** Garfinkel Affidavit, p.4, ¶ 23, Exhibit 7.

14. The Garfinkel Affidavit included fees and costs incurred through December 19, 2019. I have reviewed my timesheets for January 2020, and I have spent an additional 6.40 hours in connection with CLA's Motion for Attorney's Fees and Costs. I performed the following services: finalized the Motion for Attorney's Fees and my Affidavit, which was filed on January 3, 2020; telephone conferences with co-counsel; analysis of Bidsal's Opposition to the Motion for Attorney's Fees and Costs; and the preparation of this Affidavit. As set forth in the Garfinkel Affidavit, my hourly rate is $375.00. CLA will be billed $2,400.00 for my additional time in connection with the Motion for Attorney's Fees and Costs.

15. A hearing has been set on CLA's Motion for February 4, 2020. I anticipate spending time to prepare for the hearing and then attending the hearing on February 4, 2020. I expect to bill CLA approximately 4 hours to prepare and attend the hearing. CLA will be charged approximately $1,500.00 for these services.

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16. CLA is seeking a total of $3,900.00 for attorney's fees and costs incurred by my firm for services rendered in January 2020 not previously included in my Affidavit accompanying the Motion and for the February 4, 2020 hearing. The total fees and costs were and/or will be actually and necessarily incurred and are reasonable.

FURTHER AFFIANT SAYETH NAUGHT.

LOUIS E. GARFINKEL, Esq.

STATE OF NEVADA)
)
COUNTY OF CLARK)

SWORN TO AND SUBSCRIBED
BEFORE me this 24th day of January, 2020.

AUSTIN DICKSON
NOTARY PUBLIC
STATE OF NEVADA
APPT. NO. 19-1748-1
MY APPT. EXPIRES FEBRUARY 25, 2023

NOTARY PUBLIC
My Commission Expires: 2-25-23

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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 21st day of January, 2020, I caused the foregoing **AFFIDAVIT OF LOUIS E. GARFINKEL, ESQ. IN SUPPORT OF CLA PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS**:

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

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

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

James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
Smith & Shapiro, PLLC
3333 E. Serene Ave, Suite 130
Henderson, NV 89074
T: (702) 318-5033/F: (702) 318-5034
Email: jshapiro@smithshapiro.com
acannon@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

Melanie Bruner

Melanie Bruner, an Employee of
LEVINE & GARFINKEL

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EXHIBIT "1"

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EXHIBIT "1"

Electronically Filed
6/21/2019 12:54 PM
Steven D. Grierson
CLERK OF THE COURT

James E. Shapiro, Esq.
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SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
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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
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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 JC.31

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
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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

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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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EXHIBIT "2"

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EXHIBIT "2"

NEOJ
Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy, Suite 230
Henderson, NV 89012
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Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES LLC, a limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No.: A-19-795188-P Dept.: 31 **NOTICE OF ENTRY OF ORDER GRANTING 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
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3333 E. Serene Ave., Suite 130
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E: jshapiro@smithshapiro.com
sherbert@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

Jane Hardcastle
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

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ASAF
Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
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1671 W. Horizon Ridge Parkway, Suite 230
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Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company,

Petitioner,

v.

SHAWN BIDSAL, an individual,

Respondent.

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

SUPPLEMENTAL AFFIDAVIT OF RODNEY T. LEWIN, ESQ. IN SUPPORT OF CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Rodney T. Lewin, being first duly sworn depose and says:

1. I am an attorney at law duly licensed to practice before all the Courts of the State of California, and represented Claimant CLA Properties, LLC ("CLA") in the arbitration, the award of which this proceeding was brought to seek court confirmation and judgment. The facts set forth herein are based upon my personal knowledge, and if called to testify thereto, I could and would competently do so.

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2. I here address the time incurred by my firm subsequent to the filing of the Motion for Attorney Fees and Costs (the "Motion").

3. An appeal has been filed. A Request for Stay of Execution has been filed. Therefore, time incurred in both of these endeavors not only has in part been spent in January of this year, but they are ongoing matters for which time will continue to be spent between now and the hearing of this Motion and even thereafter. Therefore, it appeared to me better to accumulate all that time in a future motion for those fees incurred in those endeavors rather than to include them now and I do not include them now. Thus, the attached pre-bill reflects only the time incurred in January, 2020 through January 22nd in regard to this Motion and not to the other endeavors in this case. It is our intent to submit a later Motion for Attorney Fees for these other endeavors.

4. There has been no statement sent to the client for services in January, 2020. Exhibit "1" is a true and correct copy of a pre-bill for this matter redacted to reflect solely that attributable to preparing this Motion and exclusive of any time set forth in my Affidavit filed with the Motion.

5. By way of reminder, in paragraph 3 of my Affidavit submitted with the Motion, the hourly rates in this proceeding for Richard Agay is $395.00 and for me is $475.00.

6. Because a point has been made in the Opposition to this Motion that "Jack Liev" is not known to opposing counsel, I point out that in my prior Affidavit, I identified JM as Mr. Margolin as a legal assistant. "Jack Liev" is the *nom de plume* of legal assistant J. Margolin.

7. The pre-bill submitted as an exhibit hereto accurately reflect the time spent each day and the entries were made at or soon after the completion of the task referenced in those timesheets. A description of the services was written by the individual performing the service.

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8. The draft of the Reply papers was prepared in my office and is being completed as I dictate this Affidavit. It therefore does not include time on or after January 23, 2020. I estimate that Mr. Agay will spend an additional 4 hours revising and completing the draft of the Memorandum of Points and Authorities amounting to $1,580.00, and I estimate that I will spend one hour in editing this Affidavit and the Memorandum. The time for oral argument will be set forth in the Affidavit of Louis Garfinkel, Esq.

9. To summarize, the fees for the time spent by Mr. Agay and me in January, 2020 through January 22nd with respect to this Motion is $4,766.66. The fees for the estimated time following the dictation of this Affidavit on January 23rd to be spent by Mr. Agay and completing the Memorandum after changes to draft is four hours, which at $395.00 is $1,580.00, and for me in said editing is $495 for the one hour in said editing at rate of $495/hour. And therefore the amount to be charged to the client for work on this Motion in January, 2020 is $6,841.66 (again, none of which is included in the initial papers filed for this Motion.

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RODNEY T. LEWIN

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SWORN TO AND SUBSCRIBED
BEFORE me this 24th day of January, 2020.

ANGELA CRAWFORD
COMM. # 2162360
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
COMM. EXPIRES AUG. 11, 2020

Angela Crawford
NOTARY PUBLIC
My Commission Expires: August 11, 2020

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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 21st day of January, 2020, I caused the foregoing **SUPPLEMENTAL AFFIDAVIT OF RODNEY T. LEWIN, ESQ. IN SUPPORT OF CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS:**

[ ] 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.
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acannon@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

Melanie Bruner

Melanie Bruner, an Employee of
LEVINE & GARFINKEL

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EXHIBIT "1"

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EXHIBIT "1"

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RODNEY T. LEWIN, A PROFESSIONAL CORPORATION
Pre-bill Worksheet

Nickname	7157-GREEN VALLEY COMMERCE LLC | 1541		
Full Name	BENJAMIN GOLSHANI		
Address	2801 S. MAIN ST. LOS ANGELES, CA 90007		
Phone 1	310-260-5666	Phone 2	
Phone 3		Phone 4	
In Ref To	CLA PROPERTIES, LLC - #7157		
Last bill	12/31/2019		
Last charge	1/23/2020		
Last payment	12/30/2019	Amount	$208.32

Date / ID	Attorney / Activity	Rate / Markup %	Hours / DNB Time	Amount / DNB Amt	Total	
1/2/2020	ROD, L.		475.00	0.80	380.00	Billable
265362	Legal Services					
	REVIEW AND REVISE MOTION FOR FEES (AND AFFIDAVIT OF RTL) AND E-MAIL TO LOUIS					
1/2/2020	[redacted]					Do Not Bill
265373						
1/8/2020						Billable
265724						
1/9/2020						Billable
265776						
1/14/2020						Billable
265864						
1/15/2020						Billable
265893						
1/17/2020						Billable
265941						
1/17/2020	ROD, L.		475.00	1.75	831.25	Billable
265942	Legal Services					
	REVIEW OPPOSITION RE ATTORNEYS FEE; TELEPHONE CALL FROM LOUIS; REVIEW E-MAIL WITH LAW FROM LOUIS AND TELEPHONE CALL WITH; CONFERENCE, INTRA-OFFICE RE OPPOSITION, TIMELINESS ISSUES, STRATEGY AND TO DO E-MAIL COMMUNICATION TO BEN;					
1/17/2020	AGAY		395.00	1.00	395.00	Billable
266032	Legal Services					
	COMMENCED REVIEW OF OPPOSITION TO FEE MOTION AND					

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7157-GREEN VALLEY COMMERCE LLC:BENJAMIN GOLSHANI (continued)

Date / ID	Attorney / Activity	Rate / Markup %	Hours / DNB Time	Amount / DNB Amt	Total
	EMAIL RE DEADLINES; CONFERENCE, INTRA-OFFICE RE SAME (N/C); E-MAIL TO CLIENT ; E-MAIL TO CLIENT RE OPPOSITION FE MOTION; E-MAIL TO GARFINKEL RE AUTHORITY OF SPLIT BET WEN FEDERAL AND STATE				
1/17/2020 266033	[redacted]				Billable
1/20/2020 266034	AGAY Legal Services REVIEW E-MAIL COMMUNICATION FROM GARFINKEL RE FEE MOTION	395.00	0.40	158.00	Billable
1/21/2020 266035	AGAY Legal Services REVIEW GARFINKEL E-MAIL COMMUNICATIONS REGARDING CERTAIN POINTS IN OPPOSITION FEE MOTION AND RESPOND; REVIEW CASE NOTES TO RULES 59 AND 54; TELEPHONE CALL WITH GARFINKEL ANALYZE WHY BIDSAL POINTS ARE ERRONEOUS; CONFERENCE, INTRA-OFFICE RE SAME ((N/C))	395.00	2.00	790.00	Billable
1/22/2020 265981	ROD, L. Legal Services TELEPHONE CALL FROM LOUIS (2X)	475.00	0.10	47.50	Billable
1/22/2020 266004	ROD, L. Legal Services CONFERENCE, INTRA-OFFICE RE REPLY	475.00	0.20	95.00	Billable
1/22/2020 266036	AGAY Legal Services REVIEW OUR MOTION; READING CASES CITED IN OPPOSITION; REVIEW BIDSAL PRIOR PAPERS FOR MOTION AND DRAFTING PREPARING REPLY BRIEF RE ATTORNEYS FEES; DETERMINE NEED FOR FURTHER AFFIDAVIT;	395.00	6.00	2,370.00	Billable
	[redacted]				Billable

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TOTAL	Billable Fees	15.65			$6,641.75
	Do Not Bill	1.00		$475.00	
Total of billable expense slips					$0.00

7157-GREEN VALLEY COMMERCE LLC:BENJAMIN GOLSHANI (continued)

Calculation of Fees and Costs

	Amount	Total
Fees Bill Arrangement: Slips		
By billing value on each slip		
Total of billable time slips	$6,641.75	
Total of Fees (Time Charges)		$6,641.75
Total of Costs (Expense Charges)		$0.00
Total new charges		$6,641.75
Previous Balance		
Current	$10,016.05	
Total Previous Balance		$10,016.05
New Balance		
Current	$16,657.80	
Total New Balance		$16,657.80
Funds Account: Default		
Previous account balance	$0.00	
Total added to account	$0.00	
Total removed from account	$0.00	
New account balance		$0.00
Amount to replenish account to $0.00	$0.00	

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OPPM
Louis E. Garfinkel, Esq.
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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 **PETITIONER CLA PROPERTIES, LLC'S OPPOSITION TO RESPONDENT SHAWN BIDSAL'S MOTION FOR STAY PENDING APPEAL** Date of Hearing: February 18, 2020 Time of Hearing: 9:00 a.m.

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Petitioner, CLA Properties, LLC ("CLA"), hereby submits its Opposition to the Motion for Stay Pending Appeal ("Motion") by Respondent Shawn Bidsal ("Bidsal").

This Opposition is made and based on all of the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, the attached exhibit, the Affidavit of Benjamin

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Golshani, and any such argument the Court may entertain.

DATED this 31st day of January, 2020.

LEVINE & GARFINKEL

By: Louis E. Garfinkel

Louis E. Garfinkel, Esq.
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1671 W. Horizon Ridge Pkwy, Suite 230
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Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties, LLC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO MOTION TO STAY PENDING APPEAL

I.

INTRODUCTION

In response to Bidsal's Motion, CLA raises three main points. First, the Motion should be denied in its entirety. Second, if the Court does not deny the Motion entirely, then certain conditions should be imposed before any stay. Finally, if neither the denial nor conditions are imposed, then a bond in the amount of $3,000,000.00 should be required to protect CLA pending the appeal.

II.

REASONS WHY THE MOTION TO STAY SHOULD BE DENIED

The Arbitrator's Award confirmed by the Judgment in this action has two aspects: One is the payment of money consisting of attorney's fees previously granted in the amount of $298,250.00, which with interest added to an anticipated conclusion of appeal two years later or in 2022 would by virtue of NRS 99.040 result in an additional 7.5% of interest for two years for a total of $360,065.25. But that is not all. There are two motions pending for additional attorney's fees, one in this Court to be heard on February 4, 2020 and one in the Federal Court under

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submission. Staying recovery of the attorney's fees in the Award or this action admittedly could be satisfied by a bond which will be discussed below.

But the main portion of the Judgment is that Bidsal transfer his interest in Green Valley Commerce, LLC ("Green Valley") to CLA, thereby making CLA the sole owner of Green Valley.

That cannot easily be equated to a definite amount. Rather, it is in the nature of injunctive relief. In that regard, these points lead to a conclusion that the stay should not be granted because the detriment CLA is at risk of suffering by further delaying its acquisition of Bidsal's interest in Green Valley cannot be satisfied by the fact that CLA must pay a purchase price.

We first address the issues arising from granting the stay. First, if the Judgment were satisfied instead of stayed CLA would become the sole owner of Green Valley and as such could sell or refinance the property. During the appeal, CLA can do neither. Delay in the transfer of interest puts CLA at risk and subject to a downturn in the real estate market, or even a bubble as took place in 2008 where Nevada commercial properties values nosedived. This risk is not calculable. Given the current US government deficit of one trillion dollars plus ($1,000,000,000.00+) per year and other real estate market conditions this risk is real and not farfetched. But with a stay CLA is at the whim of Bidsal whose position has now twice been held to be wrong and the chance of his success on appeal on this Arbitration Award is somewhere between slim and none.

Second, as sole owner, CLA could proceed to cure the vacancies and deferred maintenance either with the cash generated by Green Valley or by borrowing. But while Bidsal remains an owner and manager that cannot happen.

Third, Bidsal's interest which is at stake could be made subject to a lien by the government or someone else, something that could not happen after transfer.

And make no mistake about it, the mere fact that CLA must pay a price for Bidsal's interest does not address any of those problems. That is demonstrated by an understanding of the operating agreement and formula that determines the price CLA must pay for Bidsal's membership interest in Green Valley because nothing within it affords protection The buy-out formula was based on the consummation of the purchase in 30 days. The arbitration was

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supposed to provide the parties with a mechanism for a quick resolution of disputes. CLA is not protected by Bidsal's failure to consummate the transfer now and as shown below is at further risk beyond the mere purchase price.

The formula is set forth in Section 4.2 of Article V of the Green Valley Operating Agreement (APP, Exh. O[1] and Exh. A to Bidsal's Opposition filed January 17, 2020). The formula there stated is "(FMV-COP) x 0.5 - capital contribution of the Offering Member(s) at the time of purchasing the property -- plus prorated liabilities." Bidsal was the Offering Member and CLA was the Remaining Member. (The section defines "FMV" as the fair market value of the property, and "COP" as the cost of the property.) There are no "prorated liabilities." (See Golshani Affidavit accompanying this Memorandum.)

The fair market value was set at $5,000,000 in Bidsal's offer of July 7, 2017. APP, Exh. Y. The cost of the acquisitions ("COP") was $4,049,250.00. (Golshani Affidavit.) Deducting that from the $5,000,000.00 leaves $950,750.00, one-half of which is $475,375.00. Added to that is the capital contribution of Bidsal at time of purchasing the property as set forth in the Operating Agreement as the initial capital (page 28 of Operating Agreement) of $1,215,000.00. That gives a gross purchase price of $1,690,375.00.

On August 3, 2017, CLA responded to Bidsal's offer by electing to buy Bidsal's membership interest rather than selling its membership interest to Bidsal. APP, Ex. AA. By virtue of that Section 4.2 the sale should have **consummated 30 days** thereafter or on September 2, 2017. The negotiated quick closing eliminated risks in the value of the LLC interest to be acquired; an appeal may last two years or more and CLA should not have to bear any risk during this time period.

What is critical in the foregoing formula is that there is no consideration given to what takes place between the CLA's election to buy or sell and the consummation of the transfer. Since the transaction was to be consummated in 30 days time was material But here we are two

[1] "APP" designates Respondent's Appendix filed July 15, 2019. The Appendix filed by Petitioner on August 5, 2019 is abbreviated "PX." Unless otherwise stated, page, paragraph and line references are to the page, paragraph and line number of the Exhibit rather than the appendix. The transcript of the hearing before the Arbitrator is Exhibits 116 and 117 of Petitioner's Appendix, and may be abbreviated "Tr."

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and a half (2 1/2) years later and still Bidsal seeks to delay with an appeal with little chance of success and which will last possibly another two years without posting a bond.

Here is what has happened since September 22, 2017 while Bidsal continued to manage Green Valley's property.

First, Bidsal distributed $500,500.00 to himself as well as to CLA as set out in the accompanying Affidavit of Ben Golshani. That is money which would have belonged to CLA as the sole owner of Green Valley but for Bidsal's refusal to transfer his interest. And it is not as if Bidsal concedes that such payments to him made after the date the transaction should have been completed should be deducted from whatever CLA owes. To the contrary, CLA submitted a Proposed Interim Order (APP, Ex. FF) part of which on page 15 in paragraph 1 stated, "Any distribution paid to Mr. Bidsal from Green Valley after July 7, 2017 shall be deducted from the payment to be made by CLA to Mr. Bidsal for his membership interest in Green Valley." In his response, Bidsal on page 1 starting at line 25 (APP Exh. HH) stated, "This sentence is inappropriate and should be stricken from the Award," a statement he then repeated starting on page 2 on line 22. (Bidsal there defined "Award" as the Proposed Interim Award.)

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Therefore, it is clear that it is Bidsal's contention that he can continue to pay himself whatever he wants all without any reduction in the amount that CLA is to pay once the appeal is concluded and Bidsal loses. That CLA has the right to pursue another claim against Bidsal by virtue thereof is not a reasonable remedy to allowing Bidsal to continue to drain Green Valley of its assets until the appeal is concluded which is what Bidsal by his Motion to Stay is requesting.

A second reason why Bidsal should be removed from the management team and not permitted to continue to manage Green Valley's property is Bidsal's intentionally harming Green Valley through his management. He drained Green Valley of money (above described) instead taking care of deferred maintenance. In May of 2018 at the arbitration hearing starting on page 245, line 23 of Transcript (PX, Ex. 117) he acknowledged that there was deferred maintenance on the property including the roof, the air conditioning, vacant spaces that needed to be tuned up, tenant improvements, outside parking, and some items in the business park as well as a broken wall.

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Yet, rather than fixing these items, Bidsal thereafter distributed over $500,000.00 to himself. (Golshani Affidavit).

In addition, subsequent to CLA's election to buy out Bidsal, Bidsal discharged the leasing broker and did not engage another even though 41% of the property was vacant. (Golshani Affidavit).

Finally, it is not as if there is no risk entailed in allowing Bidsal to retain his membership interest. Nothing prevents the IRS or a third party from levying execution on that interest and whose claim is not subjected to CLA's right to purchase Bidsal's interest.

For any one of the foregoing reasons, but certainly for all, a stay of execution would create enormous prejudice to CLA without any available relief.

III.

CONDITIONS IN LIEU OF DENIAL

Should the Court reject outright denial of the Motion for Stay for the reasons above stated, then in addition to the need for a bond, discussed below, a part of its determination should include the imposition of certain conditions. That clearly is a right and power of the Court. "[A] court has inherent power to protect the dignity and decency of its proceedings and to enforce its decrees." *Halverson v. Hardcastle*, 123 Nev. 245,261,163 P3d 428,440 (2007). Even more to the point is the statement from *Kassabian v. Jones*, 72 Nev. 314,315, 304 P.2d 962 (1956), that "the provisions of Rule 62 relating to stay of execution shall not limit the power of this court pending appeal 'to make any order appropriate to preserve the status quo or **the effectiveness of the judgment. .** .'"

A. Management of the Property Should be Transferred to Golshani

The first such condition should be that Bidsal immediately surrender actual management of the LLC and the property of Green Valley. Bidsal's Affidavit in support of this Motion states in paragraph 2 that "I am **the** managing member of Green Valley Commerce, LLC ('GVC')".

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(Emphasis added.) The implication that he is the only "managing member" is either false or the highest degree of sophistry.

Bidsal's Affidavit acknowledges that CLA is wholly owned by Ben Golshani. (Paragraph 8 of Bidsal Affidavit). Article IV, Section 1 of the Green Valley Operating Agreement (APP, Exh O) states that the "the Initial Managers shall be Mr. Shawn Bidsal and Mr. Benjamin Golshani." That is repeated on the signature page where the managers are identified as Shawn Bidsal and Benjamin Golshani. Therefore, even before transfer of Bidsal's interest, Benjamin Golshani just as much as Shawn Bidsal was entitled to serve as the manager. Bidsal pretends that there would be some terrible evil befall him should Mr. Golshani take over as the sole manager, as though Mr. Golshani were not capable. Bidsal does not reveal that Golshani (through CLA or directly) and Bidsal have formed more than just one LLC and in each instance (i) both were designated as managers and (ii) one took on the day-to-day management of the property owned by the LLC.

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For example, in October of 2013, Bidsal entered into another Operating Agreement with Ben Golshani, this time for Mission Square, LLC. It too operates commercial property just like Green Valley. Its Operating Agreement (PX page 252) is close in all respects (the main exception being elimination of the arbitration provision) identical to that for Green Valley. It too provides that both Bidsal and Ben Golshani are the initial managers. The distinction, however, is that the day to day management of this limited liability company has been, with the consent of Bidsal, by Golshani. Golshani is fully capable of managing Green Valley, the entity which he surely will be the sole owner of after Bidsal's appeal is finished.

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So the pretense by Bidsal that harm would befall him were Golshani to take over management is simply unbelievable.

Here, both Judge Haberfeld serving as an Arbitrator and the Judge serving in this case

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have affirmed that Mr. Golshani through his company, CLA, is entitled to acquire the interest of Bidsal. There is therefore no reason why during the pendency of this appeal actual management should not be carried out by Benjamin Golshani. Logic compels it and the Operating Agreement provides for it.

Bidsal's desire to remain as manager is obvious; he wants to use it to leverage CLA. He will delay the proceeding as much as possible, distributing funds that do not belong to him. That must not be allowed. In the Arbitration Bidsal testified that he did not want to manage the property anymore:

> 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.
>
> **[Bidsal Testimony May 9, 2018 p.390:1 14-18; see Exhibit 1]**

Bidsal's wish should be granted now…he should be removed as a manager.

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B. <u>Prohibition against Distributions to Bidsal</u>

We have above detailed how Bidsal has taken cash from Green Valley to line his own pockets. If notwithstanding the positions raised above, Bidsal is allowed to remain as the manager, then an additional condition to the grant of stay should be that there are no further distributions to Bidsal pending the appeal. If the appeal is lost (and two Judges would have had to have been wrong for it not to be lost) and the appellate court rules the same way as the Trial Judge and the same way as the Arbitrator, then CLA will be purchasing the interest of Bidsal. But as described above, the operating agreement was based on the partners abide by it and consummate the deal all cash within 30 days of election so the formula for calculation of that purchase price, as above noted, does not take into account distributions or current capital account, but rather considers only the capital account at the time of purchase. So in effect each

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time that Bidsal distributes money to himself, he is decreasing the value of what CLA is entitled to purchase.[2]

C. Offset Should Be Established

Reference has previously been made to CLA's proposed Interim Award (PX, Exh. FF). Paragraph 3 on page 15 thereof provided that with regard to the award of attorney's fees and costs, "these sums, if not previously paid, shall be deducted from the payment to be made by CLA to Mr. Bidsal for his membership interest in Green Valley." In response thereto; Bidsal stated, "Paragraph 3 in Section V of the Award is objectionable because it grants to CLA a deduction in the purchase price for Bidsal's membership interests for the attorney fees and costs which CLA expects to be awarded in relation to its pending application for attorneys' fees and costs. . . The enforcement of those awards and the mechanisms for recovery of those awards (including execution and garnishment) are left up to the Court system by virtue of the provisions of 9 U.S.C. Section 1 *et seq.* CLA must pay the full price for Bidsal's membership interests [sic] in GVC." APP, Exh. HH (As above noted, the word "Award" was there defined by Bidsal on page 1 as the Proposed Interim Award.)

Compare this: In Bidsal's attempt to justify the grant of stay even without any bond, he argues that under the Award Petitioner "is required to pay well over a million dollars ($1,000,000.00) to me for my membership interest in GVC." (Bidsal Affidavit, ¶ 16.) Bidsal also claims that "to the extent that CLAP incurs any harm from the appeal, the monetary amount can simply be deducted from the amount which CLAP ultimately must pay to Bidsal" (Motion p.5, line 20) based on the supposition that "CLAP can offset any amounts owed by Bidsal to CLAP from CLAP's ultimate payment to Bidsal." (Motion p.4, line 27.) In other words, Bidsal argues that ultimately he will be owed more than he owes.

If finally Bidsal is withdrawing his contention that CLA must pay the full price and seek recovery elsewhere for the attorney's fee award as he did before, then the grant of any stay must

[2] The issue of whether these distributions to Bidsal after the date the sale should have been transferred is still pending i.e. whether as an offset to the price to be paid or by recovery by a separate action.

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be conditioned on an Order that with regard to whatever CLA may owe for Bidsal's membership interest, CLA shall be entitled to offset all amounts owed by Bidsal to CLA as established by any Court, Judgment, or Order.

If notwithstanding the positions raised above, if Bidsal is allowed to remain as one of the managers, then an additional condition to the grant of stay should be that there be no further distributions to him pending the appeal.

IV.

BOND

If for any reason the Court should permit Bidsal to remain as one of the managers, then Bidsal's assertion that the purchase price will exceed what is owed does not hold water. For the reasons pointed out above, were Bidsal still in control of the property, CLA faces the prospect at the end of the appeal with Bidsal's interest being subjected to liens or encumbrances and the property (or its value) being virtually destroyed through lack of proper care by Bidsal either in the maintenance of the property or in the leasing of the property. Therefore, what is at risk is not merely the $298,250.00 and the interest thereon and any further fees that may be awarded but the very property itself. As stated in *Nelson v. Heer*, 122 P.3d 1252,1254 (2005), with regard to a stay, "the focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal." Here, CLA needs protection against the destruction of the property and the dilution of the value of the property through mismanagement and improper distributions.

Unless those are otherwise taken care of by condition or denial as above recited, CLA requires protection in the form of a bond, the amount of the bond should be $3,000,000.00.That amount is reached by the following.

Bidsal testified at the Arbitration hearing that the value of the property was at least $ 6,300,000. (PX, Exh. 117, Tr. 244:21-245:16). The risks from purely economic conditions as well as destruction of the property or the various force majeure events occurring before CLA has the power and right to dispose of the property quite easily lead to a dramatic decline in value. Las Vegas Sun writer Buck Wargo stated on July 25, 2011 that the value of commercial properties in Las Vegas had fallen between 40 and 80 percent in the recent bust. See

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"Commercial Real Estate: How low can it go", a copy of which is attached as Exhibit "2". Using 60% as the risk factor is reasonable.

Sixty percent of $6,300,000 comes to potential loss of $3,780,000. Added thereto must be the existing attorney's fee award. The Judgment confirms an Award of $298,250 back in April of 2019. It is reasonable to assume that the appeal filed in January of this year will not conclude before two years. That brings it to January of 2022 or two and three quarter years from the Award. That means there will be two and three quarter years of interest. The rate established under NRS 99.040(1) is be 2% higher than that reflected in the prime rate of 5.5%, or a total of 7.5% over two and three quarter years, which is 20.625 5%, giving a total of interest of $61,565.25 which when added to the $ 298,500 is $360,065.25. Adding that to sixty percent of the value of the property value gives the amount of $4,140,065.25

But that is not all that Bidsal may then owe. By the time this motion is heard this Court will have ruled on CLA's Motion for Attorney's Fees and Costs. It would be injudicious of us to presume how much will be awarded by this Court, but can do so orally at the time of the hearing on this Motion. From that the purchase price should be deducted.

We have above shown that without any offset, the most that CLA would have to pay is $1,690,000.00. But that ignores Bidsal's paying himself $500,500 after the date the sale should have closed. Deducting that (and probably that will have to be litigated given Bidsal's scorched earth policy) leaves the amount of $1,189,500. Deducting that from $4,140,065.25 gives $2,950,056,25 Added to that is whatever award this Court should make on the Motion for Attorney's Fees and Costs now pending.

Therefore, contrary to Bidsal's claim that the unpaid price covers the detriment suffered by staying execution, in fact even after deducting the purchase price, CLA is at risk of losing $3,000,000 or more by staying execution and that should be the amount of the bond.

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V.

CONCLUSION

For the above and foregoing reasons, the Motion should be denied. However, if the Court is inclined to grant a stay, the Court should do so subject to the conditions and bond amount set forth above.

DATED this 31st day of January, 2020.

LEVINE & GARFINKEL

By: _____

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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 31st day of January, 2020, I caused the foregoing **CLA PROPERTIES, LLC'S OPPOSITION TO RESPONDENT SHAWN BIDAL'S MOTION TO STAY PENDING APPEAL**:

[ ] 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:

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EXHIBIT "1"

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EXHIBIT "1"

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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 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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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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EXHIBIT "2"

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EXHIBIT "2"

(From the *Las Vegas Sun*)

BIG STORY:

Commercial real estate: How low can it go?

0 Comments

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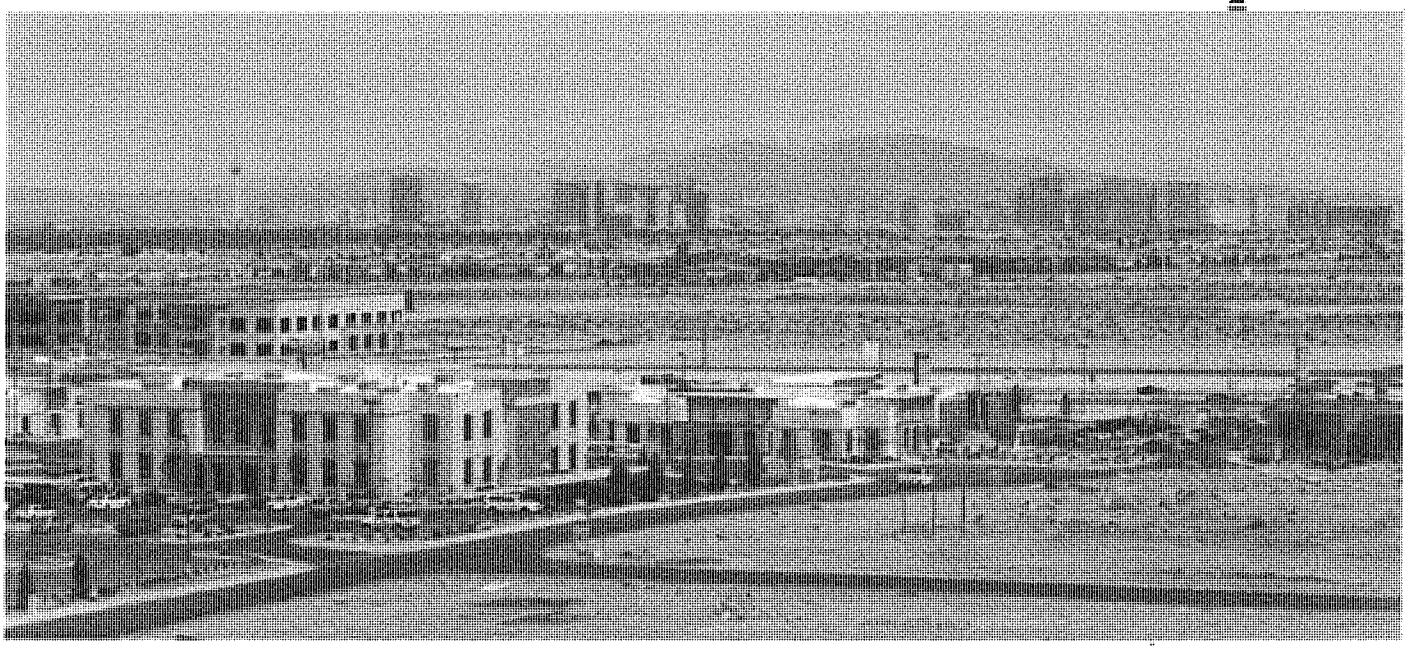

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By **Buck Wargo**

Monday, July 25, 2011 - 3 a.m.

Lists

- **The List: Available commercial real estate** (7-11-2011)

Related Stories

- **Commercial real estate recovery may be two steps forward, one back** (4-4-2011)

- **Business picking up, but commercial and retail space not filling** (4-23-2011)
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- **Retailers optimistic about future of Las Vegas market** (5-20-2011)
- **Interest in property auction may bode well for Las Vegas real estate market** (5-20-2011)
- **Las Vegas commercial mortgage delinquencies lead nation, hit $2.9 billion** (5-22-2011)
- **Report: Retail vacancies to reach bottom this year** (6-18-2011)
- **Retail sales up this year in Las Vegas, but vacancies are, too** (6-30-2011)

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Sports are an apt metaphor for life because of the simplicity behind the idea that in sports—as in life—there are winners and losers. It's inevitable; simple as that.

Recently we watched as Japan won the Women's World Cup in a thrilling comeback victory against the American team. Japanese fans were naturally elated while the American fans were heartbroken. Truth is, the biggest hurdle the US players are likely to face is overcoming the disappointment of the loss itself. But, alas, life isn't that simple when it comes to the major correction of commercial real estate in Las Vegas.

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We're all too familiar with the myriad stories about people who, because of an adjustable rate mortgage or job loss, have lost their home to foreclosure. But the bursting housing bubble depressed the economy and ultimately spread to the commercial side of the real estate equation that already had a glut of space from overbuilding during the Las Vegas boom market. Businesses closed or wanted to relocate to pay cheaper rent. Landlords of office, industrial and retail properties subsequently lost tenants and couldn't afford to make their loan payments or banks wouldn't extend loans made prior to the recession.

Banks foreclosed on those property owners, extinguishing a life's work sometimes valued at millions of dollars. Just like that. In many cases, lives were devastated and changed forever.

On the flip side, the Great Recession created opportunities for others who had nothing to do with the demise of the previous owners, and they're swooping in and buying office, industrial and retail properties and land, and stand to make millions

in profits if they guessed right. It all sounds like a game, but this is one in which the stakes are high. And, in some cases, the consequences have been deadly.

Only last August, Las Vegas real estate developer Donald Romano, 74, and his wife Barbara were found dead in their Summerlin home. Police called the case a murder-suicide after a gun was found in Donald Romano's hand. He also left a note. The tragedy came about a month after Romano lost possession of his Pine Corporate Center on West Charleston Boulevard, an office complex of 18 buildings totaling 100,000 square feet.

It's an extreme and tragic example of the impact the commercial real estate industry's fallout has had in Las Vegas, said Frank Gatski, the CEO of Gatski Commercial Real Estate Services.

"This was his whole life. It was his pride and joy, and it went into receivership," Gatski says. In a lot of cases, investors did everything right. It's not like they were gambling and throwing money out the window."

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Commercial development has served as one of the driving forces of the Las Vegas economy during the boom, but is at a near standstill with millions of square feet of oversupply and a complete lack of demand with businesses closing and cutting back on their space needs. A lagging indicator, commercial real estate will be one of the last sectors to rebound once the economy improves and additional space is needed.

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For every loser, there's a potential winner in commercial real estate as lenders and holders of debt start to foreclose in greater numbers and sell them to buyers in the US and abroad who've been waiting on the sidelines to buy at bargain prices. Las Vegas has the highest percentage of distressed commercial real estate in the country by far, according to New York-based Real Capital Analytics. In its most recent report, it reported nearly $19 billion in distressed properties, which includes more than $4 billion in properties that have been foreclosed upon.

Interest has been strong, as noted in a May online auction of commercial real estate in Nevada, most of it in Las Vegas. About 85 percent of the properties and notes up for auction were sold for $340 million, according to **Auction.com**. Investors are apparently trying to capitalize on the opportunities in Vegas to become the next round of winners, and that includes Romano's Pines Corporate Center bought out of receivership last month. Newport Beach-based MIG Real Estate acquired the office complex on the 7200 block of West Charleston Boulevard. It's the firm's fifth acquisition in Las Vegas since October 2010.

Although such groups aren't necessarily getting a steal, they're buying properties at good prices and plan on holding them and making improvements to enhance their value over the long term. Dan Fasulo, managing director of Real Capital Analytics, says private investment groups such as MIG Real Estate are an example of what's happening in the market.

"These are guys who've been in the industry a long time and know how to buy right and create value and execute a leasing strategy," Fasulo said.

A few weeks ago, Lightstone Acquisitions, part of the Lightstone Group, a New York-based real estate investment company, acquired 23.54 acres at the Las Vegas Beltway and Hacienda Avenue for $4.4 million. The firm bought the property from City National Bank, which foreclosed on Newport Beach developer Dominic Magliarditi, who planned a mixed-use development when he bought it in November 2007 for $30.2 million. Lightstone plans to hold the property as an investment.

Rick Myers, president of Thomas & Mack Development Group and a consultant for Nevada State Bank, said at a recent conference that the bank has sold 85 distressed properties worth $120 million. About 85 percent were vacant land and many deals ranged from $700,000 to $1.5 million, with some exceeding $10 million, Myers says. About 85 percent of the deals were offshore investors paying cash.

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Mike Mixer, the managing partner of the brokerage firm Colliers International Las Vegas, says he has clients with a heavy debt load who are losing properties they invested in and other clients with well-funded checkbooks who are giddy at the opportunities. Mixer says Las Vegas is only midway through its commercial mess and a lot of properties have yet to hit the market. Banks had initially been trying to extend terms with property owners but have come under increasing pressure from regulators to deal with the problem; thus, an increase in foreclosures is imminent.

"It's like the residential market, but not as much volume," Mixer says. "One person's pain is another's gain. The foreclosure mess continues to weigh heavily on value. There's more distress coming on the market."

Land prices fell by 60 to 80 percent, office properties have fallen by 40 to 70 percent; industrial by 40 to 60 percent and retail properties by 40 to 80 percent.

In all of this pain, who's actually been hurt the most? Retail centers without an anchor tenant.

Las Vegas got hurt by the easy access to capital and euphoria over the economy that prompted overbuilding, especially by those who weren't experienced at developing. Vacancy rates continue near record highs, with office just below 25 percent by most accounts, industrial vacancy more than 15 percent and retail vacancy more than 10 percent. Both retail and industrial were in low single digits before the recession, and the office vacancy was below ten percent.

Colliers International reports there is more than 9.4 million square feet of vacant office space, 5.3 million square feet of vacant retail space and some 16 million square feet of vacant industrial space.

"There's a lot of stuff that should have never been built, said Fred Chin, president of the Atalon Group turnaround firm. "There were a lot of unknowledgeable and inexperienced people who became developers, even doctors. A lot of people got wiped out in Vegas, and there are others who are a lot less rich now. And there are still others who are taking advantage of the idiots who made the loans and developed the properties by buying them cheap."

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"Who are the losers?" Everybody," says Kirk Boylston, regional director for EJM Development, which built the Arroyo mixed-use development in southwest Las Vegas. "Even people who still have property are doing OK, but they're not doing as OK as they once were. There's been too much rental erosion. But even though nobody's doing as well, some are much better than others."

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What's happening is a lot of private equity firms are hovering, waiting to acquire the properties that go on the market or buy loans from financial institutions or investment banks. They could ultimately foreclose on the properties. Las Vegas is one of the last markets to start clearing properties on the commercial side after values have fallen steeply, Fasulo said.

Many in the investment community are convinced that the worst is over, and that's encouraging them to be more willing to step in and make purchases and banks more confident to put properties on the market.

"There are people who believe in Vegas and think it's at the bottom, and going to get better," Chin says.

That doesn't help those who lost everything to the downturn in commercial real estate.

Those hurt the worst are property owners who had a personal guarantee on their loans, says Joe Kupiec, the managing director of brokerage firm Grubb & Ellis.

"Some of the stories are rather depressing and lot of people who've done significant development over the years and had done very well became overleveraged and got caught," Kupiec says.

One of those feeling the pain is Angelo Tourlis, who came to Las Vegas in 2001 from Chicago, where he owned three bars with family members before selling them and retiring. Tourlis used the proceeds from the bars to get involved in real estate investment.

At first he bought town homes but quickly sold them and made other investments in commercial property, including land. By the middle of the decade, he graduated to buying a restaurant on North Durango Drive that was occupied by Bob's Big Boy. He also acquired an 11,000-square-foot office building on Eastern Avenue near the 215 Beltway. Between the two, the deals were worth about $5 million. Tourlis, a Greek immigrant, poured the nest egg he worked his whole life to build into the properties and lived off the cash flow they produced.

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But when Bob's Big Boy filed for bankruptcy in 2009, he was unable to rent it out and when tenants at his new office building didn't occupy space, Tourlis wasn't able to pay his mortgages. He has since moved back to Chicago and says it's devastated his life. He's also in the middle of a divorce.

Gatksi, who tried to help Tourlis, says it's one thing to see people fail who were too greedy, but to see it happen to individuals who were conservative and went by the book and were still hurt is difficult to watch.

"This market has brutalized a lot of families. These are people who've worked hard their entire life to accumulate wealth," Gatski says. "Angelo Tourlis was living the American Dream and didn't do anything wrong except buy at the wrong time."

Tourlis says he still owns a condominium in Las Vegas that he's trying to sell but has no interest in getting back into the commercial real estate business. He said he's too old and broke.

"I'm 80 years old, and it's not easy," Tourlis says. "I did nothing wrong, but it cost me. My life has turned upside down, and I'm going to end up by myself."

Winners and losers. No one said it was fair.

Section: Business

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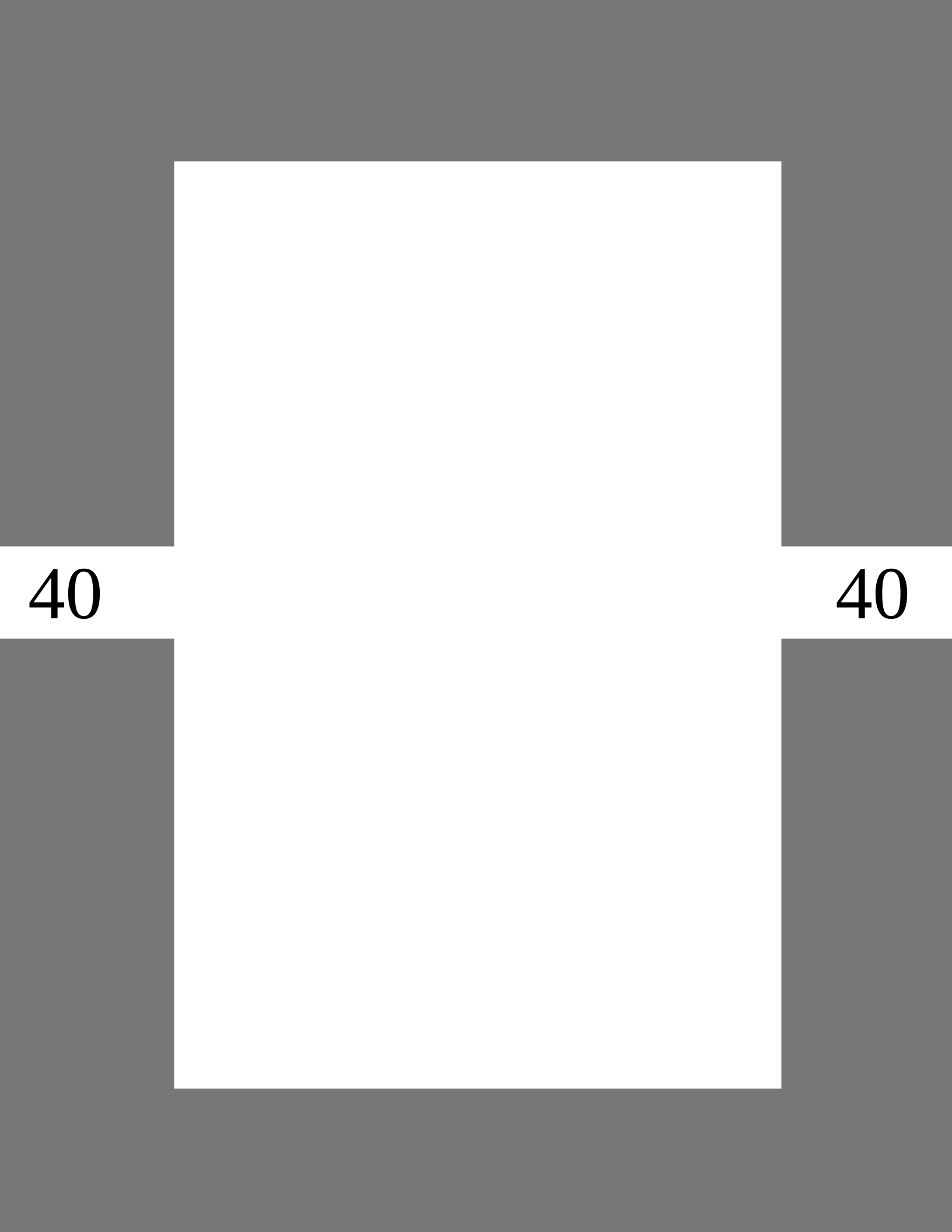
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AFFT
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Henderson, NV 89012
Tel: (702) 673-1612
Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company,

Petitioner,

v.

SHAWN BIDSAL, an individual,

Respondent.

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

AFFIDAVIT OF BENJAMIN GOLSHANI IN OPPOSITION TO RESPONDENT'S MOTION FOR STAY PENDING APPEAL

Date of Hearing: February 18, 2020
Time of Hearing: 9:00 a.m.

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Benjamin Golshani, being first duly sworn depose and says:

1. I am the sole owner of Petitioner CLA Properties, LLC ("CLA"). I have personal knowledge of the facts stated herein.

2. Both respondent, Shawn Bidsal ("Bidsal"), and I were designated as the original managers of Green Valley Commerce, LLC ("Green Valley"), and there has been no change in that designation since the Operating Agreement so appointing us was signed.

3. Directing my attention to Article V Section IV of the Operating Agreement for Green Valley, the cost of purchase of the property held by Green Valley was $4,049,250.00.

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4. Addressing the formula for the buyout by one member of the other, Green Valley has no pro-rata liabilities.

5. Attached hereto and marked Exhibit 1 is a schedule showing distributions from Green Valley from 2017 through 2019. After CLA's August 3, 2017 election to buy out Bidsal, Bidsal signed checks distributing to himself $500,500.00 as reflected in that schedule.

6. Attached hereto and marked Exhibit 2 is a March 6, 2019 email from Bidsal to me in response to my February 25, 2019 email from me to him along with the rent rolls showing 41% vacancy. Prior thereto, Bidsal had fired the leasing broker to which I complained. Bidsal refused to rehire a leasing broker leading to the vacancy that continues to this date.

7. I attended the arbitration hearing and was present when Bidsal testified to the deferred maintenance of the property that included the need for repairs to the roof, air conditioning, other tenant improvements, parking, and some items in the business park as well as a broken wall and the existence of vacant spaces. I believe those same conditions remain today as I have not heard otherwise.

8. Around two years after Bidsal and CLA formed Green Valley, Bidsal and CLA formed another LLC called Mission Square, LLC likewise to own and operate commercial property. We agreed that I would be the day to day manager of Mission Square.

9. I am well able and qualified to handle the management of commercial properties. I have been managing properties and real estate investments since 2004, and since 2015 that has been my main occupation. The management of Green Valley should be turned over to me ASAP, since that should have occurred in 2017 when the buyout of Mr. Bidsal's interest should have taken place. I want to protect my current and future investment and not leave it in Mr. Bidsal's hands.

Benjamin Golshani

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SWORN TO AND SUBSCRIBED
BEFORE me this 31st day of January, 2020.

Please See Attached
Form For Notary

NOTARY PUBLUC
My Commission Expires: 11/01/2023

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JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 31st day of January,

2020 by Benjamin Golshani,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature (Seal)

UPEKSHA THENNAKOON MUDIYANSELAGE
Notary Public - California
Los Angeles County
Commission # 2307839
My Comm. Expires Nov 1, 2023

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OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit of Benjamin Golshani
(Title or description of attached document)

In Opposition To Respondent's
(Title or description of attached document continued)

Motion For Stay Pending Appeal.

Number of Pages 03 Document Date —

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - Additional information Is not required but could help to ensure this jurat is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

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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 31st day of January, 2020, I caused the foregoing: **AFFIDAVIT OF BENJAMIN GOLSHANI IN OPPOSITION TO RESPONDENT'S MOTION FOR STAY PENDING APPEAL**

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

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

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

James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
Smith & Shapiro, PLLC
3333 E. Serene Ave, Suite 130
Henderson, NV 89074
T: (702) 318-5033/F: (702) 318-5034
Email: jshapiro@smithshapiro.com
acannon@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

Melanie Bruner

Melanie Bruner, an Employee of
LEVINE & GARFINKEL

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EXHIBIT "1"

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EXHIBIT "1"

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GREEN VALLEY COMMERCE
DISTRIBUTION
2017-2019

	BENJAMIN GOLSHANI				SHAWN BIDSAL			
ENTITY	YEAR AND DATE		CHECK #	AMOUNT	YEAR AND DATE		CHECK #	AMOUNT
GREEN VALLEY COMMERCE	2017	02/29/17	10512	42,000.00	2017	02/29/17	10513	42,000.00
		11/22/2017	10589	100,000.00		11/22/2017	10597	100,000.00
		2/27/2017	1359	14,000.00		2/27/2017	1360	14,000.00
		11/22/2017	1391	45,000.00		11/22/2017	1395	45,000.00
				201,000.00				201,000.00
GREEN VALLEY COMMERCE	2018	4/26/2018	10624	75,000.00	2018	4/26/2018	10625	75,000.00
		8/23/2018	10642	55,000.00		8/23/2018	10643	55,000.00
		4/26/2018	1410	25,000.00		4/26/2018	1411	25,000.00
		8/23/2018	1419	20,000.00		8/23/2018	1420	20,000.00
				175,000.00				175,000.00
	2019	3/8/2019	10716	59,000.00	2019	3/8/2019	10717	59,000.00
		8/14/2019	10758	55,000.00		8/14/2019	10759	55,000.00
		3/8/2019	1440	24,000.00		3/8/2019	1441	24,000.00
		8/14/2019	1462	20,000.00		8/14/2019	1463	20,000.00
		10/7/2019	10769	20,000.00		10/7/2019	10770	20,000.00
		10/7/2019	1471	2,500.00		10/7/2019	1472	2,500.00
				180,500.00				180,500.00

EXHIBIT 1

EXHIBIT "2"

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EXHIBIT "2"

From: shawn bidsal <wcico@yahoo.com>
Sent: Wednesday, March 6, 2019 12:12 PM
To: ben@claproperties.com
Subject: Re: Financials and deferring maintenance

ben

here are the financials and rent roll for both green valley and green way, please send the rent roll , financials for mission square,

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

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On Monday, February 25, 2019, 12:53:04 PM PST, <ben@claproperties.com> wrote:

Shawn,

We have discussed by email the situation of the Green Valley. You were supposed to send me the financials of The Green Valley about 2 months ago but So far I have not received it. There are Issues with Green Valley that needs to be taken care of. I need the name of the brokers who has the listing for both properties . If we do not have a

EXHIBIT 2

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broker at this time, I like to know the reason. I could not find the listing of any of the properties which tells me you have abandoned the property and not managing them.

I need the financials of The Green Valley for the period 1/1/18 to 12/31/18 and 1/1/19 to date to the extent available, as well as the name, telephone number and email address of all the vendors who are providing services now and during 2018. I like to contact them and inquire about their services and the situation of the property. In your previous letter you said that there are not differed maintenance but I see that there are a lots of them and none of the issues that you wrote to me in 2017 has been fixed.

As mentioned before, We must inform all the tenants about the buyout and the decision of the arbitrator. The current situation in Green Valley is not favorable and the tenants may leave which will result in another dispute between us.

Please provide me with the information by not later than noon on Wednesday.

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I think we should turn over the management of Green valley to CLA immediately. Please advise me if you agree.

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I would prefer not having to spend more money getting what I am legally entitled to and would appreciate your cooperation.

Ben

From: shawn bidsal <wcico@yahoo.com>
Sent: Saturday, December 15, 2018 8:56 AM
To: ben@claproperties.com
Subject: Re: Financials and deferring maintenance

EXHIBIT 2

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ben

there is no deferred maintenance on landscape or the plants , every year, during winter months, plants go dormant and come back to life in spring.

regarding contacting the tenants: the green valley case is not finished, so until that time, there is no reason to contact the tenants.

i sent you the tax returns a while ago, here is the p&L for each property,

Shawn Bidsal

West Coast Investments Inc

14039 Sherman Way, Suite 201

Van Nuys CA 91405

818-901-8800 p

818-901-8877 f

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On Tuesday, December 11, 2018, 7:01:37 AM PST, ben@claproperties.com <ben@claproperties.com> wrote:

Shawn, It has been brought to my attention that the trees and plants in Green Valley commerce are dying (See below pictures). I did not believe

EXHIBIT 2

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that neglecting and differing the maintenance of the property is something that you wanted. It is not to anybody's interest. Please inform me of the reason of the current situation and what can be done to save them. Although the judge has awarded us the judgment but letting the trees die is not a good practice. Your attorney has stated that you do not wish me to take over the management. How would it benefit you? You have so many other properties to warry about, why would you want to spend your valuable time on this and be responsible if it is neglected.

We have requested from you to send us the financials of The Green Valley Commerce and Country Club LLC, however, we have not received anything yet. CLA is a member and has the right to examine the records. We are already in litigation on Green Valley. I do not wish to start another case, that is why I am writing this letter to you directly to keep this channel open to discuss and resolve simple matters that benefit both parties. As I understand the attorney's fee is going to be awarded. Your attorney has expressed that the attorney fee that you need to pay is high. One would think why would you want to run it higher? Again, I do not wish to escalate this and like to resolve these simple matters in good faith so I will wait for 5 days for your good faith response to resolve the above problems before turning it to the attorneys.

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We need to contact the tenants and explain that there is a buyout. I like to also hire contractors to take over the maintenance of the properties. I like to work with you to arrange rather than have the attorneys do it. It is better for both of us.

I look forward to hearing from you and if you have any question or concerns, please contact me.

Ben

EXHIBIT 2

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WEST COAST INVESTMENTS INC

RENT ROLL

ENTITY GREEN VALLEY COMMERCE LLC
PROPERTY GREENWAY VILLAGE
3342 EAST GREENWAY ROAD, PHOENIX AZ 85032

UNIT NO	TENANT	START DATE	END DATE	Values SQ FT	PRO-RATED SQFT	RENT SQ FT	BASE RENT	CAM	TOTAL AMOUNT
GW-101	SUBWAY	4/1/2013	2/28/2021	1,460	12.58%	1.64	2,397.76	481.80	2,879.56
GW-102	RODNEY YOUNG INS AGENCY	3/19/2014	2/28/2019	1,200	10.34%	1.10	1,315.74	552.00	1,867.74
GW-103	CAROLE HALSTEAD	4/1/2014	3/31/2020	1,293	11%	1.03	1,337.10	540.00	1,877.10
GW-104	H & R BLOCK	4/1/2013	4/30/2021	1,293	11%	1.08	1,401.00	652.00	2,053.00
GW-105 & 106	VACANT	VACANT	VACANT	2,419	21%	0.00	0.00	0.00	0.00
GW-107	VACANT	VACANT	VACANT	1,167	10%	0.00	0.00	0.00	0.00
GW-108	VACANT	VACANT	VACANT	1,123	10%	0.00	0.00	0.00	0.00
GW-109	CARDINE BEAUTY SALON (ELSA GARCIA)	4/1/2014	9/30/2021	1,650	14%	1.00	1,652.77	544.50	2,197.27
Grand Total				**11,605**	**100%**	**5.86**	**8,104.37**	**2,770.30**	**10,874.67**

EXHIBIT 2

As of December 31, 2018

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Electronically Filed
2/13/2020 3:16 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER OF THE PETITION OF:	CASE#: A-19-795188-P
	DEPT. XXXI
CLA PROPERTIES LLC	

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 4, 2020

RECORDER'S TRANSCRIPT OF PETITIONER CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS

APPEARANCES:

For the Petitioner: LOUIS E. GARFINKEL, ESQ.

For the Respondent: JAMES E. SHAPIRO, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

002957

Las Vegas, Nevada, Tuesday, February 4, 2020

[Case called at 10:09 A.M.]

THE COURT: Okay. I'm going to call in order. CLA Properties is first in numeric order, 795188, and that's page 6,10:00, CLA Properties. Thank you so much.

MR. GARFINKEL: Good morning, Your Honor. Louis Garfinkel on behalf of CLA Properties, LLC.

MR. SHAPIRO: Good morning, Your Honor. Jim Shapiro on behalf of Shawn Bidsal.

THE COURT: Okay. So the Court's understanding this is a separate motion -- a separate order on attorney's fees and cost, which is pending before the Court. The Court has the Petitioner's CLA Properties motion for attorney's fees and costs, and I have the oppositions, thereto. Thank you for the courtesy copies that we got from all of the parties.

Okay. So we've got the operating agreement, you've got the NRS provisions. I was going to break it down, do attorney's fees first, and then costs, rather than arguing them both together, if that meets ya'lls needs.

MR. GARFINKEL: Sure, Your Honor.

THE COURT: So go ahead on the attorney's fees.

MR. GARFINKEL: Your Honor, let me ask something, are there certain -- would it be helpful to you if I sort of did a bid of chronology because of the federal case and then also this particular case?

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THE COURT: You jumped to the heart of the question the Court was going to ask, is whether or not actions in the federal court, if you're seeking fees here in state court or not?

MR. GARFINKEL: Absolutely not, Your Honor.

THE COURT: Okay. That's why I was -- I need to make --

MR. GARFINKEL: Yeah, because Your Honor, I handle --

THE COURT: -- question about the -- sorry.

MR. GARFINKEL: -- the federal case, all right? I filed the -- after Mr. Bidsal filed his motion to vacate the arbitrator's awarded the federal court, I then went ahead and handled the motion to dismiss. Mr. Lewin's office was not really involved in it. And so after the motion to dismiss was granted in federal court by Judge Gordon --

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THE COURT: Uh-huh.

MR. GARFINKEL: -- I then went ahead and filed a motion for attorney's fees in federal court, and I can tell you that the motion was based on my work, that's it. And I was very careful, Your Honor, that when we prepared the motion for attorney's fees in this matter --

THE COURT: Uh-huh.

MR. GARFINKEL: -- that I went through my bills very carefully, and what I did was, was I redacted out -- if you look at my bills that are attached to my affidavit, I --

THE COURT: Right.

MR. GARFINKEL: -- I blackened out everything that had to do with the federal case, and I made sure that there was nothing from the federal case that was included here, Your Honor. I knew it was become

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an issue, so I wanted to make sure that it wasn't an issue, Your Honor.

THE COURT: Okay. Does that -- I could tell you, my two questions, my question -- that was one question, and I appreciate there may be a difference of opinion, but I will tell you what the Court's two questions are.

MR. GARFINKEL: Sure.

THE COURT: The two questions that are dependent on the answer. That one was going to be having a clear understanding of what -- because this case was in arbitration, federal court, state court, and now he's got some appellate processes, is to ask the question and to ensure the only fee component sought in front of this Court, I'm not saying that they are or are not, and I appreciate there's no rule, statute, et cetera, I'm just --

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MR. GARFINKEL: Sure.

THE COURT: -- jumping ahead to the questions that I have, is it -- it was only for state court proceedings, and if it was not just for state court proceedings, what was the analysis for anything else. That's the first question.

MR. GARFINKEL: Yeah.

THE COURT: And the second was -- well, actually, it was just kind of reverse order was -- since it was argued in the opposition that there is no rule, statute, et cetera, and that this is an arbitration act, how -- what's the link in for attorney's fees --

MR. GARFINKEL: You got it. Sure.

THE COURT: -- here in state court so --

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MR. GARFINKEL: Your Honor, let me ask you something. Is there any issue about the 21 days? Because -- well --

MR. SHAPIRO: There's no issue, Your Honor. That was my error.

THE COURT: Yeah.

MR. SHAPIRO: It's timely filed.

MR. GARFINKEL: Okay.

THE COURT: Yeah, I was going to say at the -- okay. Thank you. Thank you, counsel.

MR. SHAPIRO: Thank you, Mr. Shapiro.

MR. GARFINKEL: Okay.

THE CLERK: Your Honor, I wanted to just disclose I've done an internship with Mr. Garfinkel, and his partner, Ira Levine, is my godfather. So I did not realize that's an on case today. I just know I needed to disclose any prior [indiscernible].

THE COURT: Sure.

MR. SHAPIRO: I don't have a problem with it, Your Honor.

THE COURT: Okay. Appreciate it. Thank you for the disclosure. Appreciate it. Okay.

MR. SHAPIRO: Especially since you didn't know that.

THE CLERK: I didn't realize it.

THE COURT: No, she just came --

MR. SHAPIRO: And I didn't know it either, Your Honor.

THE CLERK: No, I didn't realize it was --

MR. SHAPIRO: It's fine. I don't see that being any problem.

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THE COURT: Just to let you know, our wonderful clerk was assigned to help us out yesterday afternoon.

THE CLERK: Yeah, I just wanted to --

THE COURT: So we've had -- after this calendar --

MR. SHAPIRO: Well, thank you for [indiscernible].

MR. GARFINKEL: You are?

THE CLERK: Ira Levine's goddaughter. I did an internship one summer with you when I was going to UT.

MR. GARFINKEL: Oh.

THE CLERK: Years ago.

MR. GARFINKEL: Okay. I've aged, and I've probably forgotten that already, Your Honor, so there you go.

THE COURT: Okay. Is there any issue? As you know, the clerk does --

MR. SHAPIRO: None whatsoever, Your Honor.

MR. GARFINKEL: Okay.

THE COURT: Okay. I appreciate it. Thank you. Thank you for the disclosure. Okay.

MR. GARFINKEL: All right, so --

THE COURT: Counsel, feel free.

MR. GARFINKEL: So that issue's gone. Okay. So, Your Honor, so let's get to the basis. Under Rule 54 you've got to show a statute or a rule as a basis for attorney's fees. And, Your Honor, there are two issues here.

One is, of course, is the operating agreement, and the

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operating agreement basically talks about the award of attorney's fees and costs by an arbitrator, and I will gladly admit that. Okay, it talks about an arbitrator. But then again, Your Honor, on the other hand, that provision basically says that the arbitrator's award is going to be final, not appealable, okay, and a judgment can be entered thereon in any competent court. So maybe on its face the exact language may not be able to get there, but I would argue it's implied.

Second, Your Honor, and this is sort of critical, Mr. Shapiro's brief focuses on the Federal Arbitration Act, and if you take a look at the arbitration provision here, and you look at the operating agreement, you have two provisions. Okay. One provision basically says that the arbitration's going to be governed by the Federal Arbitration Act.

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Then when you also look at a second provision in the operating agreement, it basically says that in all respects, this contract, this agreement is going to be governed by Nevada law. And so one of the issues is, is you have this inconsistency between the Federal Arbitration Act, and then the Nevada choice of law provision.

Well, Your Honor -- and I don't know if you remember this, but when we briefed the motion to confirm the arbitrator's award and the counter-petition to vacate the arbitrator's award, there was a case that we cited in there that specifically addressed that, and it's a Nevada Supreme Court case. And, Your Honor -- and I will cite it for you, it's the *WPH* case. All right. And it's *WHP Architecture v. Vegas VP.* It's 131 Adv. Op. 88 360, P3d 1145. And, Your Honor, that case answers the question and it answers the question in our favor, and that's where --

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and that's how you get to state law here, and I will link it together.

So if you take a look at that case, Your Honor, the Nevada Supreme Court relied on a United States Supreme Court case in that case, and the court ruled that substantive provisions of a contract would be determined by state law and procedural aspects of an arbitration would be governed by the FAA.

And so if you take a look at that case, what the Nevada Supreme Court basically did was that they basically said that rules that -- rules -- state law rules that govern attorney's fees or award attorney's fees are substantive, not procedural, and as a result, those are the laws that are going to apply. Okay.

So take a look at that case because we believe that answers the question in our favor, Your Honor, and that's how you get to the award of attorney's fees here.

Now, what we also did, Your Honor, was we cited NRS 38.243, which is part of chapter 38, and this is what it says. Upon a granting an order confirming vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, et cetera, and we've gotten there.

A court may also allow reasonable costs of the motion and subsequent judicial proceedings. And then it says on application of a prevailing party to a contested judicial proceeding, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment

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confirming vacating without directing a rehearing, modifying or correcting an award.

And, Your Honor, we believe that under that statute, you have the authority to award CLA Properties, LLC an award of attorney's fees and costs, and Your Honor, based on the last -- the reply that we filed and the subsequent affidavits of both mine and Mr. Lewin's we're seeing $82,839.47. And, Your Honor, so I think I've answered your question as how we get to an award of attorney's fees here. Okay. We think that the state law -- under state law we're entitled to it, and I believe that the case that I cited to you explains direct -- how we get to this law governing this action.

And so, Your Honor, let me just sort of go on, and what I'm going to do is I want to just sort of address some of the arguments they made because in their opposition they basically said look, if you're going to award attorney's fees and costs, Your Honor, you've got to reduce it by 24,848.03. And so, Your Honor, our reply, I believe, Your Honor, specifically addressed all of the issues that they raised. And why don't I just kind of go over it? I mean, obviously, you know, the original motion, Mr. Lewin's affidavit, my affidavit, we address the Brunzell factors, we went through all four of them, and we think we've satisfied them. But a couple of things. All right.

First thing is, is they claim that CLA is asking the court to award fees that they are seeking in federal court, and it was actually sort of a nominal amount, Your Honor, but I think I addressed that right up front. In my affidavit, I was very clear about that, and I think we've

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addressed it.

The second thing is, is that they said that CLA's billing records are too vague, the claims entries are ambiguous as to whether or not related to this matter, and they seek to reduce it by 2,141.13. And Your Honor, again, that sort of gets back to the issue of whether or not the fees that we are seeking in this case are specifically for this case, and both Mr. Lewin's affidavits and my affidavits specifically address that. And Your Honor, I'm here today as an officer of the court.

THE COURT: Uh-huh.

MR. GARFINKEL: I took -- I made sure very clearly that it did not because I knew this was going to become an issue, and because of the sort of tortured procedural history of this case with the federal court pending. And just so you know, Your Honor, the federal court has not ruled on our motion to dismiss there. I'm sorry, our motion for attorney's fees, so that's still pending.

The third thing is, is that there was sort of this -- there's an entry there for Jack Liev, it was for $178.12, and I included that in my billings and the reason why for that, Your Honor, is just because I dealt with Jack Liev there, I guess that's Jack Margolin's pen name. I didn't know that. I've dealt with Mr. Liev for a number of years.

And as you may recall, Your Honor, Mr. Bidsal's motion to vacate was 40 pages long, with 1,100 pages of exhibits, and essentially, they tried to retry the case. So we had to go ahead and address all of their issues, and, Your Honor, we filed a 40-page brief with a thousand pages of exhibits including the original transcripts from the arbitration,

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and that included six volumes.

And so I worked with Mr. Liev at Mr. Lewin's office to put together our appendix which we filed with the Court, and as you know, Your Honor, it was six volumes, and I provided -- ultimately provided courtesy copies to you in two large binders.

There was also an issue here where basically Mr. Bidsal objects to certain work performed by Mr. Lewin's office that occurred before we filed our petition to confirm the arbitrator's award here, all right, and let me explain to you why.

THE COURT: Was it before or was it between the petition and the opposition is --

MR. GARFINKEL: Well --

THE COURT: -- the way I read it and --

MR. GARFINKEL: Well, let me --

THE COURT: -- you all are nuancing it --

MR. GARFINKEL: -- let me explain. Let me explain to you what happened.

THE COURT: Okay.

MR. GARFINKEL: So, Your Honor, remember, the original lawsuit was filed in federal court, and Mr. Bidsal filed, you know, a brief in excess of, I think 24 pages in federal court, along with six volumes of exhibits. And within -- and remember, he filed a motion to vacate originally in federal court, and then he filed a second one here. So the original one in federal court was never heard by the court there, and was never fully briefed, although Mr. Bidsal filed an opening brief there.

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And once we filed our motion to dismiss, opposing counsel and I entered into a stipulation in the federal case to stay the briefing of their motion to vacate pending a ruling by Judge Gordon on my motion to dismiss because it did not make sense to go ahead and fully brief that until we knew what the judge was going to do on the motion to dismiss. So it was basically economy, et cetera.

However, what Mr. Lewin did do is his office did look at the filing that Bidsal filed in the federal court because it was a motion to vacate, and we assumed that that was going to be identical or very similar to what was filed in this case. So the $3,000, the 3,829.50 that Mr. Shapiro's -- or Mr. Bidsal is claiming should not be awarded in this case because it was before we actually-- before this case was actually filed, it's related to the motion to vacate, Your Honor, and it makes sense that they would go ahead and look at that before -- before this lawsuit was actually filed.

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Now I will tell you, Your Honor, while the federal case was pending, because I felt pretty confident that it was going to be granted if there was no subject matter jurisdiction, I went ahead, and I filed the petition to confirm the arbitrator's award here. And then what I did with opposing counsel was, because the federal motion to dismiss for lack of subject matter jurisdiction was still pending, opposing counsel and I entered into a stipulation to stay the proceeding here, pending a decision by Judge Gordon.

THE COURT: Uh-huh.

MR. GARFINKEL: And the stipulation and order that we

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prepared essentially had a briefing schedule in the event that Judge Gordon granted the motion to dismiss. So I forget the exact terms, but I think maybe, you know, within 30 days or 40 days after Judge Gordon granted the motion, they would file their opposition and counter-petition, and then we would have so many days to file our reply.

And Your Honor, so one of the conditions of that order staying this case was that if Judge -- whatever Judge Gordon did, I needed to give opposing counsel, and also this Court notice of the court's order. So we knew that the time would start ticking -- the clock would start ticking for them to file their brief. And so that was one of the things that they argued, that they should not -- we should not be able to bill for it in this case, but, Your Honor, it was only -- I think it was a couple of hundred buck, but it did apply to this case because we did do our stipulation.

A couple of other items. One has to do with California law. They claim that California law -- that Mr. Lewin's office did research on California law for $770, it shouldn't apply, but then again, Your Honor, both parties throughout the arbitration acknowledged that in certain cases where no Nevada law is available, we would look to California law, and that's something that both sides did throughout the arbitration and Mr. Lewin's office did that in this case, too. There was an issue that came up, and they looked to California law.

Finally, Your Honor, it has to do with failure to comply with the rules. And, Your Honor, the hearing was originally scheduled, I believe, for September 10th, and there -- it was an issue with providing a

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courtesy copy.

THE COURT: No worries.

MR. GARFINKEL: And, Your Honor, I -- listen, I took full responsibility for that, and the hearing was continued to October. I provided you with a courtesy copy, and then, Your Honor, you had to cancel that October hearing because I think you were in trial, and so we kicked that back.

THE COURT: Uh-huh.

MR. GARFINKEL: So, Your Honor, one of the things that I did, and, you know, I've been doing this a long time, and I try to be very fair with my client.

THE COURT: Sure.

MR. GARFINKEL: I've been around the block. And so when that issue came up, what I tried to do with my billings, you know, for CLA Properties was reduce my attorney's fees by a commensurate amount. I mean I had to show up in court, and I gave the client a courtesy discount for the first bill, I think a thousand dollars, and then, Your Honor, I had to do prep time for the second hearing in October, and what I did was is I wrote that time off, and then we had the hearing in November.

So, Your Honor, and I looked at -- I looked at Mr. Lewin's bill, and also my bill, and there was prep work that we did that we had to do no matter what. Now obviously, the hearing was continued, and so I -- we tried to compensate for that. I know Mr. Lewin's office gave courtesy discounts, as did mine.

So, Your Honor, I think I've spoken enough today, but any

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questions for me?

THE COURT: I'm going to ask you a question when you speak again. I'll give you a heads up to take a look at it. I don't know if A-G-A-Y, is it [A-gay], [A-gai]. I don't --

MR. GARFINKEL: Richard [A-gay].

THE COURT: Richard Agay.

MR. GARFINKEL: Yeah, Mr. Agay.

THE COURT: Okay. Mr. Agay's not part of the analysis, right? Is --

MR. GARFINKEL: Well --

THE COURT: -- 94.65, and I'd rather address that in your final words.

MR. GARFINKEL: Sure.

THE COURT: But I'll give you a heads up I'm going to ask you that question so, I guess, addressing the opposition.

MR. GARFINKEL: Yeah. I will tell you that Mr. Agay is the one who did a lot of the legal analysis, you know, in terms of the -- Mr. Lewin's office handled the arbitration. And so when it came to really the drafting of the brief in opposition to their counter-petition to vacate the arbitrator's award, Mr. Agay is the one who did most of the drafting, and frankly, Your Honor, I thought he did a great job.

I thought that our opposition to the counter-petition was really good, I mean, because their counter-petition essentially retried this case. And they tried to get you to retry it. And so we had to address the evidence that was at the arbitration and a lot of the legal issues, and he

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spent a lot of time on it, and I think the final product showed.

THE COURT: Okay. Thank you so much.

MR. GARFINKEL: Thank you, Your Honor.

THE COURT: Counsel, go ahead.

MR. SHAPIRO: Thank you, Your Honor. May I stand here so it's better?

THE COURT: You can stand, sit.

MR. SHAPIRO: I got my stuff all over.

THE COURT: Stand, sit.

MR. SHAPIRO: Oh, I would never sit but --

THE COURT: Wherever, you need to read your notes, substance over format. Go ahead.

MR. SHAPIRO: Thank you. Your Honor, I'll kind of reverse. I will address the legal basis, we don't think there is, and I'm going to go into that in more detail, but I'm going to -- just because it's --

THE COURT: Okay.

MR. SHAPIRO: -- fresh in the mind to talk about it. We are concerned of the fact that there were five different attorneys working on this file. I think that's excessive, it's unreasonable. Mr. Agay did not appear at any hearing, he did not appear at the arbitration, I've never actually met the man, and so that is one of our concerns.

But going back to the first question Your Honor asked which is about the fees being included, Mr. Garfinkel's own affidavit makes it clear that yes, he is seeking fees here for work done in the federal case, and the distinction that he makes is he says, well, I didn't ask the federal

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court for that money so I'm asking Your Honor for it.

And I'll direct your attention to the affidavit that was filed on January 27th, at 9:21 a.m. This is the affidavit of Mr. Garfinkel. And again, Mr. Garfinkel and I get along great, he's a great man, consider him a friend, I'm not trying to throw him under the bus, but his affidavit says something different.

If you look at paragraph five, it says on page 9 of Bidsal's oppositions, lines 6 through 16, Bidsal argues that CLA is seeking double recovery. Specifically, Bidsal argues that CLA is asking the Court to award the same attorney fees that CLA is asking the federal court to award, which is not quite what our argument is, but that's how he framed it.

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THE COURT: Uh-huh.

MR. SHAPIRO: In support of this argument, Bidsal cites the Garfinkel affidavit that includes charges for June 18, 24th, 25th, 2019, for reviewing the federal court order and preparing a notice of entry of the order for the federal court order. CLA claims the sum of 281.25 is unjustified. This claim is without merit because -- and this is the key part -- no time included in this motion was also included in the motion for attorney's fees filed in federal court.

So in other words, I didn't ask for these fees to the federal court, so I'm going to ask Your Honor for those fees. That's not allowed. That's not part of these proceedings. Even if Your Honor decides that attorney's fees are warranted, they don't get to throw in any leftover federal fees here because it wasn't part of their motion for attorney's

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fees in federal court. And so we do think it's inappropriate to include that.

Now going to the other problems, it's not just the 281, there's -- when we added up the total amount of attorney's fees listed in their billing records that related to the federal case, we came up with $8,604.40. And anything related to the federal court should not be included in this motion.

THE COURT: Counsel, could you re-reference where that is in your -- 8,000 -- because page 9 is your 281.

MR. SHAPIRO: Hold on, I will find it.

THE COURT: And then you have a total number of 8,626 on page 11, but is there a different page I should be referencing? I'm just trying to follow along in your brief.

MR. SHAPIRO: Yeah, I wrote that in my notes, but I didn't write where it was in the --

MR. GARFINKEL: Your Honor?

MR. SHAPIRO: It's page 9, line 10.

MR. GARFINKEL: Yes, Your Honor.

THE COURT: Okay. Got it. Okay. Thank you.

MR. SHAPIRO: And the example -- the low-hanging fruit that we identify where there is this reviewing of the federal court order and the notice of entry, but there were other entries when you look at the invoices that are clearly associated with that federal motion, and our position is you don't get to lump in all the federal stuff that you didn't ask the federal court for into the state motion.

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THE COURT: Sure. So you have -- sorry, my question is a little bit long per se. The 281.25 you've got listed on line 14, when you were arguing, you were saying that there were additional entries, I didn't -- is there somewhere in your pleading that focuses on a number of what those additional entries are?

MR. SHAPIRO: You know what Your Honor, the answer is no. Whatever's in the paragraph is what we have.

THE COURT: Okay. No worries. Thank you so much.

MR. SHAPIRO: Uh-huh.

THE COURT: Please continue.

MR. SHAPIRO: Then you go to the next problem that they have, and that is they've got $2,141.13 of draft correspondence, and similarly vague things. The problem is when you look at the dates, there's no correspondence going back and forth in this case, and here's the concern, there's a sister case. Sister case, who's the judge on that?

MR. GARFINKEL: Judge Gordon, Your Honor.

MR. SHAPIRO: Judge -- no, not Gordon.

MR. GARFINKEL: Okay. Hold on, you're talking about Mission Square? That's Judge Denton. We haven't done any --

MR. SHAPIRO: Judge Denton.

MR. GARFINKEL: We haven't done anything in that case for a year, Your Honor.

MR. SHAPIRO: No, admittedly, that one has been stayed, but there's been a lot of correspondence going back -- for our settlement and different things there. When you look at the dates of these draft

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correspondence, there was nothing going on this case. And so the only thing I come up with is that they're including correspondence on the sister case, which is the Mission Square lawsuit in this one, trying to recover attorney's fees, so they're loading up the bills. But in any event, the dates of those draft correspondence simply don't line up with anything that was occurring in this case.

THE COURT: Okay.

MR. SHAPIRO: Then we have research. And Your Honor nailed it on the head. This petition -- their petition in the state court was filed May 21st, 2019. That was their opening brief. At that point, they had already laid out all of the legal arguments that they had made, and yet on May 22nd, May 28th, May 29th, May 30, June 2nd, June 12th, they're doing research. What are they researching? We haven't filed anything yet. They've already filed their opening brief, so what is it that they're spending almost $4,000 researching after they file their opening brief and before we file our opposition?

And remember, they pretty much already had our opposition because it was our motion to vacate in federal court, so they already had it. There's no more research needed. There's simply no basis to award them the research, and that goes for the May 28th and June 13th entries where they're researching California law. Again, this is after they filed their petition and before we file our opposition and counter-petition.

The Lewin affidavit on May 30th has an entry for review answer. There wasn't an answer filed on May 30th or anywhere near

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May 30th. I don't know why he's spending over an hour looking at a nonexistent answer and then trying to bill us. They're simply padding these fees and inflating them.

When you look at the preparation time for appearing at the hearing which had to be continued because no courtesy copies were provided, Lewin spent $4,351 preparing for that hearing. He has never appeared, and that's in addition to the $4,275 that Garfinkel spent preparing for that hearing. You've got $8,626 preparing for a hearing that didn't go forward because courtesy copies were not provided.

Now Mr. Garfinkel states he's already discounted his bill, and I believe him, but the matter of fact is he didn't discount it enough and my client shouldn't have to pay for Louis to prepare for the hearing and for Rod Lewin to prepare for a hearing that he never appeared for and that never happened.

And so at the end of the day if Your Honor's inclined to award attorney fees we request that it be reduced by $24,848.

Now let's go to the question of can Your Honor even do it? Is it even allowed? CLA Properties is arguing that NRS Chapter 38 applies, but I want to draw Your Honor's attention to two exhibits. Exhibit 1 is the operating agreement, and Exhibit 3 is CLA Properties' petition for arbitration with JAMS. Now on page 3 of that, they identify two important things.

One, they identified that the arbitration shall be administered -- and I'm going to quote. Quote, "Arbitration shall be administered by JAMS in accordance with its then-prevailing expedited rules" end quote.

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So they have identified the procedure by which the arbitration will occur. The next sentence states, quote, "The arbitration shall be governed by the United States Arbitration Act, 9 USC 1, et seq." There's the substantive.

Now, why is that important? Because they are relying upon *WPH Architecture Inc.*, a Nevada case -- a Nevada Supreme Court case. What was the Nevada Supreme Court case dealing with in that instance? In that instance, they were trying to decide whether or not the American Arbitration Association rules or Nevada law applied.

So we're looking at; do the procedure apply? The AAA procedure or does Nevada law apply? And what they concluded was that you will apply AAA rules for procedure and Nevada law for substantive. Well, that's different, because in *WPH*, you didn't have a provision that specifically addressed both. Unlike *WPH*, the operating agreement actually addresses both the procedural and the substantive. Procedurally it says: JAMS rules will govern. Substantively, it says, the United States Arbitration Act governs.

And so the issue that was -- the Supreme Court was dealing with in *WPH* has already been resolved by agreement of the parties, who have already identified in the operating agreement that procedurally, it's governed by JAMS rules; substantively, it's governed by the United States Arbitration Act.

In fact, if you look, and CLA Properties cites to the -- I'm going to slaughter this name, *Mostrobuono* case, which is the Supreme Court case, 514 U.S. 52. When you look at that case, the Supreme Court

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made it clear, and that's what the Nevada Supreme Court was relying on -- the Supreme Court made it clear that the case comes down to what the contract says. And they said this is going to be resolved by a review of the contract. Well, when you review the contract in this case, the contract clearly says procedurally, JAMS rules, substantively, United States Arbitration Act. That is consistent with *WPH*. In fact, that's the same result that *WPH* came to. You've got AAA in *WPH*. They said AAA procedure applies, Nevada law applies, because of the facts of that case. Well, in this case, JAMS procedure applies, United States Arbitration Act applies.

Because the United States Arbitration Act applies, we have cited, Your Honor, to *Crossbill Medical Oncology PC*, and I've got a copy of that decision if you'd like it.

THE COURT: I'm fine, but thank you.

MR. SHAPIRO: But that case addresses this exact issue, and what it says is, "Unless the agreement of the parties provides for award of attorney fees after arbitration, there's no basis to award attorney's fees." And in this case when you go back to the arbitration clause, it's very clear that the arbitrator -- the arbitrator shall award costs and expenses, including cost of arbitration previously advanced and the fees and expenses of attorneys, accountants, and other expenses to the prevailing party. That's it. There's no provision in the operating agreement, Section 14.1, that allows for an award of attorney fees post-arbitration.

The language is very clear. It's limited to an award by the

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arbitrator. And because it's limited to an award by the arbitrator, under the reasoning set forth in the *Crossbill Medical Oncology* case, there is simply no basis to award any attorney fees after the arbitration is concluded, even if there's proceedings at a subsequent time seeking to either confirm or vacate that arbitration award.

And I went out of order, so bear with me, Your Honor.

THE COURT: Yes.

MR. SHAPIRO: I want to make sure I covered everything. Yeah, it looks like I have. Does Your Honor have any questions?

THE COURT: Refresh the Court's recollection, if the arbitrator awarded fees in this case, in the underlying procedure? I thought he did.

MR. SHAPIRO: The arbitrator did.

MR. GARFINKEL: $298,500, Your Honor.

THE COURT: Okay. I thought -- okay. And the basis of that award does or does not have a citation to the Nevada Arbitration Act, the Federal Arbitration Act, the JAMS rules, or what? I was trying to find that readily available in what you all provided me, and if that's a question that someone doesn't know the answer to, I full appreciate that, but where I'm trying -- since you're both arguing that -- since this came up, right, to confirm or vacate an arbitrator's award. Actually, it was Petitioner confirming and vacating.

The Court was interested to know that point, but I will tell you that if either party thinks that the Court doesn't need to know that point for an analysis of its rulings, and since it wasn't in the briefs, I'm not going to consider it. But if you both agree that I should know the

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answer to it, then I'm more than glad to listen to it.

MR. SHAPIRO: I don't think it's relevant.

THE COURT: Huh?

MR. SHAPIRO: I don't see how it would -- no, I hesitate to say that because clearly, you do, and so I'm saying I don't think the reasoning complies.

THE COURT: No, no, no, it's not reasoning, it's really -- it's a question at this point, right? Because part of the analysis that you are presenting is from different perspectives, right?

MR. SHAPIRO: Uh-huh.

THE COURT: Is what was the scope that was before the arbitrator as either potentially yes, giving this Court some indication on whether or not there's a provision for attorney's fees, or as I'm saying no, or that maybe it doesn't matter one way or another, or whatever a fourth option is out there, so I'm just trying to have an understanding of whether the Nevada Arbitration Act was included in that underlying without -- and I wouldn't have done any independent to go back and look at it because it's not before me, and I'm perfectly fine if the answer is not before me.

MR. GARFINKEL: Your Honor, the arbitrator's award just -- I assume is just based on the arbitration provision, the agreement. The parties briefed it under the Brunzell analysis because under the terms of the operating agreement, Nevada law applies, and that's what the parties agreed to, and so basically, we filed our motion for attorney's fees and cost, and it was briefed under the Brunzell factors. Both parties

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had plenty of opportunity to brief it multiple times, and then the arbitrator entered his award, and that's what happened. So he did not invoke the Nevada Arbitration Act or the Federal Arbitration Act, Your Honor.

THE COURT: Do you concur with that general analysis?

MR. SHAPIRO: I honestly don't remember --

THE COURT: Okay.

MR. SHAPIRO: -- Your Honor.

MR. GARFINKEL: I do.

MR. SHAPIRO: And my position is I don't know that it really applies. I think whatever -- however, I mean, here's the problem. The arbitrators can do whatever they want. He can apply Louisiana law, and we -- you know, I mean, it's hard to get them overruled.

THE COURT: Well, the Court was only asking the question purely for the basis if either of you are arguing that something the arbitrator did precluded what this Court could do or should have been included for what this Court should be doing. So if there was something that was directly on point and one of the parties felt that it had not been briefed before this Court, the Court was going to see if -- the challenge here is you all are spending so much time in so many different jurisdictions and venues, the last thing I want to do is trying to suggest more briefing. At the same time, I want to be sure because you each have a case, all parties feel like every option -- has had every opportunity to address the issues that they need to address, so.

MR. SHAPIRO: I'm ready to submit it, Your Honor, I think

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that --

THE COURT: Okay. Then that's all it is that is before me today for submission then, okay, because unless both parties were asking for something different I would rule today --

MR. GARFINKEL: No, Your Honor.

THE COURT: -- because that's the appropriate thing.

MR. GARFINKEL: Your Honor, and I --

THE COURT: You get last word, go ahead.

MR. GARFINKEL: -- made our case for the *WPH* case and why it applies, so I don't need to --

THE COURT: Okay.

MR. GARFINKEL: -- go into any more.

THE COURT: Okay. So counsel, you get last word.

MR. GARFINKEL: Well, you know, Your Honor, I think I addressed all of Mr. Shapiro's arguments, you know, in my opening here. Obviously, we disagree with opposing counsel when it comes to the relevance of the *WPH* case. We believe, Your Honor, it -- I mean, basically, Mr. Shapiro's arguing that you should ignore Nevada law, that provision in there, and that's what the law says, and that's what the agreement says, is that in all respects, the operating agreement is going to be covered by Nevada law, and that's what happened in the *WPH* case. I mean, he's coming up with a creative argument, but I don't think that it holds water, Your Honor.

THE COURT: Okay.

MR. GARFINKEL: In terms of, you know, the specific

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amounts, 860440 number that he referenced before, that's the amount of legal fees that I sought in the federal case. And, Your Honor, and I went through that very carefully, it's not part of it. The other argument, Your Honor, and Mr. Shapiro made this argument, had to do with why was Mr. Lewin's office doing research before the petition to confirm the arbitrator's award was filed in state court. And the reason why, Your Honor, is because Mr. Bidsal filed a motion to vacate the arbitrator's award in federal court, and that's the first motion to vacate that he filed.

And then what did he do? He went ahead and filed it here. And if you took a look at both of them, they were very similar, Your Honor, and so it only made sense that they would go ahead and start taking a look at it, because whether we were going to be in federal court, or state court, had to do the research, and that's what happened, Your Honor. So I -- you know, while he's arguing it occurred before, I think it was certainly relevant, that time, to the -- to opposing the counter-petition to vacate the arbitrator's award.

And, Your Honor, Mr. Shapiro talked about the *Mission Square* case, and he -- his argument was, was that he thinks that there may be some time from the *Mission Square* case that was included in the invoice for this one.

Well, I'll tell you, Your Honor, that did not happen for me because I have two files that I've opened up, all right? One is the CLA Properties, Mission Square, which is an 001 file since that was the first lawsuit, and then you have the CLA Properties, Bidsal, which is the subject of this case, which is the 002 file. So if there was time for

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Mission Square, it would be billed to the 001 file.

So, Your Honor, I understand what Mr. Shapiro was saying, but what I did was I went back, and I looked at all of the communications that I had with Mr. Shapiro and all of the emails to make sure that the time that I was seeking in this case had to do with this. So there you go, Your Honor.

THE COURT: Okay.

MR. GARFINKEL: Anything else?

THE COURT: I do have one more question.

MR. GARFINKEL: Sure.

THE COURT: And I'm referencing the court's order, okay, in affirming the arbitrator, and I'm looking at the section of analysis, right?

MR. GARFINKEL: Sure.

THE COURT: Okay. From this Court's very own order. I read --

MR. GARFINKEL: Should I go over and get it, Your Honor?

THE COURT: I'll read it out loud.

MR. GARFINKEL: Okay.

THE COURT: Because I'm going to have questions, okay?

"At the November 12th, 2019 hearing, the parties agreed that this Court has jurisdiction to review the arbitrator's award pursuant to Nevada Revised Statute 38.244(2). Moreover, the parties agreed that the Court's decision to vacate the award is properly governed by the United States Arbitration Act, 9 USC Section 9. Respondent also analyzed the motion pursuant to Nevada Revised Statute 38.

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The parties further agreed that regardless if the Court utilized the federal or state standard, the result would be the same. The dispute is whether the Court should affirm or vacate the arbitrator's award."

The petition to confirm the award filed by CLA was based on --

MR. GARFINKEL: I believe it was on the Nevada Arbitration Act.

THE COURT: Okay. You're correctly anticipating where my questions going.

MR. GARFINKEL: Yeah, and that Arbitration Act, Your Honor.

THE COURT: Let me at least finish my question just for --

MR. GARFINKEL: I apologize.

THE COURT: No, you're correctly --

MR. GARFINKEL: I'm sorry, Your Honor.

THE COURT: -- no, you're correctly anticipating it.

MR. GARFINKEL: My fault.

THE COURT: I'm pretty sure you're correctly anticipating it, but for clarity of record so that if somebody agrees or disagrees, you might -- okay. So since the petition was filed solely under the United States Arbitration Act, 9 USC Section 9, does this fall outside of *WPH Architecture*, because this case, you had a choice to file it under whatever provisions you thought, and here, the substantive law, you asked this Court to analyze for purposes of having the underlying award confirmed was the federal standard?

MR. GARFINKEL: I don't think so, because, Your Honor, this

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has to do with whether -- what law applies for purposes of the motion for attorney's fees, all right? And *WPH,* when you have consistent provisions, all right, that's what the analysis did with it, because you had -- in that case, you had a contract where you had the FAA, you also have state law, and the Supreme Court was looking at it, and going, well, you've got these two --- you have these two provisions here, and the contract includes both of them, so what's going to be substantive, what's going to be procedural?

And the Supreme Court said that the substantive is going to be state law. And if you look at the Nevada Supreme Court case, look at the statutes that they applied. In that case --

THE COURT: Okay. Withdrawn at that time, statute on offers of judgment, and NRCP 68 --

MR. GARFINKEL: Right.

THE COURT: -- the offer of judgment. You see, the reason why the Court's asking the question is because in *WPH Architecture,* there was before that court state court provisions -- state law provisions, whether it be the statute that -- the 17, you know, which has since been repealed. I'm not talking about 2019 versions, and then NRCP 68 in this case. So that before them was an issue that the offers of judgment were out there pursuant to state law.

Here, the only time the State Arbitration Act came in before this Court was in Respondent's briefs. And really, my question is do you think that makes a difference? And I'm going to ask each of you in moment, realizing that I've got another -- I've still got your cause, I've got

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another 10:00, and I've got an 11:00, so I'm going to ask for a brief answer, but I'm really trying -- you know, I'm trying to flush out this nuance.

MR. GARFINKEL: Sure. I understand. Your Honor, we don't. We think *WPH* supports our position.

THE COURT: Okay.

MR. SHAPIRO: Your Honor, the fact that the relief was sought under the United States Arbitration Act is important. It's important for two reasons. One, that was the agreement of the parties as set forth in the operating agreement. And number two, because that -- they acknowledged that that's the substantive law that applies. And so I mean at the end of the day, whether or not you apply the *WPH* decision, the result is the same. The arbitration clause is clear. It's the United States Arbitration Act, and there's no provision under the Arbitration Act to award attorney fees.

THE COURT: Well, I will tell you, this was very, very well argued, very well briefed, but I do believe that I have to deny the request for attorney's fees, because I think, A, I think this Court's own order, stated that I was analyzing this under the United States Arbitration Act, 9 USC Section 9, it's on the face of the order, and it's on the face of the order as being the agreed upon analysis of the case before this Court, not separating out between an affirmation of an arbitrator's decision of fees and costs because the fees and costs can only get triggered because the court affirms the arbitration decision, so it has to take the case number as a whole before this Court. And the case number as a whole

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before this Court was filed only under the United States Arbitration Act.

So therefore, unlike -- but as for the *WPH Architecture* case where the issue before it was conflicting provisions of NRCP 68, the old NRS repealed offer of judgment 17.115 statute, here, I didn't -- this Court didn't have state law presented on its face before this Court as a basis for a court ruling, initially, and that's why I would distinguish that case.

Even in distinguishing the case, *WPH Architecture*, I think, supports this Court's ruling because here, unlike *WPH Architecture*, you have the clarity of not only the underlying arbitration agreement, but more importantly, how the petition was filed in this Court under the federal, and then this Court finding that affirmatively in its order, I'm bound by the Court's order, as well, consistent with how it was filed.

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So under those distinguishing facts, the Court would need to deny the request for attorney's fees and denying the request for attorney's fees means I wouldn't have done the analysis with regards to the fees. It is so ordered. Since I have denied it, counsel, that means you are going to be filing hopefully a detailed order after you circulate it to opposing counsel and providing it back to this Court.

Does anyone need a clarification or was that -- whether you agree or disagree, you understand what -- the basis?

MR. SHAPIRO: Thank you, Your Honor.

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MR. GARFINKEL: Thank you, Your Honor.

THE COURT: Okay. I appreciate it. Thank you for your time.

[Proceedings adjourned at 10:56 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Jessica B. Cahill

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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RESPONDENT'S REPLY TO CLA PROPERTIES, LLC'S OPPOSITION TO MOTION FOR STAY PENDING APPEAL

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, hereby submits his Reply (the "***Reply***") to CLA Properties, LLC's ("***CLAP***") Opposition (the "***Opposition***") to Bidsal's Motion for Stay Pending Appeal. (the "***Motion***")

MEMORANDUM OF POINTS AND AUTHORITIES

Relying upon remote possibilities and exaggerated facts, CLAP argues that the requested stay should be denied because the harm to CLAP is too great. However, when each of their alleged concerns and arguments is carefully reviewed, it becomes clear that CLAP's objections are extremely remote and unlikely scenarios and are otherwise without merit.

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A. CLAP'S "REASONS WHY THE MOTION TO STAY SHOULD BE DENIED" FAILS TO IDENTIFY A SINGLE VIABLE CONCERN.

CLAP's Opposition starts out by listing four 'reasons' why the Motion for Stay should be denied. However, none of the listed reasons stand up to scrutiny.

1. Accruing Interest is Not a Valid Basis on Which to Deny the Requested Stay.

CLAP starts by arguing that the Arbitrator's award of attorney's fees will accrue over $60,000.00 in interest over a two-year period.[1] However, it is extremely common for judgments to accrue interest once they are entered. If a request for stay pending appeal were conditioned upon the lack of accruing interest, no request for a stay would ever be granted. In most, if not all, cases where a stay pending appeal is entered, the underlying judgment is/was accruing interest, but that did not mean the requested stay was somehow improper. If accruing interest were a basis on which to deny stay, the rule allowing a stay pending appeal would, for all intents and purposes, be eliminated.

As outlined in the Motion, because CLAP will be required to pay over $1.5 million dollars to Bidsal, if CLAP is successful on appeal, CLAP will be able to offset all accrued interest from the payment that CLAP makes to Bidsal. For this reason, the accrual of interest is not a valid basis on which to deny the requested stay.

2. CLAP's Motions for Attorney's Fees Are Irrelevant.

CLAP next points out the fact that they filed two separate motions for attorney's fees, one in federal court (approximately $8,500.00) and one with this Court (approximately $85,000). However, this Court recently denied CLAP's motion for attorney's fees and, it is anticipated that the federal court will likewise deny the motion in federal court for the same reasons. In any event, CLAP has failed to explain nor demonstrate how this issue is relevant to the question of whether a stay should be granted.

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[1] CLAP cites to and relies upon NRS 99.040 as the basis for the accrual of interest. However, NRS 99.040 does not apply. Specifically, NRS 99.040(1) states that it only applies "in the following cases:" (a) Upon contracts, express or implied, other than book accounts. (b) Upon the settlement of book or store accounts from the day on which the balance is ascertained. (c) Upon money received to the use and benefit of another and detained without his or her consent. (d) Upon wages or salary, if it is unpaid when due, after demand therefor has been made. NRS 99.040(1). Because an award of attorney's fees entered as part of an arbitration does not fit within any of the four delineated scenarios, NRS 99.040 does not apply.

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3. CLAP's Extreme Hypothetical Scenarios Demonstrate Why the Requested Stay Should be Granted.

CLAP next points to extreme hypothetical scenarios that 'could' happen. However, these very scenarios demonstrate why the requested stay should be granted.

(a) The Anticipated Sale of the Underlying Property Is Exactly Why the Requested Stay Should be Granted.

The first hypothetical identified by CLAP is the fact that, if a stay is imposed, it will prevent CLAP from selling or encumbering the underlying property.[2] *See* Opposition at Section II, page 3:9-11. However, the fact that CLAP admits that it is now considering selling the underlying property underscores the need for the stay pending appeal. This admission on the part of CLAP is exactly the reason a stay is necessary. Allowing CLAP to sell the underlying property, which is the primary asset of the dispute, will permanently and irrevocably deprive Bidsal of his rights in the property, such that in the event that the Supreme Court chooses to invalidate the arbitration, the subject of the appeal would have been defeated.

Because "land is unique," Locken v. Locken, 98 Nev. 369, 372, 650 P.2d 803, 805 (1982), the need to preserve the status quo is heightened when real property is involved. In A & B Steel Shearing & Processing, Inc. v. United States, for example, the government had obtained a judgment allowing it to seize property for tax liability, but the federal district court stayed the judgment pending appeal: Even though the court believed the taxpayer's appeal would fail (*cf.* NRAP 8(c)(4)), "the court is not required to find that ultimate success by the movant is a mathematical probability." 174 F.R.D. 65, 70 (E.D. Mich. 1997) (*quoting* Thiry v. Carlson, 891 F. Supp. 563, 566 (D. Kan. 1995)). The prospect of irreparable harm—and defeating the object of the appeal—made a stay necessary: The taxpayer "would be irreparably harmed if the subject property, unique commercial real estate, is sold during appeal since money damages could not provide an adequate remedy in the event, albeit unlikely, that plaintiff succeeds on appeal. Indeed, disposal of the subject property during appeal would moot the entire appellate process." *Id.* In contrast, enjoining the government from selling the property did not pose the same harm: "While the government and the taxpayer's estate could be harmed

[2] Ironically, this entire dispute arose because CLAP did *not* want to sell its interest in Green Valley. If CLAP had wanted to sell the underlying property, CLAP would have sold its interest to Bidsal and we wouldn't be in this situation.

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if the injunction is granted and the property depreciates in value pending appeal, it is also true that the government and the taxpayer's estate could be greatly benefited if the injunction is granted and the property appreciates pending appeal." *Id.*

One of the issues to be considered when deciding whether to grant a stay is "whether the object of the appeal or writ petition will be defeated if the stay is denied." *See* Hansen, 116 Nev. at 657. If, as CLAP argues, it is allowed to sell the underlying property pending the appeal, and Bidsal were ultimately successful in vacating the arbitrator's award, the entire object of the appeal would be defeated as the underlying property (which is the only asset of Green Valley) would have been sold. This argument weighs in favor of granting the requested appeal.

(b) Management of the Underlying Property by Bidsal has never been a concern for CLAP.

The second hypothetical identified by CLAP is that it will be unable to manage the underlying property if the stay is imposed. However, Bidsal has been managing the underlying property for the past decade and CLAP has never raised any concerns about how the underlying property was managed until now. Even more telling is the fact that nowhere in this matter, prior to the present Opposition by CLAP, has Benjamin Golshani ("***Golshani***") stated that he was unhappy with how CLAP was managing the underlying property. This argument is being raised not because it is a real concern for CLAP, but more because it sounds like a good argument to make.

CLAP's argument that Golshani would be the proper manager for the property ignores the facts that Bidsal has managed approximately over 50 properties valued at over $300,000,000.00, in eight states over his 24-year career in real estate. *See* Declaration of Shawn Bidsal, attached hereto as ***Exhibit "B"*** and incorporated herein by this reference. When compared to Golshani's commercial real estate management experience CLAP's argument simply does not bear out. The fact that CLAP is also complaining about the distributions that the company has been making underscores that Bidsal is properly managing the underlying property, sufficiently enough to have excessive cash available for EQUAL distributions to both Bidsal and CLAP. *See* Exhibit "B".

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Because CLAP has been content with Bidsal's management of the underlying property for the past decade, maintaining the status quo a bit longer will not cause any harm to CLAP.[3]

(c) Under Nevada Law, There is Absolutely No Risk of a Lien Against Bidsal's Membership Interest.

The third hypothetical identified by CLAP is that if the stay is imposed, "Bidsal's interest which is at stake could be made subject to a lien by the government or someone else." This is impossible under Nevada law.

Green Valley is a Nevada limited liability company. At issue are Bidsal's shares in Green Valley. However, even if Bidsal defaults to a creditor (whether governmental or otherwise), such that the credit obtains a judgment against him, NRS 86.401 prevents any creditor from attaching Bidsal's membership interest in Green Valley. Instead, NRS 86.401 limits a creditor's remedies to an order whereby the creditor is entitled to receive any distributions that the member would have otherwise been entitled to receive, commonly known as a charging order. *Id*. Further, NRS 86.401(2)(a) clearly states that NRS 86.401 "[p]rovides the *exclusive remedy* by which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of the member's interest of the judgment debtor, whether the limited-liability company has one member or more than one member. *No other remedy, including, without limitation, foreclosure on the member's interest or a court order for directions, accounts and inquiries that the debtor or member might have made, is available to the judgment creditor* attempting to satisfy the judgment out of the judgment debtor's interest in the limited-liability company, and *no other remedy may be ordered by a court*." (emphasis added).

Because a charging order will not, as a matter of law, affect anything other than distributions that Green Valley would have otherwise paid to Bidsal, this argument by CLAP is, again, without merit.

4. CLAP's Arguments Regarding the Payoff Formula Are Likewise Irrelevant.

After providing a perfect example of why the requested stay should be granted (the possible sale of the asset by CLAP), and raising extreme hypotheticals which have no merit, CLAP

[3] CLAP takes Bidsal's statement during the Arbitration completely out of context. It is not that Bidsal objects to managing the underlying property, which he has successfully done for nearly a decade; rather it is that Bidsal objects to a continued relationship with CLAP and/or Golshani. *See* Exhibit "B".

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next discusses the payoff formula, which is not before this Court and which is, unfortunately, highly contested—so much so that a demand for arbitration has recently been filed to address this very concern. *See* Exhibit "B".

While Bidsal disputes the numbers used by CLAP in its Opposition, the reality is that even under CLAP's own calculation, CLAP will have to pay more than $1.5 million to Bidsal. This demonstrates that CLAP is protected from any harm it could incur as a result of the requested stay, as CLAP's alleged damages (even under CLAP's own unfounded theories) will not exceed $1.5 million.

5. CLAP's Arguments Related to the $500,500 Distribution are Misguided at Best, if not Outrightly Misleading.

CLAP next points out that Bidsal has made distributions. While this argument is not relevant to the present Motion, it is important to note, that in arguing this "fact" to support CLAP's assertion that a bond is necessary, CLAP grossly misstates "facts". *See* Exhibit "B". CLAP's Opposition makes it appear that Bidsal distributed $500,500.00 only to himself, when in fact, the distributions were made *equally* between Bidsal and CLAP. *See* Exhibit "1" to the Affidavit of Benjamin Golshani. Further, the last time a distribution was made was October 7, 2019, *two months before* this Court confirmed the arbitrator's award. No distributions have been made since this Court entered its order confirming the arbitrator's award, and a stay would preserve that status quo.

Because even CLAP agrees that it will have to pay Bidsal over $1.5 million if the Arbitration Award is upheld, even if it is ultimately determined that the $500,500 in distributions should be repaid (an issue that was not part of the Arbitration Award), CLAP can deduct that amount from the payment to Bidsal.

6. No Viable Concerns Exist as to Warrant a Denial of the Motion to Stay.

As outlined above, none of the 'reasons' why the Motion for Stay should be denied have merit. We are here because CLAP did not want to sell, so CLAP's alleged concerns about not being able to sell are clearly fabricated. The fact that the first time in the past decade that Golshani has complained about Bidsal's management is in its Opposition demonstrates that there are no real concerns about Bidsal's management. CLAP's arguments regarding his ability to sell the underlying property underscores the need for the requested stay. CLAP's alleged concerns about liens against

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Bidsal's membership interest is nothing more than hyperbole as NRS 86.401 specifically prevents this scenario from ever occurring. And CLAP's arguments regarding the equal distributions made by Bidsal can easily be accounted for in the final payment from CLAP to Bidsal.

Because none of CLAP's arguments have merit, Bidsal's request for a stay should be granted.

B. CLAP'S 'CONDITIONS' ARE LIKEWISE WITHOUT MERIT AND SHOULD BE REJECTED.

CLAP next argues that, if the Court is inclined to grant the requested stay, that certain conditions should be imposed. However, once again, CLAP's arguments fail to pass muster. With the exception of the prohibition against further distributions, this Court should grant an unconditional stay.

1. Transferring Management Would Be Extremely Detrimental.

The first condition CLAP argues for is that management of the underlying property should be surrendered to CLAP. As is clear from the testimony presented during the arbitration, Golshani teamed up with Bidsal primarily because Golshani did not have any experience in owning and managing real property. A true and correct copy of excerpts from the Arbitration Transcript are attached hereto as ***Exhibit "C"*** and are incorporated herein by this reference. Additionally, although Golshani claims that property management has been his main occupation since 2015, that assertion is contradicted by a Statement of Information filed with the State of California Secretary of State for Noveltex, Inc. A true and correct copy of the Statement of Information is attached hereto as ***Exhibit "D"*** and is incorporated herein by this reference. The Statement of Information was filed on October 8, 2019 and shows that Golshani was the Chief Executive Officer, Secretary, Chief Financial Officer, Director, Registered Agent and President of Noveltex, Inc. a corporation whose business is trading and sales of fabric. *See* Exhibit "D".

Bidsal has been managing the underlying property for the past decade, not only without complaint from CLAP, but well enough to make regular distributions to its members. *See* Exhibit "1" to the Affidavit of Benjamin Golshani. Because Golshani lacks experience in managing commercial properties, combined with the fact that Bidsal has a long and successful history of doing so, this requirement would harm both parties. Likewise, CLAP's assertions that Bidsal is failing to properly

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manage the property is pure fiction; Bidsal has been and continues to be a diligent and successful manager of the property. *See* Exhibit "B".

In any event, management of the underlying properties is not one of the elements to be considered. This requested condition should be denied.

2. Prohibition Against Distributions.

CLAP next argues that there should be a prohibition imposed against making any distributions until the appeal is concluded. As Bidsal has already refrained from making any distributions since the Court confirmed the arbitration award, this is already happening. However, if the Court feels it would be appropriate to include this in the order, Bidsal is fine with this condition as he is already voluntarily abiding by it.

3. CLAP's Offset Condition Should be Summarily Rejected.

Pointing to arguments that were raised during the arbitration proceedings, but which have since been abandoned, CLAP argues that an offset should be established.

CLAP is, again, trying to create issues where none exist. There is nothing wrong with Bidsal raising some arguments during the arbitration proceeding, but not raising those arguments after the final Arbitration Award is rendered. This happens in virtually every case that is appealed in any form. Yet, CLAP points to this and attempts to make it appear that Bidsal is somehow acting inappropriately. Just like the extreme hypotheticals CLAP raised earlier, CLAP is making this argument not because it has merit, but solely because CLAP is desperate to paint Bidsal in as negative a light as possible.

In any event, Bidsal has been consistent in his position that any damages which CLAP is ultimately found to have incurred can easily be deducted from the more than $1.5 million that CLAP will ultimately be required to pay Bidsal should CLAP prevail on appeal and the fact that Bidsal made alternative arguments during the underlying arbitration is totally irrelevant to the present proceedings.

C. CLAP'S ARGUMENTS REGARDING THE BOND ARE LIKEWISE WITHOUT MERIT.

Recognizing that, even under the most favorable calculation, CLAP will owe Bidsal more than $1.5 million, and likewise recognizing that its damages should a stay be imposed, will amount to far

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less than the $1.5 million it will be required to pay Bidsal, CLAP goes back to its extreme hypotheticals in an attempt to inflate its potential damages.

Pointing to the "Great Recession"[4], an event which the International Monetary Funds concluded "was the most severe economic and financial meltdown since the Great Depression and is often regarded as the second-worst downturn of all time,"[4] CLAP argues that there is a risk that the underlying property could lose 60% of its value. However, losses of that magnitude had not occurred in the 75 years prior to 2008 and CLAP does not point to a single authority which predicts that such a drastic and dramatic downturn is likely to occur in the next two years. Further, given the fact that it had been over 75 years since the last financial meltdown that resulted in such dramatic downturn, combined with the fact that our economy has been extremely strong in the past 10 years, it is simply unreasonable to assume that the property will lose 60% of its value anytime in the next two years.

Consistent with the majority of the arguments CLAP raises in its Opposition, CLAP is attempting to sensationalize the issue by making unwarranted and extreme assumptions, then acting like the exaggerated scenarios have a high chance of actually occurring, when the exact opposite is true.

If the legal standard was that every possible scenario had to be accounted for, no matter how remote or unlikely, then no stay would ever be granted and, in the few scenarios where a stay was granted, the bond would be unrealistically high. Thankfully, the law requires the Court to weigh the actual risks, under realistic scenarios, when making its determination. *See e.g.*, McCulloch v. Jeakins, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983); Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); NRAP Rule 8(c). The fact that the best arguments CLAP could come up with as to why the stay should not be granted relies upon extreme and unlikely scenarios, relies upon irrelevant facts and issues, and relies upon risks that, under Nevada law, simply do not exist, speaks volumes about how little the risk actually is for CLAP if the requested stay is imposed.

D. WHEN WEIGHING THE ACTUAL RISKS, UNDER REALISTIC SCENARIOS, IT IS CLEAR THAT THE REQUESTED STAY SHOULD BE GRANTED.

[4] *See* https://en.wikipedia.org/wiki/Great_Recession, 02/06/2020 @ 3:30pm.

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As set forth in Bidsal's original motion, there are four factors for the Court to consider when deciding whether or not to issue a stay: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. Hansen, 116 Nev. at 657.

Nowhere in CLAP's opposition does CLAP address the first, second or fourth factors. CLAP focuses solely on the third factor, and as outlined above, relies solely upon extreme and unlikely scenarios and on scenarios which, under Nevada law, will never happen.

If, as is outlined in Bidsal's Motion, the Court considers the four factors under realistic scenarios, it becomes clear that the requested stay should be granted. Further, because any harm that CLAP will incur as a result of the stay will not exceed the $1.5 million that CLAP will be required to pay to Bidsal should CLAP prevail on appeal, for the reasons outlined in Bidsal's Motion, the requirement of a bond should be waived.

Dated this 11th day of February, 2020

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