

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

IN THE MATTER OF THE  
PETITION OF CLA PROPERTIES,  
LLC.

CLA PROPERTIES, LLC, a  
California limited liability company,

Appellant,

vs.

SHAWN BIDSAL, an individual,

Respondent.

Supreme Court No. 80831  
District Court Case No. A19-188  
Electronically Filed  
Apr 08 2020 09:16 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT**

**GENERAL INFORMATION**

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

**WARNING**

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents

will result in the delay of your appeal and may result in the imposition of sanctions.

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

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

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

Attorney: Louis E. Garfinkel, Esq. Telephone: (702) 673-1612  
Firm: LEVINE & GARFINKEL  
Address: 1671 W. Horizon Ridge Pkwy, Ste 230  
Henderson, NV 89012  
Clients: Appellant CLA Properties LLC

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

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

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

Attorney: Daniel Polsenberg, Esq. Telephone: (702) 318-5033  
Firm: LEWIS ROCA ROTHGERBER CHRISTIE, LLP  
Address: 3993 Howard Hughes Pkwy, Ste 600, Las Vegas, NV 89169  
Client(s): Respondent Shawn Bidsal

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal  |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim   |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify: _____)   |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification   |
| <input type="checkbox"/> Review of Agency determination     | <input checked="" type="checkbox"/> Other disposition (specify):<br><u>Motion for Attorney's Fees and</u><br><u>Costs</u> |

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: In The Matter Of The Petition Of CLA Properties, LLC, Nevada Supreme Court No. 80427.

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

*Name:* Bidsal v. CLA Properties, LLC

*Number:* 2:29-cv-00605-APG-BNW

*Court:* United State District Court, District of Nevada

*Date of Disposition:* June 24, 2019

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

*Nature of the action:* Appellant CLA Properties, LLC (“CLA”) and Respondent Shawn Bidsal (“Bidsal”) are members of Green Valley Commerce, LLC (“Green Valley”), a Nevada limited liability company. The Green Valley Operating Agreement contains a buy-sell provision. A dispute arose between Appellant CLA and Respondent Bidsal regarding the buy-sell provision in the Operating Agreement, and on September 26, 2017, Appellant CLA filed a demand for arbitration with JAMS in accordance with the Green Valley Operating Agreement. The arbitration was held on May 8-9, 2018, and on April 4, 2019, the Arbitrator, the Honorable Stephen Haberfeld, entered a Final Award (the “Award”) in favor of CLA. See Exhibit 1. Arbitrator Haberfeld found in favor of CLA with respect to the buy-sell dispute, and further awarded Appellant CLA attorney’s fees and costs in the amount of \$298,256.00.

On April 9, 2019, Respondent Bidsal filed a Motion to Vacate Arbitration Award in the United States District Court, District of Nevada, Case No. 2:19-cv-00506-APG-BNW. On June 24, 2019, the Federal District Court entered an Order dismissing the matter for lack of subject matter jurisdiction.

On May 21, 2019, Appellant CLA filed its Petition for Confirmation of Arbitration Award and Entry of Judgment with the Eighth Judicial District Court, In and For, Clark County, Nevada. On July 15, 2019, Respondent Bidsal filed his Opposition and Counter-Petition to Vacate Arbitration Award.

Appellant CLA filed in Federal District Court a motion for attorney’s fees for fees incurred in opposing Respondent Bidsal’s Motion to Vacate Arbitration Award. On March 16, 2020, the Federal District Court denied the motion on the grounds that it did not have jurisdiction, and could not award attorney’s fees and CLA could seek its fees in the state court litigation.

*Result:* On December 6, 2019, the District Court entered its Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent’s Opposition and Counter-Petition to Vacate the Arbitrator’s Award. The District Court confirmed the Award. A Notice of



Entry of the District Court's Judgment was served and filed on December 16, 2019. On January 3, 2020, Petitioner CLA filed its Motion for Attorney's Fees and Costs which was opposed by Respondent Bidsal. On March 5, 2020, the District Court entered its Order Denying Petitioner CLA Properties LLC's Motion for Attorney's Fees and Costs, and the Notice of Entry of the District Court's Order was served and filed on that same date. Appellant CLA is appealing the District Court's Order denying its Motion for Attorney's Fees and Costs.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary): Whether the District Court erred in denying Appellant CLA's Motion for Attorney's Fees and Costs.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised: N/A.
11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130? N/A.
12. **Other issues.** Does this appeal involve any of the following issues?
  - ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
  - ☐ An issue arising under the United States and/or Nevada Constitutions
  - ☐ A substantial issue of first impression
  - ☐ An issue of public policy
  - ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision
  - ☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance: N/A.
14. Trial. If this action proceeded to trial, how many days did the trial last? N/A.  
Was it a bench or jury trial? N/A.
15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

#### **TIMELINESS OF NOTICE OF APPEAL**

16. **Date of entry of written judgment or order appealed from:** March 5, 2020.

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

17. **Date of entry of written judgment or order appealed from:** March 5, 2020 and March 6, 2020.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)                      Date of filing: \_\_\_\_\_

☐ NRCP 52(b)                      Date of filing: \_\_\_\_\_

☐ NRCP 59                          Date of filing: \_\_\_\_\_

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

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

(c) Date written notice of entry of order resolving motion served \_\_\_\_\_.

Was service by:

☐ Delivery

☐ Mail/electronic/fax

19. **Date notice of appeal filed March 13, 2020**

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

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

#### **SUBSTANTIVE APPEALABILITY**

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

- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                    | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                    | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                    | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Default judgment                                 |                                       |
| <input checked="" type="checkbox"/> Other (specify): <u>NRAP 3A(b)(8)</u> |                                       |

Explain how each authority provides basis for appeal from the judgment or order: NRAP 3A(b)(8) provides the basis for this appeal because on March 5, 2020, the District Court entered its Order Denying CLA Properties, LLC's Motion for Attorney's Fees and Costs and such Order is a special order after judgment. See, Winston Products Co. v. Deboer, 122 Nev. 517, 525, 134 P.3d 726, 731 (2006).

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

(a) Parties:

Petitioner: CLA Properties LLC

Respondent: Shawn Bidsal

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

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

*Appellant's claims against Respondent:* CLA's Motion for Attorney's Fees and Costs which sought the sum of \$82,889.74 was denied by the District Court on March 5, 2020.

*Respondent's counterclaims against Appellant:* N/A.

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

☒ Yes

☐ No

25. **If you answered "No" to question 24, complete the following:**

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

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

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal

- Notices of entry for each attached order

### VERIFICATION

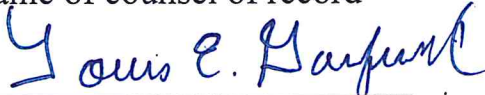
**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

CLA Properties LLC  
Name of appellant

April 8, 2020  
Date

Clark County, Nevada  
State and County where signed

Louis E. Garfinkel, Esq.  
Name of counsel of record

  
Signature of counsel of record

## **INDEX OF EXHIBITS**

- Exhibit “1” - May 21, 2019 Petition for Confirmation of Arbitrator’s Award and Entry of Judgment
- Exhibit “2” – December 16, 2019 Notice of Entry of Order Granting Petition For Confirmation of Arbitrator’s Award and Entry of Judgment and Denying Respondent’s Opposition and Countermotion to Vacate The Arbitrator’s Award
- Exhibit “3” – January 3, 2020 Petitioner CLA Properties, LLC’s Motion for Attorney’s Fees and Costs
- Exhibit “4” – January 3, 2020 Affidavit of Louis E. Garfinkel, Esq. in Support of CLA’s Properties, LLC’s Motion for Attorney’s Fees and Costs
- Exhibit “5” – January 3, 2020 Affidavit of Rodney T. Lewin, Esq. in Support of CLA Properties, LLC’s Motion for Attorney’s Fees and Costs
- Exhibit “6” – March 5, 2020 Order Denying Petitioner CLA Properties, LLC’s Motion for Attorney’s Fees and Costs
- Exhibit “7” – March 5, 2020 Notice of Entry of Order Denying Petitioner CLA Properties, LLC’s Motion for Attorney’s Fees and Costs
- Exhibit “8” – March 6, 2020 Amended Notice of Entry of Order Denying Petitioner CLA Properties, LLC’s Motion for Attorney’s Fees and Costs

## CERTIFICATE OF SERVICE

I certify that on the 8<sup>th</sup> of April, 2020, I served a copy of **DOCKETING STATEMENT** upon all counsel of record by electronic mail to the following address(es):

James E. Shapiro, Esq.  
SMITH & SHAPIRO, PLLC  
3333 E. Serene Ave, Suite 130  
Henderson, NV 89074  
Email: [jshapiro@smithshapiro.com](mailto:jshapiro@smithshapiro.com)  
*Attorneys for Shawn Bidsal*

Daniel Polsenberg, Esq.  
Abraham Smith, Esq.  
LEWIS ROCA ROTHGERBER CHRISTIE, LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Email: [dpolsenberg@lrrc.com](mailto:dpolsenberg@lrrc.com)  
Email: [asmith@lrrc.com](mailto:asmith@lrrc.com)  
*Attorneys for Shawn Bidsal*



---

Melanie Bruner, an employee of  
Levine & Garfinkel



**EXHIBIT “1”**

**EXHIBIT “1”**

*Steven D. Grierson*

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

1 PTNC  
2 Louis E. Garfinkel, Esq.  
3 Nevada Bar No. 3416  
4 LEVINE & GARFINKEL  
5 1671 W. Horizon Ridge Pkwy, Suite 230  
6 Henderson, NV 89012  
7 Tel: (702) 673-1612/Fax: (702) 735-2198  
8 Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)  
9 Attorneys for Petitioner CLA Properties, LLC

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CLA PROPERTIES LLC, a limited  
10 liability company,

11 Petitioner,

12 vs.

13 SHAWN BIDSAL, an individual,

14 Respondent.

Case No.:

Dept. No.:

**PETITION FOR CONFIRMATION OF  
ARBITRATION AWARD AND ENTRY OF  
JUDGMENT**

**HEARING REQUESTED**

16  
17 Petitioner, CLA Properties LLC ("CLA"), hereby petitions this Court for an order  
18 confirming the Arbitration award entered on April 5, 2019 (the "Award"), in JAMS Arbitration  
19 Number 1260004569, in favor of CLA and against Respondent, Shawn Bidsal ("Bidsal"). A copy  
20 of the Award is attached hereto as Exhibit "1".

21 DATED this 21<sup>st</sup> day of May, 2019.

22  
23 By:

LEVINE & GARFINKEL

*Louis E. Garfinkel*  
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](mailto:lgarfinkel@lgealaw.com)

Attorneys for Petitioner CLA Properties, LLC

1 PTNC  
Louis E. Garfinkel, Esq.  
2 Nevada Bar No. 3416  
LEVINE & GARFINKEL  
3 1671 W. Horizon Ridge Pkwy, Suite 230  
Henderson, NV 89012  
4 Tel: (702) 673-1612/Fax: (702) 735-2198  
Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)  
5 Attorneys for Petitioner CLA Properties, LLC

6  
7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CLA PROPERTIES LLC, a limited  
10 liability company,

11 Petitioner,

12 vs.

13 SHAWN BIDSAL, an individual,

14 Respondent.

Case No.:

Dept. No.:

**PETITION FOR CONFIRMATION OF  
ARBITRATION AWARD AND ENTRY OF  
JUDGMENT**

**HEARING REQUESTED**

15  
16  
17 Petitioner, CLA Properties LLC ("CLA"), hereby petitions this Court for an order  
18 confirming the Arbitration award entered on April 5, 2019 (the "Award"), in JAMS Arbitration  
19 Number 1260004569, in favor of CLA and against Respondent, Shawn Bidsal ("Bidsal"). A copy  
20 of the Award is attached hereto as Exhibit "1".

21 DATED this 21<sup>st</sup> day of May, 2019.

22 LEVINE & GARFINKEL

23 By: 

24 Louis E. Garfinkel, Esq.  
Nevada Bar No. 3416  
25 1671 W. Horizon Ridge Pkwy, Suite 230  
Henderson, NV 89012  
26 Tel: (702) 673-1612 / Fax: (702) 735-2198  
Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)  
27 Attorneys for Petitioner CLA Properties, LLC  
28

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

3 **I. PARTIES AND JURISDICTION**

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

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

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

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

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

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

18 The representative shall promptly meet in good faith effort to resolve the dispute.  
19 If the representatives do not agree upon a decision within thirty (30) calendar days  
20 after reference of the matter to them, any controversy, dispute or claim arising out  
21 of or relating in any way to this Agreement or the transaction arising hereunder  
22 shall be settled exclusively by arbitration in the City of Las Vegas, Nevada. Such  
23 arbitration shall be administered by JAMS in accordance with its then prevailing  
24 expedited rules, by one independent and impartial arbitrator selected in  
25 accordance with such rules. The arbitration shall be governed by the United  
26 States Arbitration Act, 9 U.S.C. § 1, *et seq.* . . . The award rendered by the  
27 arbitrator shall be final and not subject to judicial review and judgment thereon  
28 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

1 agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the  
2 court to enter judgment on an award . . . .” Pursuant to the Operating Agreement, the parties  
3 agreed to arbitrate any dispute in Las Vegas, Nevada.  
4

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

7 9. Stephen E. Haberfeld was appointed Arbitrator in JAMS Arbitration Number  
8 1260004569.

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

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

## 15 II. LEGAL ANALYSIS

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

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

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

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

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

1 Respondent Bidsal consistent with the Award.

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

3 a. Within ten (10) days of the issuance of the Award, Bidsal shall (A) transfer  
4 his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"),  
5 free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in  
6 accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating  
7 Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents  
8 (\$5,000,000.00) and, further, (B) execute any and all documents necessary or appropriate to  
9 effectuate such sale and transfer.

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

13 c. Bidsal shall take nothing by his Counterclaim.

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

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

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

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

25 a. Within ten (10) days of the Judgment, (A) transfer his fifty-percent (50%)  
26 Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all  
27 liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the  
28

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

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

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

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

12  
13 DATED this 21<sup>st</sup> day of May, 2019.

14  
15 LEVINE & GARFINKEL

16  
17 By: 

18 Louis E. Garfinkel, Esq.  
19 Nevada Bar No. 3416  
20 1671 W. Horizon Ridge Pkwy, Suite 230  
21 Henderson, NV 89012  
22 Tel: (702) 673-1612 / Fax: (702) 735-2198  
23 Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)  
24 *Attorneys for Petitioner CLA Properties, LLC*

**EXHIBIT "1"**

**EXHIBIT "1"**



IAMS ARBITRATION NO. 1260004569

CLA PROPERTIES, LLC,  
Claimant and Counter-Respondent,

vs.

SHAWN BIDSAL,  
Respondent and Counterclaimant.

FINAL AWARD

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

DETERMINATIONS

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

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

/////

I  
**JURISDICTION, PARTIES, AND MERITS ORDER NO. 1**

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

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

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

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

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

---

<sup>1</sup> 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."

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

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

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

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

## II FACTUAL CONTEXT

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

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

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

--- response to CLA's election --- Mr. Bidsal refused to sell his Green Valley membership interest to CLA based on his \$5 million valuation, and "invoke[d] his right to establish the FMV by appraisal,"<sup>3</sup> "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.

---

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

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

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

9. As amplified below, the parties' dispute and this arbitration have been a result and expression of "seller's remorse" by Mr. Bidsal --- after having initiated Section 4.2 procedures, of which he was the principal draftsman,<sup>5</sup> 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.

---

<sup>4</sup> 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.

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

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

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

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

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

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

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

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

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

13. That "specific intent" language is express, specific and could not be more clear as to these parties' objectively manifested "specific intent" to be so bound. Under governing Nevada law,<sup>6</sup> 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

---

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

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

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

"Q And does that -- does that language reflect your -- your then understanding of what the intent of this provision was?

"A Yes.

"Q And that was your understanding of what Mr. Golshani and Mr. Bidsal had wanted you to put in?

"A Yes.

"Q And it was your understanding that they had both --- that was what they both had agreed to, right?

"A Yes.

\*\*\* \*\*

"Q But the reason you put -- the reason that you put down a -- the reason you inserted the specific intent of the parties was to make sure there was no question about what the intent of the parties

was, right?

"A That was what I intend when I put language like 'specific intent,' yes."

5/9/2018 Hrg.Tr., at pp. 295:19-296:5, 297:4-10.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

and sale price of "the Membership Interest" which was the subject of the parties' Section 4.2-compliant offer and acceptance.<sup>7</sup>

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

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

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

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

---

<sup>7</sup> 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. <sup>8</sup> Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

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

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

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

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

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

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

---

<sup>8</sup> Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

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

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

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

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

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

#### IV

#### ATTORNEYS' FEES AND COSTS

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

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

26. The Arbitrator has carefully considered and weighed the evidence and other written submissions of the parties in connection with CLA's Section 14.1 attorneys' fees and costs application --- including weighing and consideration of the so-called Brunzell factors, under Nevada law<sup>9</sup> --- 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.<sup>10</sup>

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

---

<sup>9</sup> Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969) ("Brunzell").

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

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

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

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

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

---

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



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

The applicability of Nevada substantive law and the provision for a Nevada venue for the Merits Hearing evidentiary sessions does not require or, without more, persuade the Arbitrator that Las Vegas, Nevada rates should be a "cap" or "prevailing market" hourly rate for purposes of determining the reasonable attorney's fees of a Section 14.1 prevailing party in this arbitration. Mr. Bidsal has not cited any case so requiring or that Las Vegas is the sole relevant legal market, regardless, for determining reasonable hourly rates for legal services.<sup>12</sup> 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,<sup>13</sup> as were their billed hours of service, in the circumstances.<sup>14</sup> That is so notwithstanding the

---

<sup>12</sup> 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).

<sup>13</sup> The hourly rates of Messrs. Lewin and Agay are below comparable Southern California prevailing hourly rates for comparable legal services and relevant experience.

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

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

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

Both sides have waived any objection which they had or may have had to a more detailed (e.g., factor-by-factor) and/or full-bodied analysis or discussion of the Brunzell 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.<sup>15</sup>

////

---

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

<sup>15</sup> The 7th subparagraph of Paragraph 23 of the Interim Award, at p. 19 thereof, states as follows:

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

V  
RELIEF GRANTED AND DENIED

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

1. Within ten (10) days of the issuance of this Final Award, Respondent Sharam Bidsal also known as Shawn Bidsal ("Mr. Bidsal") shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to Claimant CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents (\$5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.
2. Mr. Bidsal shall take nothing by his Counterclaim.
3. As the prevailing party on the merits, CLA shall recover from Mr. Bidsal the sum and amount of \$298,256.00, as and for contractual attorneys' fees and costs reasonably incurred in connection with this arbitration.
4. Except as permitted under JAMS Comprehensive Arbitration Rule 24, neither side may file or serve any further written submissions, without the prior written permission of the Arbitrator. See JAMS Comprehensive Rule 29.
5. To the extent, if any, that there is any inconsistency and/or material variance between anything in this Final Award and the Interim Award, Merits Order No. 1 and/or any other prior order or ruling of the Arbitrator, this Final Award shall govern and prevail in each and every such instance.

/////

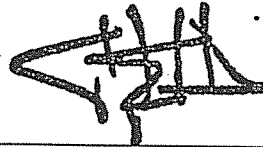
/////

/////

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

A handwritten signature in dark ink, appearing to read 'SEH', is written over a horizontal line.

STEPHEN E. HABERFELD  
Arbitrator

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

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

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


Rodney T. Lewin Esq.  
L/O Rodney T. Lewin  
8665 Wilshire Blvd.  
Suite 210  
Beverly Hills, CA 90211  
Phone: 310-659-6771  
rod@rtlewin.com  
Parties Represented:  
CLA Properties, LLC

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

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

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

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

  
\_\_\_\_\_  
Anne Lieu  
alieu@jamsadr.com

**EXHIBIT "2"**

**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, Shawni Bidsal formed the Company as a Nevada limited liability company by filing its Articles of Organization (the "Articles of Organization") pursuant to the Nevada Limited Liability Company Act, as Filing entity #E0308602011-0; and

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

### Article I.

#### DEFINITIONS

##### Section 01 Defined Terms

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

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

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

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

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

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

B.E. JB

**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.**

BG 10



The Limited Liability Company shall continuously maintain at its registered office, or at such other place as may be 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.

#### **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.

B.G. JB

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

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

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

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

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

#### **Section 06 Waiver of Notice.**

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

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

#### **Section 07 Presiding Officials.**

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

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

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

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

#### **Section 09 Business Which May Be Transacted at Special Meetings.**

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

#### **Section 10 Quorum.**

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

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

#### **Section 11 Proxies.**

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

#### **Section 12 Voting.**

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

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

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

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

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

- (A) Alter the Preferred Allocations provided for in *Exhibit "B"*;
- (B) Agree to continue the business of the Company after a Dissolution Event;
- (C) Approve any loan to any Manager or any guarantee of a Manager's obligations; and
- (D) Authorize or approve a fundamental change in the business of the Company.
- (E) Approve a sale of substantially all of the assets of the Company.
- (F) Approve a change in the number of Managers or replace a Manager or engage a new Manager.

#### **Section 13 Meeting by Telephonic Conference or Similar Communications Equipment.**

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

#### **Section 14. Deadlock.**

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

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

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

#### Article IV. MANAGEMENT

##### Section 01 Management.

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

##### Section 02 Rights, Powers and Obligations of Management.

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

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

- (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.

BG  
PB

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.

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

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

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

#### **Section 4. Purchase or Sell Right among Members.**

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

#### **Section 4.1 Definitions**

Offering Member means the member who offers to purchase the Membership Interest(s) of the Remaining Member(s). "Remaining Members" means the Members who received an offer (from Offering Member) to sell their shares.

"COP" means "cost of purchase" as it specified in the escrow closing statement at the time of purchase of each property owned by the Company.

"Seller" means the Member that accepts the offer to sell his or its Membership Interest.

"FMV" means "fair market value" obtained as specified in section 4.2

#### **Section 4.2 Purchase or Sell Procedure.**

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



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.

$(FMV - COP) \times 0.5$  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.

$(FMV - COP) \times 0.5$  + 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.

B G P

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

### DISTRIBUTION OF PROFITS

#### **Section 03 Qualifications and Conditions.**

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

#### **Section 04 Record Date.**

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

#### **Section 05 Participation in Distribution of Profit.**

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

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

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

#### **Section 07 Date of Payment of Distribution of Profit.**

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

### **Article VI.**

### ISSUANCE OF MEMBERSHIP INTEREST CERTIFICATES

#### **Section 01 Issuance of Certificate of Interest.**

BE  
SP

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

#### Section 02 Transfer of Certificate of Interest.

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

#### Section 03 Lost, Stolen or Destroyed Certificates.

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

- (a) makes proof by affidavit, in form and substance satisfactory to the Management, that a previously issued Certificate has been lost, destroyed or stolen;
- (b) requests the issuance of a new Certificate before the Company has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (c) Satisfies any other reasonable requirements imposed by the Management.

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

### Article VII. AMENDMENTS

#### Section 01 Amendment of Articles of Organization.

B. E  
PB

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

**Section 02    Amendment, Etc. of Operating Agreement.**

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

**Article VIII.**

**COVENANTS WITH RESPECT TO, INDEBTEDNESS,  
OPERATIONS, AND FUNDAMENTAL CHANGES**

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

**Section 01    Title to Company Property.**

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

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

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

B G  
PB

**Article X.**  
**MISCELLANEOUS**

**a. Fiscal Year.**

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

**b. Financial Statements; Statements of Account.**

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

**c. Events Requiring Dissolution.**

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

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

BG  
JA

**d. Choice of Law.**

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

**e. Severability.**

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

**f. Successors and Assigns.**

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

**g. Non-waiver.**

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

**h. Captions.**

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

**i. Counterparts.**

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

**j. Definition of Words.**

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

**k. Membership.**

B E  
M

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.

*Handwritten initials: B C, JP*

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

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

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

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

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

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

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

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

B G PB



**ARTICLE XII**  
**INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION**

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

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

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

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

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

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

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

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

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

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

### ARTICLE XIII

#### Preparation of Agreement.

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

- (A) The Members have been advised by the Law Firm that a conflict of interest would exist among the Members and the Company as the Law Firm is representing the Company and not any individual members, and
- (B) The Members have been advised by the Law Firm to seek the advice of independent counsel; and
- (C) The Members have been represented by independent counsel or have had the opportunity to seek such representation; and
- (D) The Law Firm has not given any advice or made any representations to the Members with respect to any consequences of this Agreement; and
- (E) The Members have been advised that the terms and provisions of this Agreement may have tax consequences and the Members have been advised by the Law Firm to seek independent counsel with respect thereto; and
- (F) The Members have been represented by independent counsel or have had the opportunity to seek such representation with respect to the tax and other consequences of this Agreement.

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

Member:

Shawn Bidsal

Shawn Bidsal, Member

CLA Properties, LLC

by

Benjamin Golshani

Benjamin Golshani, Manager

Manager/Management:

Shawn Bidsal

Shawn Bidsal, Manager

Benjamin Golshani

Benjamin Golshani, Manager

B G  
AB

## 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

BC  
sp

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.

5

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

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

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

- 5.1.6 Loans If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code; or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.
- 5.1.7 Tax Credits Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members under subsection 2.1.1 hereof, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.
- 5.1.8 Change of Pro Rata Interests. Except as provided in subsections 2.1.6 and 2.1.7 hereof or as otherwise required by law, if the proportionate interests of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in section 2.1.1 during each such portion of the taxable year in question.
- 5.1.9 Effect of Special Allocations on Subsequent Allocations. Any special allocation of income or gain pursuant to subsections 2.1.3 or 2.1.4 hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.1 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 2.1 if such special allocations of income or gain under subsection 2.1.3 or 2.1.4 hereof had not occurred.
- 5.1.10 Nonrecourse and Recourse Debt. Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.7042(b)(4) of the

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

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

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

### 5.3 Tax Status and Returns.

- 5.3.1 Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.
- 5.3.2 The Manager(s) shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within one-hundred twenty (120) days after the end of each calendar year, the Manager(s) shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.
- 5.3.3 Unless otherwise provided by the Code or the Income Tax Regulations there under, the current Manager(s), or if no Manager(s) shall have been elected, the Member holding the largest Percentage Interest, or if the Percentage Interests be equal, any Member shall be deemed to be the "Tax Matters



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

## EXHIBIT B

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

### PREFERRED ALLOCATION AND DISTRIBUTION SCHEDULE

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

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

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

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

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

Losses shall be allocated according to Capital Accounts.

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

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

BC  
JP

## **EXHIBIT “2”**

## **EXHIBIT “2”**



1 **NEOJ**

2 Louis E. Garfinkel, Esq.

3 Nevada Bar No. 3416

4 LEVINE GARFINKEL & ECKERSLEY

5 1671 W. Horizon Ridge Pkwy, Suite 230

6 Henderson, NV 89012

7 Tel: (702) 673-1612

8 Fax: (702) 735-0198

9 Email: lgarfinkel@lgealaw.com

10 *Attorneys for Petitioner CLA Properties LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CLA PROPERTIES LLC, a limited liability  
14 company,

15 Petitioner,

16 vs.

17 SHAWN BIDSAL, an individual,

18 Respondent.

Case No.: A-19-795188-P

Dept.: 31

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

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

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

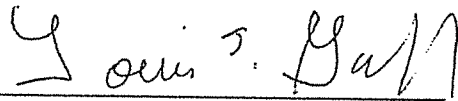
28 ///

1 Opposition and Counter-petition to Vacate the Arbitrator's Award, a copy of which is attached as Exhibit  
2 "1."

3 Dated this 16<sup>th</sup> day of December, 2019  
4

5 LEVINE & GARFINKEL

6  
7 By:

  
8 Louis E. Garfinkel, Esq. (Nevada Bar No. 3416)  
9 1671 W. Horizon Ridge Pkwy, Suite 230  
10 Henderson, NV 89012  
11 Tel: (702) 673-1612 / Fax: (702) 735-0198  
12 Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)  
13 *Attorneys for Petitioner CLA Properties LLC*  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

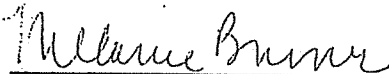
2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee  
3 of LEVINE & GARFINKEL, and that on the 16<sup>th</sup> day of December, 2019, I caused the  
4 foregoing NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR  
5 CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT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

8  
9 ☐ by placing a true and correct copy of the same to be deposited for mailing in the US Mail  
10 at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully  
11 prepaid; and/or

12 ☐ by hand delivery to the parties listed below; and/or

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

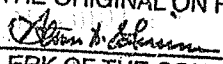
15 James E. Shapiro, Esq.  
16 Nevada Bar No. 7907  
17 Aimee M. Cannon, Esq.  
18 Nevada Bar No. 11780  
19 Smith & Shapiro, PLLC  
20 3333 E. Serene Ave, Suite 130  
21 Henderson, NV 89074  
22 T: (702) 318-5033/F: (702) 318-5034  
23 Email: [jshapiro@smithshapiro.com](mailto:jshapiro@smithshapiro.com)  
24 [acannon@smithshapiro.com](mailto:acannon@smithshapiro.com)  
25 Attorneys for Respondent Shawn Bidsal

26 

27 Melanie Bruner, an Employee of  
28 LEVINE & GARFINKEL

JAN 22 2020

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
CLERK OF THE COURT

**EXHIBIT “1”**

**EXHIBIT “1”**

*Steven D. Grierson*

1 ORDR

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 IN THE MATTER OF THE PETITION OF  
7 CLA PROPERTIES LLC

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

8 ORDER GRANTING PETITION FOR  
9 CONFIRMATION OF ARBITRATION  
10 AWARD AND ENTRY OF JUDGMENT  
11 AND DENYING RESPONDENT'S  
12 OPPOSITION AND  
13 COUNTERPETITION TO VACATE  
14 THE ARBITRATOR'S AWARD

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

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

24 I. PROCEDURAL AND FACTUAL BACKGROUND

25 CLA Properties, LLC (Petitioner or CLA) and Shawn Bidsal (Respondent or Mr.  
26 Bidsal) were the sole members of Green Valley, LLC (Green Valley), a Nevada limited  
27



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

4  
5 It is undisputed that Mr. Golshani on behalf of CLA, along with Respondent  
6 executed an Operating Agreement for Green Valley (Operating Agreement) on June 15,  
7 2011. Section 4 of Article 5 (Section 4) of the Operating Agreement contained  
8 provisions regarding how the membership interest of one member could be purchased  
9 and/or sold to the other member. The Operating Agreement allows members to initiate  
10 the purchase or sale of one member's interest by the other. These provisions were  
11 drafted by third party attorney, David LeGrand, and then were modifications made.  
12 More specifically, Section 4 allowed the offering member to buy out the remaining  
13 member at a price based upon a valuation of the fair market value of Green Valley. It is  
14 then that the remaining member is given the option to buy or sell pursuant to the  
15 valuation or demand an appraisal.  
16

17 Section 4 of Article V commences on page 10 and the relevant  
18 portions read as follows:  
19

20 **Section 4. Purchase or Sell Right among Members.**

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

24 **Section 4.1 Definitions.**

25 Offering Member means the member who offers to purchase the  
26 membership interest(s) of the Remaining Member(s). "Remaining  
27 members" means the Members who received an offer (from  
28 Offering Member) to sell their shares.

"COP" means the cost of purchase as it is specified in the  
escrow closing statement at the time of purchase of each  
property owned by the Company.

1 "Seller" means the Member that accepts the offer to sell his or its  
2 Membership Interest.

3 "FMV" means "fair market value" obtained as specified in section  
4 4.2

#### 5 Section 4.2 Purchase or Sell Procedure.

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

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

24 The Offering Member has the option to offer to purchase the  
25 Remaining Member's share at FMV as determined by Section  
26 4.2, based on the following formula.

27  $(FMV - COP) \times 0.5$  plus capital contribution of the Remaining  
28 Member(s) at the time of purchasing the property minus prorated  
liabilities.

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

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

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

1 refused to sell his interest to Petitioner and instead stated that he had a right to have a  
2 fair market value appraisal of his membership interest. The parties disputed whether  
3 the Operating Agreement provided that Respondent had a right to seek a fair market  
4 valuation of his interest or whether the Agreement provided that Respondent had to sell  
5 his share at the \$5 million dollar price.  
6

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

9 Article III, Section 14.1 of the Operating Agreement of Green Valley is entitled  
10 "Dispute Resolution" and contains an arbitration provision whereby the parties agreed  
11 the dispute would be resolved exclusively by arbitration. Section 14.1 states in  
12 pertinent part:  
13

14 The representative shall promptly meet in good faith effort  
15 to resolve the dispute.

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

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

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

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

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

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

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

3 The parties also litigated this matter in Federal Court. On April 9, 2019,  
4 Respondent filed a Motion to Vacate an Arbitration Award in United States District  
5 Court, District of Nevada. On April 25, 2019, Petitioner filed a Motion to Dismiss for  
6 Lack of Subject Matter Jurisdiction. On June 24, 2019, the United States District Court,  
7 District of Nevada, granted Petitioner's Motion to Dismiss because the case did not  
8 present a federal question. Petitioner filed the present action with the Court.  
9  
10

## 11 II. ANALYSIS

12 At the November 12, 2019 hearing, the parties agreed that this Court has  
13 jurisdiction to review the Arbitrator's Award pursuant to Nevada Revised Statute  
14 38.244(2). Moreover, the parties agreed the Court's decision to vacate the Award is.  
15 properly governed by United States Arbitration Act, 9 U.S.C. § 9. Respondent also  
16 analyzed the Motions pursuant to Nevada Revised Statute 38. The parties further  
17 agreed that regardless if the Court utilized the federal or state standard, the result would  
18 be the same. The dispute is whether the Court should affirm or vacate the Arbitrator's  
19 award.  
20  
21

22 Having reviewed the papers and pleadings on file herein, including, but not  
23 limited to, exhibits and affidavits; having heard oral arguments of the parties in excess  
24 of ninety minutes, the Court finds that the Arbitration award should be affirmed. The  
25 language of the Operating Agreement supports the decision of Arbitrator Haberfeld. (Ex.  
26 MM, App 1088). The Court finds that Arbitrator Haberfeld's analysis that the offering  
27  
28

1 member does not have a right to an appraisal in the instant scenario is supported by the  
2 language of the Operating Agreement and the testimony of the witnesses including that  
3 of David LeGrand as well as the other evidence presented.  
4

5 Although Respondent contends that the Arbitrator interpreted Section 4.2 of the  
6 Operating Agreement as a "forced buy-sell" agreement, the decision sets forth that the  
7 labeling of the Agreement was not the controlling factor, but instead it was the language  
8 of the Agreement as supported by the evidence presented at the Arbitration. The fact  
9 that the final provision in the Agreement was not the same language initially drafted by  
10 Mr. LeGrand has not been shown by Respondent to merit setting aside the Arbitrator's  
11 findings under either the federal or state standards. Further, the Arbitrator said that his  
12 decision would be the same, even if Mr. Golshani had been the draftsman. See, e.g.,  
13 17 of Ex. MM pg 9, APP 1088 at 1097. Thus, whether both parties modified the  
14 language in some respect or if Respondent's position is adopted that it was only Mr.  
15 Golshani, the outcome is the same—there was not sufficient evidence that the  
16 Arbitrator's decision should be vacated based on his interpretation of who drafted  
17 the provision.  
18

19 Further, while Respondent contends the Arbitrator exceeded his authority by  
20 ignoring the plain language definition of "FMV" (fair market value), as stated in the  
21 Operating Agreement, there is insufficient support or evidence to support that  
22 contention. Instead, Arbitrator's Haberfeld's decision clearly articulates the evidence he  
23 relied on in making his decision and he supported that decision to the extent necessary  
24 to have it affirmed both under state and federal law. While Respondent disagrees with  
25 the decision, he has not established pursuant to the plethora of case law cited in both  
26  
27  
28

1 party's briefs, that his disagreement merits vacating the award. Moreover, to the extent  
2 his decision was not as timely as the parties would have wished has not been shown to  
3 invalidate the decision. Accordingly, as Petitioner has met its burden to have the award  
4 affirmed and Respondent has not met his burden to vacate the award. Thus, the Court  
5 must affirm the Arbitrator's award in its entirety.  
6

7 ORDER  
8

9 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that pursuant to the  
10 Operating Agreement, 9 U.S.C. § 9 and Nevada Revised Statute 38.244(2),  
11 Petitioner's Confirmation of Arbitration Award and Entry of Judgement is GRANTED.  
12 Accordingly, the Court ORDERS Judgment in favor of Petitioner CLA Properties, LLC  
13 and against Respondent Shawn Bidsal in accordance with the Award, confirming that  
14 Bidsal shall take nothing by his Counterclaim and ordering Bidsal to:  
15


16 A. Within fourteen (14) days of the Judgment, (A) transfer his fifty percent  
17 (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free  
18 and clear of all liens and encumbrances, to CLA Properties, LLC, at a price  
19 computed in accordance with the contractual formula set forth in Section 4.2 of  
20 the Green Valley Operating Agreement, with the "FMV" portion of the formula  
21 fixed as Five Million Dollars and No Cents (\$5,000,000.00) and, further, (B)  
22 execute any and all documents necessary to effectuate such sale and transfer.  
23

24 B. Pay CLA as the prevailing party on the merits of the Arbitration  
25 Claim, the sum awarded by the Arbitrator. Specifically, CLA shall recover from  
26 Bidsal the sum and amount of \$298,256.00 plus interest from April 5, 2019 at the  
27  
28

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

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

Dated this 5<sup>th</sup> day of December, 2019.

  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE

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

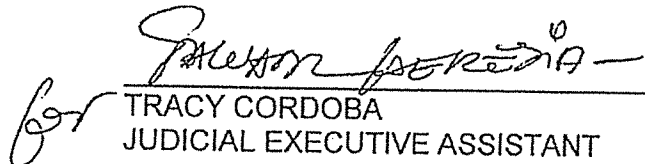


CERTIFICATE OF SERVICE

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

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

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

  
TRACY CORDOBA  
JUDICIAL EXECUTIVE ASSISTANT

**EXHIBIT “3”**

**EXHIBIT “3”**

*Steven D. Grierson*

1 **MAFC**  
2 Louis E. Garfinkel, Esq.  
3 Nevada Bar No. 3416  
4 **LEVINE & GARFINKEL**  
5 1671 W. Horizon Ridge Pkwy, Suite 230  
6 Henderson, NV 89012  
7 Tel: (702) 673-1612  
8 Fax: (702) 735-0198  
9 Email: lgarfinkel@lgealaw.com  
10 *Attorneys for Petitioner CLA Properties LLC*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 CLA PROPERTIES LLC, a limited liability  
14 company,

15 Petitioner,

16 vs.

17 SHAWN BIDSAL, an individual,

18 Respondent.

Case No.: A-19-795188-P

Dept.: 31

**PETITIONER CLA PROPERTIES,**  
**LLC'S MOTION FOR ATTORNEY'S**  
**FEES AND COSTS**

**HEARING REQUESTED**

19 Pursuant to NRCP 54(d) and NRS 38.243, Petitioner CLA Properties, LLC ("CLA")  
20 hereby moves the Court for an Order awarding it attorney's fees and costs.

21 This Motion is made and based on all the pleadings and papers on file herein, the  
22 attached Memorandum of Points and Authorities, the attached exhibits, the Affidavits of Rodney  
23 T. Lewin, Esq. and Louis E. Garfinkel, Esq., and any other such argument the Court may  
24 entertain.

25 Dated this 3rd day of January, 2020.

26 **LEVINE & GARFINKEL**

27 By:

28 *J-S. GM*  
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*

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**  
2 **ATTORNEY'S FEES AND COSTS**

3 The whole purpose of a buy-sell provision within an agreement along with an arbitration  
4 provision in case of a dispute is to enable a party to extricate himself quickly and easily from his  
5 relationship with another. This arbitration case began in September, 2017, and is still going on  
6 because of the conduct of Respondent Shawn Bidsal ("Bidsal").

7 **I.**

8 **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

9 **A. Underlying Agreement**

10 Bidsal is a resident of the State of California. Respondent CLA is a California limited  
11 liability company. The sole member of CLA is Benjamin Golshani who is a resident of the State  
12 of California.

13 Bidsal and CLA are members of Green Valley Commerce, LLC ("Green Valley"), a  
14 Nevada limited liability company. Attached as Exhibit "1" is a true and correct copy of the  
15 Operating Agreement of Green Valley which has an effective date of June 15, 2011 ("Operating  
16 Agreement").

17 Article III, Section 14.1, of the Operating Agreement is entitled "Dispute Resolution" and  
18 contains an arbitration clause along with an attorney's fee provision. Under Section 14.1, if a  
19 dispute arises, Bidsal and CLA are first required to mediate the dispute, but if the dispute is not  
20 resolved, the parties agree that the dispute will be resolved exclusively by arbitration. Section  
21 14.1 in relevant part states as follows:

22  
23 In the event of any dispute or disagreement between the Members as to the  
24 interpretation of any provision of this Agreement (or the performance of  
25 obligations hereunder), the matter, upon written request of either Party, shall be  
26 referred to representatives of the Parties for decision. The representatives shall  
27 promptly meet in a good faith effort to resolve the dispute. If the representatives  
28 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

1 be administered by JAMS in accordance with its then prevailing expedited rules,  
2 by one independent and impartial arbitrator selected in accordance with such  
3 rules. The arbitration shall be governed by the United States Arbitration Act, 9  
4 U.S.C. § 1, *et seq.* The fees and expenses of JAMS and the arbitrator shall be  
5 shared equally by the Members and advanced by them from time to time as  
6 required; provided that at the conclusion of the arbitration, the arbitrator shall  
7 award costs and expenses (including the costs of the arbitration previously  
8 advanced and the fees and expenses of attorneys, accountants and other experts)  
9 to the prevailing party. . . . The award rendered by the arbitrator shall be final and  
10 not subject to judicial review and judgment thereon may be entered in any court  
11 of competent jurisdiction. The decision of the arbitrator shall be in writing and  
12 shall set forth findings of fact and conclusions of law to the extent applicable.

13 See, Exhibit "1", pp. 7-8.

14 Article X, Section d, of the Operating Agreement contains a choice of law provision,  
15 which provides that in all respects the Operating Agreement is governed and construed with the  
16 laws of the State of Nevada. See, Exhibit "1", p. 16.

17 A dispute arose between Bidsal and CLA, and on September 26, 2017, CLA filed a  
18 Demand for Arbitration with JAMS in accordance with the Operating Agreement. The dispute  
19 involved the interpretation of the buy-sell provision contained in the Operating Agreement.

20 Intent on delaying for as long as possible, Bidsal moved to stay the Arbitration, which  
21 motion was denied. Ultimately, the Arbitration was held on May 8-9, 2018. At the Arbitration  
22 hearing, CLA was represented solely by California counsel, Rodney T. Lewin, of the Law  
23 Offices of Rodney T. Lewin, APC. Bidsal was represented both by his California and Nevada  
24 counsel. On April 4, 2019, the Arbitrator, the Honorable Steven Haberfield, entered a Final  
25 Award. Arbitrator Haberfield found in favor of CLA with respect to the buy-sell dispute, and  
26 further awarded CLA's attorney's fees and costs until then in the amount of \$298,256.00.  
27 Attached as Exhibit "2" is a true and correct copy of the Final Award entered by Arbitrator  
28 Haberfield.

#### 29 **B. Federal Waste of Time**

30 From the get-go, Bidsal has done everything in his power to destroy whatever usefulness  
31 arbitration has. Rather than complying with the Final Award, Bidsal on April 9, 2019 filed a  
32 Motion to Vacate Arbitration Award (the "Federal Motion") in the United States District Court,

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

Because the Federal Motion was in excess of twenty-four pages (in fact it was 34 pages), Bidsal then filed a Motion for Leave to File Motion in Excess of Twenty-Four Pages Re: Motion to Vacate Arbitration Award (the "Leave Motion").

Bidsal then filed an Appendix to the Federal Motion, consisting of six volumes.

In response to the Federal Motion, on April 15, 2019, CLA was served with the Summons, the Leave Motion and the Federal Motion.

On April 25, 2019, Defendant CLA filed its Motion to Dismiss for Lack of Subject Matter Jurisdiction (the "Motion to Dismiss").<sup>1</sup>

On May 1, 2019, Bidsal and CLA filed a Stipulation with the Federal Court agreeing to stay the Federal Motion and the Leave Motion pending a decision by that Court regarding the Motion to Dismiss, which stay was granted by the Court on May 2, 2019.

On May 13, 2019, Bidsal filed his Opposition to the Motion to Dismiss.

On May 13, 2019, Bidsal also filed his Motion to Remand to State Court (the "Remand Motion").

On May 20, 2019, CLA filed its Reply in Support of Motion to Dismiss.

On May 24, 2019, CLA filed its Opposition to Remand Motion.

On May 31, 2019, Bidsal filed his Reply in Support of Remand Motion.

On June 13, 2019, the Court entered an Order denying Bidsal's Remand Motion.

On June 24, 2019, the Court entered an Order granting CLA's Motion to Dismiss on grounds that the Court lacked subject matter jurisdiction, just as CLA had argued.

---

<sup>1</sup> This litigation should have never been filed in a 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 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. Nevertheless, CLA does not seek an award of fees in connection therewith—it has filed a separate motion for fees in the federal court.

1 On June 24, 2019, the Federal Clerk entered Judgment in favor of CLA and against  
2 Bidsal dismissing the matter for lack of subject matter jurisdiction.

3 C. Motion to Vacate, "Take Two"

4 Confident that the United States District Court would agree that it lacked jurisdiction,  
5 CLA filed its Petition for Confirmation of the Arbitration Award and Entry of Judgment in this  
6 Court on May 21, 2019.

7 Because of the pendency of Bidsal's frivolous federal action, on June 20, 2019 the  
8 parties here stipulated to stay this proceeding until the federal proceeding was completed (or  
9 altogether if the federal court had taken jurisdiction, which it did not). On June 24, 2019 the  
10 Federal District Court dismissed Bidsal's Federal Motion because of the lack of jurisdiction. On  
11 July 15, 2019, Bidsal filed its Opposition and Counter Petition to vacate the Arbitration Award,  
12 the second such motion, this time in this Court.

13 Bidsal's Opposition and Counter Petition was 39 pages. It included massive citations to  
14 the transcript of the arbitration hearing and approximately thirty citations of authority, each of  
15 which had to be read, digested, "key cited" and otherwise analyzed. Along with this Motion,  
16 Bidsal filed 6 Volumes of Exhibits **totaling 1,143 pages**. On August 5, 2019, CLA filed its 39  
17 page Memorandum of Points and Authorities in Support of its Petition and Opposition to the  
18 Counter Petition to Vacate. It responded to the points raised in Bidsal's 39 pages. On August  
19 26, 2019, Bidsal filed its 30 page Reply Memorandum, requiring careful analysis in preparation  
20 for oral argument.

21 Finally, on December 6, 2019, this Court granted CLA's Petition for Confirmation of the  
22 Arbitration Award and Entry of Judgment and denied Bidsal's latest attempt to Motion to Vacate  
23 the Award, his latest attempt to scuttle the arbitration agreement.

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II.

ARGUMENT

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

1. Applicable Law Regarding Attorney's Fees - NRS 38.243

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.

2. Basis for an Award of Attorney's Fees.

On December 6, 2019, the Court entered an Order granting Defendant CLA's Motion to Confirm Arbitration Award and Entry of Judgment and denying Bidsal's Motion to Vacate that Award. As such, Defendant CLA is a prevailing party. 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 quoted above 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. Based on Section 14.1, CLA, as a prevailing party, is entitled to an award of attorney's fees under the Operating Agreement.

CLA is also entitled to an award of attorney's fees under Nevada law. NRS Chapter 38



1 governs mediation and arbitration under Nevada law. NRS 38.243 allows the court after  
2 entering an order confirming, vacating, modifying or correcting an award, to award a prevailing  
3 party reasonable fees and other expenses incurred in the proceedings after the award is made.

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

6 **3. CLA is Entitled To Award of Attorney's Fees In The Amount of \$ 87,174.81.**

7 As the Arbitration Award in Footnote 2 confirms, "the evidentiary sessions of the Merits  
8 Hearing were held in Las Vegas, Nevada, at the insistence of Mr. Bidsal, notwithstanding that  
9 the individual principals (including Mr. Bidsal), CLA's lead counsel and the Arbitrator are  
10 residents of Southern California." In fact, as above noted, only CLA's California "lead counsel"  
11 attended the hearings on May 8 and May 9, 2018.

12 The work in this proceeding required the joint effort of CLA's California counsel, the  
13 Law Offices of Rodney T. Lewin, APC, and its Nevada counsel, Louis Garfinkel, Esq. Having  
14 been the only CLA attorney attending the arbitration hearing, the Lewin Office was uniquely  
15 able to present what took place at that hearing and how, why and where the transcript thereof  
16 supported the Final Award, and respond to Bidsal's assertions relating to the hearing. On the  
17 other hand, CLA had to rely on Nevada law and procedure in this Court and thus had to also use  
18 its Nevada counsel. The lion's share of the work in drafting the pleadings to obtain  
19 confirmation of the Final Award in this proceeding and defeating Bidsal's Counter Petition to  
20 Vacate the Award was performed by the Lewin firm (lead counsel) because of its familiarity  
21 with the arbitration proceedings, and by necessity reviewed by Louis Garfinkel, local counsel  
22 and attorney of record in this proceeding who also argued the motion at the hearing.

23 The time incurred by Louis Garfinkel, Esq. and the fees paid to him for such time are set  
24 forth in his Affidavit and the time incurred by the Law Offices of Rodney T. Lewin and the fees  
25 and costs paid to that firm are set forth in the Affidavit of Rodney T. Lewin, Esq.,

26 **III.**

27 **FACTORS TO BE CONSIDERED**

28 As stated in *Bunzell v. Golden Gate National Bank*, 85 Nev. 345,348, 455P.3d 31 (1969),

1  
2 "[T]he well-known basic elements to be considered in determining the  
3 reasonable value of an attorney's services... may be classified under four general  
4 headings (1) the qualities of the advocate: his ability, his training, education,  
5 experience, professional standing and skill; (2) the character of the work to be  
6 done: its difficulty; its intricacy, its importance, time and skill required, the  
7 responsibility imposed on the prominence and character of the parties where they  
8 affect the importance of the litigation; (3) the work actually performed by the  
9 lawyer: the skill, time and attention given to the work; (4) the result: whether  
10 the attorney was successful and what benefits were derived.

11 The time incurred by CLA's counsel was neither any more than nor less than that  
12 required, much of which necessitated by the conduct of Bidsal's counsel. Applying the *Brunzell*  
13 factors, the fees sought by CLA are reasonable and justified. The first *Brunzell* factor is the  
14 qualities of the advocate, including ability, training, education, experience, professional standing  
15 and skill. As "trial" counsel the services of Rodney T. Lewin's firm was essential. Rodney  
16 Lewin, Esq. has been practicing business and real estate law since 1976 (43 years) and has had  
17 his own firm since 1981. Mr. Lewin's hourly rate, which was not increased during the case, is  
18 \$475.00 per hour which is below the hourly rates of qualified attorneys in the Los Angeles  
19 community. Richard Agay, Esq., of counsel to the Lewin firm, has been practicing law since  
20 1957 (62 years), and was originally with the prominent Beverly Hills law firm Cooper Epstein &  
21 Hurwitz. Mr. Agay was also the prevailing counsel before the Supreme Court and the creation of  
22 the so-called "Comden" rule, *Comden v. Superior Court* 20 Cal.3d 906 (1978). He was also trial  
23 counsel and appellate counsel in *Young v. Rosenthal*, 212 Cal.App.3d 96 (1989) which, when  
24 issued, was at the time in a published decision the highest award for frivolous appeal in favor of  
25 responding party. Mr. Agay's hourly rate of \$395.00 an hour is *far below* the hourly rate of  
26 similarly qualified and skilled attorneys in the Los Angeles community with similar experience  
27 and qualifications. Michael Lavaee, Esq. is also of counsel to the Lewin firm. He has been in  
28 practice for ten years and his billed rate is \$265/hour (which is discounted from his normal  
hourly rate of \$350.00+ per hour).

1 Louis Garfinkel, Esq. (Las Vegas counsel) has been licensed to practice law in the State  
2 of Nevada since 1988 (31 years). He started practicing law with the prominent firm of Lionel  
3 Sawyer & Collins and in 1997 started his own firm. His normal and customary hourly billing  
4 rate of \$375.00 per hour is well within or below customary market rates for Las Vegas attorneys.  
5

6 The second *Brunzell* factor is the character of the work to be performed including  
7 difficulty, intricacy, importance, time, and skill required, and responsibility imposed and the  
8 prominence and character of the parties where they affect the importance of the litigation. It was  
9 Bidsal who created the need for much of the review, analysis and work that needed to be done in  
10 order to oppose to obtain court judgment confirming the Final Award in order to enforce it and to  
11 oppose his claims in attempt to prevent same. We above have summarized what this has  
12 entailed.  
13

14 As more specifically laid out in Mr. Lewin's Affidavit, both Mr. Lewin and Mr. Agay did  
15 extensive work in this matter. In this proceeding it was extended because of Bidsal's Opposition  
16 and Counter Petition which in some instances mis-cited and misquoted evidence, case authority  
17 and the Final Award which required CLA to carefully review Bidsal's petition and correct the  
18 record. More importantly, Mr. Bidsal virtually asked this Court to retry the arbitration case all  
19 over again. Now CLA readily acknowledges that that should not be permitted, but CLA hardly  
20 could be so cavalier as to ignore what Bidsal said. No, only a careless attorney would fail to at  
21 least briefly demonstrate why the Final Award was perfectly proper, and CLA's counsel chose  
22 not to be careless. For that surely, CLA should not be punished by failing to award the fees  
23 which Bidsal caused to be incurred.  
24

25 It should also be noted that the Lewin firm, in addition to a substantial amount of time  
26 recorded as "**no charge**" (see billing statements, Exhibit A to Lewin Affidavit), from time to  
27 time provided reductions (credits) in the billing for CLA which on the time charged for this  
28

1 proceeding through November, 2019 is \$6,864.54 and should serve to nullify any possible claims  
2 by Bidsal of duplication or overlap.

3 This being a Nevada proceeding, Mr. Garfinkel's time was even more necessary.

4 The third *Brunzell* factor is the work performed by the lawyer including skill, time, and  
5 attention given to work. The accompanying Affidavits of Rodney Lewin, Esq. and Louis  
6 Garfinkel, Esq. provide extensive details of the work performed in this case, including detailing  
7 some of the work, not all, that was caused by **Mr. Bidsal's insistence on pursuing a scorched**  
8 **earth litigation strategy.**

9 The last *Brunzell* factor is the result and whether the attorney was successful and what  
10 benefits were derived. There is no question that CLA was successful.

11 In this procedure up through November, the total time spent and charged to client (in  
12 hours) was by Rodney T. Lewin, Esq. 19.45, Richard Agay, Esq. 19.45 hours, Michael Lavaee,  
13 Esq. 13.85, and by legal assistants Jack Margolin, 28, and Ronald Faulk 0.66. In December in  
14 this proceeding Mr. Lewin spent 2.5 hours and Mr. Agay spent 17.1 hours. The time spent by  
15 Louis Garfinkel, Esq. in this proceeding was 53 hours which also includes time spent by him in  
16 December including that to prepare this motion and his affidavit. The total charged (or for  
17 December to be charged) for time and costs in this proceeding is \$72,174.81. We shall provide  
18 supplemental Affidavit regarding January time and for reply to any opposition and hearing, but  
19 estimate that will amount to \$15,000.00 more for an estimate of a total of \$87,174.81.

20 ///

21 ///

22 ///

23 ///

24 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IV.

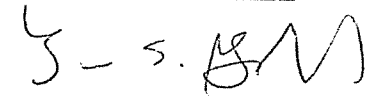
CONCLUSION

For the above and foregoing reasons, CLA's Motion for Attorney's Fees and Costs should be granted. Petitioner CLA should be awarded attorney's fees and costs in the amount of \$ 87,174.81.

Dated this 3rd day of January, 2020.

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](mailto:lgarfinkel@lgealaw.com)  
*Attorneys for Petitioner CLA Properties LLC*

**CERTIFICATE OF SERVICE**

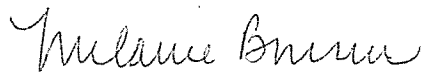
Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of LEVINE & GARFINKEL, and that on the 3<sup>rd</sup> day of January, 2020, I caused the foregoing **PETITIONER CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS:**

☐ 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

☒ 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](mailto:jshapiro@smithshapiro.com)  
[acannon@smithshapiro.com](mailto:acannon@smithshapiro.com)  
*Attorneys for Respondent Shawn Bidsal*



Melanie Bruner, an Employee of  
LEVINE & GARFINKEL

**EXHIBIT “1”**

**EXHIBIT “1”**

## OPERATING AGREEMENT

Of

Green Valley Commerce, LLC  
A Nevada limited liability company

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

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

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

### Article I.

#### DEFINITIONS

##### Section 01 Defined Terms

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

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

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

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

Limited Liability Company shall be deemed to mean Green Valley Commerce, LLC a Nevada Limited Liability Company organized pursuant to 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.

B.E. JB



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.

BC 10

The Limited Liability Company shall continuously maintain at its registered office, or at such other place as may be 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.

**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.

B.G. JB

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

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

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

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

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

#### Section 06 Waiver of Notice.

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

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

#### Section 07 Presiding Officials.

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

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

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

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

#### Section 09 Business Which May Be Transacted at Special Meetings.

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

#### Section 10 Quorum.

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

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

#### Section 11 Proxies.

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

#### Section 12 Voting.

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

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

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

B G 28

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

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

- (A) Alter the Preferred Allocations provided for in *Exhibit "B"*;
- (B) Agree to continue the business of the Company after a Dissolution Event;
- (C) Approve any loan to any Manager or any guarantee of a Manager's obligations; and
- (D) Authorize or approve a fundamental change in the business of the Company.
- (E) Approve a sale of substantially all of the assets of the Company.
- (F) Approve a change in the number of Managers or replace a Manager or engage a new Manager.

#### Section 13 Meeting by Telephonic Conference or Similar Communications Equipment.

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

#### Section 14. Deadlock.

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

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

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

#### Article IV. MANAGEMENT

##### Section 01 Management.

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

##### Section 02 Rights, Powers and Obligations of Management.

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

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

- (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.

BG  
PB



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.

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

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

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

## **Section 4. Purchase or Sell Right among Members.**

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

### **Section 4.1 Definitions**

Offering Member means the member who offers to purchase the Membership Interest(s) of the Remaining Member(s). "Remaining Members" means the Members who received an offer (from Offering Member) to sell their shares.

"COP" means "cost of purchase" as it specified in the escrow closing statement at the time of purchase of each property owned by the Company.

"Seller" means the Member that accepts the offer to sell his or its Membership Interest.

"FMV" means "fair market value" obtained as specified in section 4.2

### **Section 4.2 Purchase or Sell Procedure.**

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

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.

$(FMV - GOP) \times 0.5$  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.

$(FMV - GOP) \times 0.5$  + 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.

B G P

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

### DISTRIBUTION OF PROFITS

#### Section 03 Qualifications and Conditions.

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

#### Section 04 Record Date.

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

#### Section 05 Participation in Distribution of Profit.

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

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

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

#### Section 07 Date of Payment of Distribution of Profit.

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

### Article VI.

### ISSUANCE OF MEMBERSHIP INTEREST CERTIFICATES

#### Section 01 Issuance of Certificate of Interest.

BC  
JP

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

#### Section 02 Transfer of Certificate of Interest.

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

#### Section 03 Lost, Stolen or Destroyed Certificates.

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

- (a) makes proof by affidavit, in form and substance satisfactory to the Management, that a previously issued Certificate has been lost, destroyed or stolen;
- (b) requests the issuance of a new Certificate before the Company has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (c) Satisfies any other reasonable requirements imposed by the Management.

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

### Article VII. AMENDMENTS

#### Section 01 Amendment of Articles of Organization.

B. B.  
PB

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

**Section 02 Amendment, Etc. of Operating Agreement.**

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

**Article VIII.**

**COVENANTS WITH RESPECT TO; INDEBTEDNESS,  
OPERATIONS, AND FUNDAMENTAL CHANGES**

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

**Section 01 Title to Company Property.**

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

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

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

B G  
PD

**Article X.**  
**MISCELLANEOUS**

**a. Fiscal Year.**

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

**b. Financial Statements; Statements of Account.**

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

**c. Events Requiring Dissolution.**

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

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

B G  
JP

d. Choice of Law.

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

e. Severability.

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

f. Successors and Assigns.

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

g. Non-waiver.

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

h. Captions.

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

i. Counterparts.

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

j. Definition of Words.

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

k. Membership.

B G  
24

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.

8 G  
PA



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

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

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

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

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

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

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

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

**ARTICLE XII**  
**INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION**

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

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

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

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

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

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

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

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

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

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

### ARTICLE XIII

#### Preparation of Agreement.

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

- (A) The Members have been advised by the Law Firm that a conflict of interest would exist among the Members and the Company as the Law Firm is representing the Company and not any individual members, and
- (B) The Members have been advised by the Law Firm to seek the advice of independent counsel; and
- (C) The Members have been represented by independent counsel or have had the opportunity to seek such representation; and
- (D) The Law Firm has not given any advice or made any representations to the Members with respect to any consequences of this Agreement; and
- (E) The Members have been advised that the terms and provisions of this Agreement may have tax consequences and the Members have been advised by the Law Firm to seek independent counsel with respect thereto; and
- (F) The Members have been represented by independent counsel or have had the opportunity to seek such representation with respect to the tax and other consequences of this Agreement.

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

B G 77

Member:

Shawn Bidsal

Shawn Bidsal, Member

CLA Properties, LLC

by Benjamin Golshani

Benjamin Golshani, Manager

Manager/Management:

Shawn Bidsal

Shawn Bidsal, Manager

Benjamin Golshani

Benjamin Golshani, Manager

BG 20

## 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

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,

5

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

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

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

- 5.1.6 Loans If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code; or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.
- 5.1.7 Tax Credits Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members under subsection 2.1.1 hereof, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.
- 5.1.8 Change of Pro Rata Interests. Except as provided in subsections 2.1.6 and 2.1.7 hereof or as otherwise required by law, if the proportionate interests of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in section 2.1.1 during each such portion of the taxable year in question.
- 5.1.9 Effect of Special Allocations on Subsequent Allocations. Any special allocation of income or gain pursuant to subsections 2.1.3 or 2.1.4 hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.1 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 2.1 if such special allocations of income or gain under subsection 2.1.3 or 2.1.4 hereof had not occurred.
- 5.1.10 Nonrecourse and Recourse Debt. Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.7042(b)(4) of the



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

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

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

5.3 Tax Status and Returns.

- 5.3.1 Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.
- 5.3.2 The Manager(s) shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within one-hundred twenty (120) days after the end of each calendar year, the Manager(s) shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.
- 5.3.3 Unless otherwise provided by the Code or the Income Tax Regulations there under, the current Manager(s), or if no Manager(s) shall have been elected, the Member holding the largest Percentage Interest, or if the Percentage Interests be equal, any Member shall be deemed to be the "Tax Matters

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

## EXHIBIT B

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

### PREFERRED ALLOCATION AND DISTRIBUTION SCHEDULE

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

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

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

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

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

Losses shall be allocated according to Capital Accounts.

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

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

BE  
JP

**EXHIBIT “2”**

**EXHIBIT “2”**

IAMS ARBITRATION NO. 1260004569

CLA PROPERTIES, LLC,  
Claimant and Counter-Respondent,

vs.

SHAWN BIDSAL,  
Respondent and Counterclaimant.

FINAL AWARD

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

DETERMINATIONS

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

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

/////

I  
JURISDICTION, PARTIES, AND MERITS ORDER NO. 1

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

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

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

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

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

---

<sup>1</sup> 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."

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

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

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

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

## II FACTUAL CONTEXT

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

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

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

--- response to CLA's election --- Mr. Bidsal refused to sell his Green Valley membership interest to CLA based on his \$5 million valuation, and "invoke[d] his right to establish the FMV by appraisal,"<sup>3</sup> "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.

---

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



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

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

9. As amplified below, the parties' dispute and this arbitration have been a result and expression of "seller's remorse" by Mr. Bidsal --- after having initiated Section 4.2 procedures, of which he was the principal draftsman,<sup>5</sup> 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.

---

<sup>4</sup> 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.

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

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

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

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

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

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

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

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

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

13. That "specific intent" language is express, specific and could not be more clear as to these parties' objectively manifested "specific intent" to be so bound. Under governing Nevada law,<sup>6</sup> 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

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

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

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

"Q And does that -- does that language reflect your -- your then understanding of what the intent of this provision was?

"A Yes.

"Q And that was your understanding of what Mr. Golshani and Mr. Bidsal had wanted you to put in?

"A Yes.

"Q And it was your understanding that they had both --- that was what they both had agreed to, right?

"A Yes.

\*\*\* \*\*

"Q But the reason you put -- the reason that you put down a -- the reason you inserted the specific intent of the parties was to make sure there was no question about what the intent of the parties was, right?

"A That was what I intend when I put language like 'specific intent,' yes."

5/9/2018 Hrg.Tr., at pp. 295:19-296:5, 297:4-10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and sale price of "the Membership Interest" which was the subject of the parties' Section 4.2-compliant offer and acceptance.<sup>7</sup>

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

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

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

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

---

<sup>7</sup> 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. <sup>8</sup> Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.



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

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

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

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

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

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

---

<sup>8</sup> Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

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

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

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

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

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

#### IV

#### ATTORNEYS' FEES AND COSTS

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

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

26. The Arbitrator has carefully considered and weighed the evidence and other written submissions of the parties in connection with CLA's Section 14.1 attorneys' fees and costs application --- including weighing and consideration of the so-called Brunzell factors, under Nevada law<sup>9</sup> --- 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.<sup>10</sup>

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

---

<sup>9</sup> Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969) ("Brunzell").

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

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

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

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

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

---

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

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

The applicability of Nevada substantive law and the provision for a Nevada venue for the Merits Hearing evidentiary sessions does not require or, without more, persuade the Arbitrator that Las Vegas, Nevada rates should be a "cap" or "prevailing market" hourly rate for purposes of determining the reasonable attorney's fees of a Section 14.1 prevailing party in this arbitration. Mr. Bidsal has not cited any case so requiring or that Las Vegas is the sole relevant legal market, regardless, for determining reasonable hourly rates for legal services.<sup>12</sup> 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,<sup>13</sup> as were their billed hours of service, in the circumstances.<sup>14</sup> That is so notwithstanding the

---

<sup>12</sup> 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).

<sup>13</sup> The hourly rates of Messrs. Lewin and Agay are below comparable Southern California prevailing hourly rates for comparable legal services and relevant experience.

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

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

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

Both sides have waived any objection which they had or may have had to a more detailed (e.g., factor-by-factor) and/or full-bodied analysis or discussion of the Brunzell 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.<sup>15</sup>

/////

---

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

<sup>15</sup> The 7th subparagraph of Paragraph 23 of the Interim Award, at p. 19 thereof, states as follows:

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

V  
RELIEF GRANTED AND DENIED

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

1. Within ten (10) days of the issuance of this Final Award, Respondent Sharam Bidsal also known as Shawn Bidsal ("Mr. Bidsal") shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to Claimant CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents (\$5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.
2. Mr. Bidsal shall take nothing by his Counterclaim.
3. As the prevailing party on the merits, CLA shall recover from Mr. Bidsal the sum and amount of \$298,256.00, as and for contractual attorneys' fees and costs reasonably incurred in connection with this arbitration.
4. Except as permitted under JAMS Comprehensive Arbitration Rule 24, neither side may file or serve any further written submissions, without the prior written permission of the Arbitrator. See JAMS Comprehensive Rule 29.
5. To the extent, if any, that there is any inconsistency and/or material variance between anything in this Final Award and the Interim Award, Merits Order No. 1 and/or any other prior order or ruling of the Arbitrator, this Final Award shall govern and prevail in each and every such instance.

/////

/////

/////

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.

A handwritten signature in black ink, appearing to read 'SEH', is written over a horizontal line.

STEPHEN E. HABERFELD

Arbitrator

Dated: April 5, 2019



PROOF OF SERVICE BY EMAIL & U.S. MAIL

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

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

Rodney T. Lewin Esq.  
L/O Rodney T. Lewin  
8665 Wilshire Blvd.  
Suite 210  
Beverly Hills, CA 90211  
Phone: 310-659-6771  
rod@rtlewin.com


Parties Represented:  
CLA Properties, LLC

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

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

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

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

  
Anne Lieu  
alieu@jamsadr.com

**EXHIBIT “4”**

**EXHIBIT “4”**



1 **ASAF**

2 Louis E. Garfinkel, Esq.

3 Nevada Bar No. 3416

4 **LEVINE & GARFINKEL**

5 1671 W. Horizon Ridge Pkwy, Suite 230

6 Henderson, NV 89012

7 Tel: (702) 673-1612

8 Fax: (702) 735-0198

9 Email: lgarfinkel@lgealaw.com

10 *Attorneys for Petitioner CLA Properties LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CLA PROPERTIES LLC, a limited liability  
14 company,

Case No.: A-19-795188-P

Dept.: 31

15 Petitioner,

16 vs.

17 SHAWN BIDSAL, an individual,

18 Respondent.

19 **AFFIDAVIT OF LOUIS E.**  
20 **GARFINKEL, ESQ. IN SUPPORT OF**  
21 **CLA PROPERTIES, LLC'S MOTION**  
22 **FOR ATTORNEY'S FEES AND**  
23 **COSTS**

24 STATE OF NEVADA )

25 COUNTY OF CLARK )

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

27 1. I am a partner of the law firm of Levine & Garfinkel. I have been licensed to  
28 practice law in the State of Nevada since 1988. I make this Affidavit in Support of CLA  
Properties, LLC's ("CLA") 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. As discussed above, I have been licensed to practice as an attorney in the State of  
Nevada since 1988. I was originally hired by the law firm of Lionel Sawyer & Collins and after

1 leaving that firm, I started my own firm. Since 1997, I have been affiliated with a series of small  
2 law firms. My principal area of practice is commercial litigation. My hourly rate in connection  
3 with this case is \$375.00 per hour, which based upon my experience and skill level, is customary  
4 or below customary rates within the Las Vegas area.

5 4. Petitioner CLA is a California limited liability company. The sole member of  
6 CLA is Benjamin Golshani, who is a resident of California.

7 5. Petitioner CLA and Respondent Shawn Bidsal ("Bidsal") are members of Green  
8 Valley Commerce, LLC ("Green Valley"), a Nevada limited liability company. Respondent  
9 Bidsal is a resident of the State of California. A dispute arose between Petitioner CLA and  
10 Respondent Bidsal over a buy-sell provision contained in the Green Valley Operating Agreement.

11 6. On or about September 26, 2017, CLA's California counsel, Rodney T. Lewin,  
12 Esq. of the Law Offices of Rodney T. Lewin, filed a Demand for Arbitration with JAMS' Las  
13 Vegas office in accordance with the Green Valley Operating Agreement (the "Nevada  
14 Arbitration").

15 7. I was retained as co-counsel in connection with the Nevada Arbitration.

16 8. The Nevada Arbitration was held on May 8-9, 2018. Mr. Lewin handled the  
17 arbitration. On April 4, 2019, the Honorable Stephen Haberfeld entered a Final Award in the  
18 Nevada Arbitration. Arbitrator Haberfeld found in favor of Petitioner CLA with respect to the  
19 buy-sell dispute, and further awarded Petitioner CLA attorney's fees and costs in the amount of  
20 \$298,256.00.

21 9. On April 9, 2019, Respondent Shawn Bidsal filed a Motion to Vacate Arbitrator's  
22 Award (the "Motion to Vacate") in the United States District Court, District of Nevada, Case No.  
23 2:19-cv-00605-APG-PAL (the "Federal Action").

24 10. On April 25, 2019, Petitioner CLA filed a Motion to Dismiss for Lack of Subject  
25 Jurisdiction (the "Motion to Dismiss") in the Federal Action. Petitioner CLA and Respondent  
26 Bidsal then filed a stipulation in the Federal Action agreeing to stay the Motion to Vacate pending  
27 a decision by the Court regarding the Motion to Dismiss.

28 11. Because Petitioner CLA firmly believed that the Federal Court did not have

1 subject matter jurisdiction, before the Court ruled on the Motion to Dismiss in the Federal Action,  
2 on May 21, 2019, Petitioner CLA filed its Petition for Confirmation of Arbitrator Award and  
3 Entry of Judgment with this Court.

4 12. After this action was filed, Petitioner CLA and Respondent Bidsal entered into a  
5 stipulation to stay the proceedings in this matter pending a ruling on the Motion to Dismiss in the  
6 Federal Action.

7 13. On June 3, 2019, the Court entered an Order in the Federal Action granting  
8 Petitioner CLA's Motion to Dismiss.

9 14. After the Federal Action was dismissed, Petitioner CLA and Respondent Bidsal  
10 fully briefed CLA's Petition to Confirm Arbitrator's Award and Entry of Judgment and Bidsal's  
11 Counter-Petition to Vacate Arbitrator's Award in this action.

12 15. After oral argument on the competing Petitions, on December 6, 2019, this Court  
13 entered its Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment  
14 and Denying Respondent's Opposition and Counter-Petition to Vacate the Arbitrator's Award.

15 16. Petitioner CLA now seeks an award of attorney's fees and costs incurred to  
16 confirm the Arbitrator's Final Award.

17 17. Attached as Exhibit "1" is Levine & Garfinkel's invoice to Petitioner CLA dated  
18 June 5, 2019. The invoice contains entries for services performed and costs incurred in  
19 connection with the Federal Action and this action. I have redacted entries and costs that pertain  
20 to the Federal Action and an entry that I believe to be privileged. I spent a total of 2.6 hours in  
21 connection with this lawsuit and the costs billed to the client were \$292.10. Petitioner CLA was  
22 billed a total of \$1,267.10 in connection with this case for this invoice.

23 18. Attached as Exhibit "2" is Levine & Garfinkel's invoice to Petitioner CLA dated  
24 July 3, 2019. This invoice contains entries for services performed in connection with the Federal  
25 Action and this action. I have redacted entries that pertain to the Federal Action. I spent a total  
26 of 2.2 hours in connection with this lawsuit, but only billed the client for 2.1 hours. Petitioner  
27 CLA was also given a courtesy discount of \$358.10. After applying the discount, Petitioner CLA  
28 was billed the sum of \$429.40 for legal services and \$3.50 for costs for this invoice.

1           19. Attached as Exhibit "3" is Levine & Garfinkel's invoice to Petitioner CLA dated  
2 August 6, 2019. This invoice contains entries for services performed in connection with the  
3 Federal Action and this action. I have redacted the entries that pertain to the Federal Action and  
4 an entry that I believe to be privileged. I spent a total of 5.9 hours in connection with this lawsuit  
5 on this invoice. Petitioner CLA was also given a courtesy discount of \$618.97. Applying the  
6 discount, Petitioner CLA was billed a total of \$1,593.75 for services performed for this invoice.

7           20. Attached as Exhibit "4" is Levine & Garfinkel's invoice to Petitioner CLA dated  
8 September 5, 2019. The invoice contains entries for services performed in connection with the  
9 Federal Action and this action. I have redacted entries that pertain to services performed in the  
10 Federal Action. I spent a total of 4.70 hours in connection with this lawsuit, but only billed the  
11 client for 4.50 hours. Petitioner CLA was also given a courtesy discount of \$347.50. Applying  
12 the discount, Petitioner CLA was billed a total of \$1,340.00 for services in connection with this  
13 lawsuit. The costs incurred in connection with this lawsuit for this invoice was \$28.00.

14           21. Attached as Exhibit "5" is Levine & Garfinkel's invoice to Petitioner CLA dated  
15 October, 3, 2019. I spent a total of 11.8 hours in connection with this lawsuit, but only charged  
16 the client for 11.5 hours of work. I also gave Petitioner CLA a courtesy discount of \$900.00.  
17 Petitioner CLA was billed the sum of \$3,412.50 for legal services. Petitioner CLA was also  
18 billed \$191.97 for costs incurred on this invoice.

19           22. Attached as Exhibit "6" is Levine & Garfinkel's invoice to Petitioner CLA dated  
20 November 6, 2019. I spent a total of 3.9 hours in connection with this lawsuit, but only billed the  
21 client for 1.6 hours. The total amount billed to Petitioner CLA for services was \$600.00. The  
22 costs incurred were \$81.80 for this invoice.

23           23. Attached as Exhibit "7" is Levine & Garfinkel's invoice to Petitioner CLA dated  
24 December 5, 2019. I performed a total of 10 hours in connection with this lawsuit. I gave  
25 Petitioner CLA a courtesy discount of \$750.00. The total amount billed to Petitioner CLA for  
26 services was \$3,000.00.

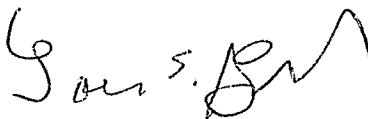
27           24. Levine & Garfinkel has not completed its invoice for services performed in  
28 connection with this matter during December 2019. However, I have reviewed my timesheets

1 and have spent 11.90 hours in connection with this matter. I have performed the following  
2 services: review of the Court's Order; telephone conferences with the client; telephone  
3 conferences with co-counsel; drafting and reviewing correspondence to and/or from the client and  
4 co-counsel; legal research regarding various issues; and preparation of the present motion and my  
5 affidavit in support of the motion.

6 25. I spent a total of 53 hours in connection with this matter on behalf of CLA.  
7 However, after CLA's courtesy discounts, CLA was and/or will be billed \$15,813.15 in attorney's  
8 fees for this matter. CLA was also billed for costs totaling \$596.37.

9 26. CLA is seeking a total of \$16,409.52 for attorney's fees and costs incurred by my  
10 firm in connection with this motion. The total fees and costs were actually and necessarily  
11 incurred and are reasonable.

12  
13 FURTHER AFFIANT SAYETH NAUGHT.

14  
15 

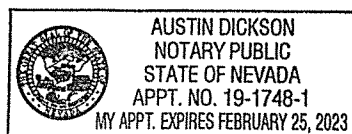
16 LOUIS E. GARFINKEL, Esq.

17 STATE OF NEVADA )  
18 )  
19 COUNTY OF CLARK )

20 SWORN TO AND SUBSCRIBED  
21 BEFORE me this 3<sup>rd</sup> day of January, 2020.

22   
23 NOTARY PUBLIC

24 My Commission Expires: 2-25-23



**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 3<sup>rd</sup> day of January, 2020, I caused the foregoing **AFFIDAVIT OF LOUIS E. GARFINKEL, 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

☒ 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](mailto:jshapiro@smithshapiro.com)  
[acannon@smithshapiro.com](mailto:acannon@smithshapiro.com)  
*Attorneys for Respondent Shawn Bidsal*

  
\_\_\_\_\_  
Melanie Bruner, an Employee of  
LEVINE & GARFINKEL



**EXHIBIT “1”**

**EXHIBIT “1”**

**LEVINE & GARFINKEL**  
1671 W. Horizon Ridge Pkway  
Suite 230  
Henderson, NV 89012  
Tax ID 56-2349556  
(702) 735-0451

Benjamin Golshani  
c/o Law Offices of Rodney T. Lewin  
Rod@rtlewin.com

June 05, 2019

*In Reference To: CLA PROPERTIES, LLC adv  
Shawn Bidsal*

**Account No.:** 35338.002

FOR PROFESSIONAL SERVICES

		Hours	Amount
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]
5/21/2019 LEG	Review and proof Petition for Confirmation of Arbitration Award; prepare exhibits to Petition; telephone conference with Rod Lewin; draft correspondence to Rod Lewin.	0.80	\$300.00
5/22/2019 LEG	Draft correspondence to Jim Shapiro; draft correspondence to Rod Lewin; review Notice of Hearing; draft correspondence to Rod Lewin; telephone conference with Court Clerk; draft correspondence to Rod Lewin.	0.30	\$112.50
5/23/2019 LEG	[REDACTED] telephone conference with Rod Lewin; draft correspondence to Rod Lewin; review correspondence; draft correspondence to Rod Lewin.	0.50	\$187.50
5/24/2019 LEG	Draft correspondence to Rod Lewin; review correspondence; draft correspondence to Rod Lewin; review correspondence; telephone conference with Rod Lewin; draft correspondence to Jim Shapiro.	0.20	\$75.00

CLA000 1

LEVINE GARFINKEL :

Benjamin Golshani

June 05, 2019  
Page 2

	<u>Hours</u>	<u>Amount</u>
5/28/2019 LEG Telephone conference with Jim Shapiro; telephone conference with Rod Lewin; review correspondence; draft correspondence to Rod Lewin.	0.30	\$112.50
5/29/2019 LEG Review correspondence; draft correspondence to Jim Shapiro; research [REDACTED] telephone conference with Rod Lewin.	0.50	\$187.50
5/30/2019 LEG Draft correspondence to Jim Shapiro; review correspondence.	0.10	\$37.50
TOTAL FOR NEW SERVICES	7.90	\$2,962.50
Additional Charges :		
	<u>Price</u>	
5/21/2019 Wiznet fee to Clark County District Court - Petition for Confirmation		281.60
Wiznet fee to Clark County District Court - Initial Appearance Fee Disclosure	281.60	
Wiznet fee to Clark County District Court - Summons	3.50	3.50
5/28/2019 Wiznet fee to Clark County District Court - Affidavit of Service	3.50	3.50
[REDACTED]	3.50	3.50
Total costs		\$395.60
TOTAL AMOUNT OF THIS BILL		\$3,358.10
PREVIOUS BALANCE		\$5,004.25
5/30/2019 Payment - thank you. Check No. Wire		(\$5,004.25)
Total adjustments (if applicable)		(\$5,004.25)
BALANCE DUE		\$3,358.10

To insure proper credit, please include the account number or copy of invoice with your payment.

CLA000 2

**EXHIBIT “2”**

**EXHIBIT “2”**

**LEVINE & GARFINKEL**  
1671 W. Horizon Ridge Pkway  
Suite 230  
Henderson, NV 89012  
Tax ID 56-2349556  
(702) 735-0451

Benjamin Golshani  
c/o Law Offices of Rodney T. Lewin  
Rod@rtlewin.com

July 03, 2019

In Reference To: **CLA PROPERTIES, LLC adv**  
**Shawn Bidsal**

Account No.: **35338.002**

**FOR PROFESSIONAL SERVICES**

	<u>Hours</u>	<u>Amount</u>
6/3/2019 LEG [REDACTED] draft correspondence to Rod Lewin; review correspondence; telephone conference with Jim Shapiro; draft correspondence to Rod Lewin.	0.40	\$150.00
6/6/2019 LEG Revision of Stipulation to Stay Proceedings; review correspondence; telephone conference with Rod Lewin; draft correspondence to Jim Shapiro.	0.30	\$112.50
6/7/2019 LEG Review correspondence and revision of Stipulation and Order.	0.10	NO CHARGE
6/11/2019 LEG Review correspondence; telephone conference with Rod Lewin; draft correspondence to Jim Shapiro; review correspondence; draft correspondence to Jim Shapiro.	0.20	\$75.00
6/12/2019 LEG Review revised Stipulation; draft correspondence to Jim Shapiro; review correspondence.	0.20	\$75.00
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
6/18/2019 LEG Draft correspondence to Jm Shapiro; review correspondence; review Order; draft correspondence to counsel.	0.20	\$75.00
6/20/2019 LEG Telephone conference with Rod Lewin.	0.20	\$75.00
6/24/2019 LEG Review Order and Judgment; telephone conference with Rod Lewin; draft Notice of Entry of Order and Judgment.	0.30	\$112.50
6/25/2019 LEG Revision of Notice of Entry of Order Granting Motion to Dismiss and Entry of Judgment; draft correspondence to Rod Lewin.	0.40	\$150.00
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
<b>TOTAL FOR NEW SERVICES</b>	<b>3.00</b>	<b>\$975.00</b>

LEVINE GARFINKEL

Benjamin Golshani

July 03, 2019  
Page 2

Additional Charges :

	<u>Price</u>	<u>Amount</u>
6/25/2019 Wiznet fee to Clark County District Court - Notice of Entry of Order		3.50
Total costs	3.50	<u>\$3.50</u>
TOTAL AMOUNT OF THIS BILL		<u>\$978.50</u>
PREVIOUS BALANCE		\$3,358.10
6/14/2019 Payment - thank you. Check No. WIRE		(\$3,000.00)
6/30/2019 Courtesy Discount per Louis E. Garfinkel, Esq.		<u>(\$358.10)</u>
Total adjustments (if applicable)		<u>(\$3,358.10)</u>
BALANCE DUE		<u><u>\$978.50</u></u>

To insure proper credit, please include the account number or copy of invoice with your payment.

**EXHIBIT “3”**

**EXHIBIT “3”**

**LEVINE & GARFINKEL**  
 1671 W. Horizon Ridge Pkway  
 Suite 230  
 Henderson, NV 89012  
 Tax ID 56-2349556  
 (702) 735-0451

Benjamin Golshani  
 c/o Law Offices of Rodney T. Lewin  
 Rod@rtlewin.com

August 06, 2019

In Reference To: **CLA PROPERTIES, LLC adv**  
**Shawn Bidsal**

Account No.: **35338.002**

FOR PROFESSIONAL SERVICES

		Hours	Amount
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
7/12/2019	LEG Draft correspondence to Jim Shapiro.	0.10	\$37.50
7/16/2019	LEG Review correspondence; telephone conference with Rod Lewin; Review and compare Motions to Vacate Arbitration Award; telephone conference with Rod Lewin.	0.60	\$225.00
7/17/2019	LEG Review Bidsal's opposition to petition for confirmation of arbitration award and counter opposition to vacate award; review arbitration award; telephone conference with Rod Lewin and Richard Agay; research [REDACTED] review correspondence.	1.80	\$675.00
7/18/2019	LEG Review correspondence; legal research regarding [REDACTED] telephone conference with Rod Lewin.	2.20	\$825.00
7/23/2019	LEG Review correspondence; telephone conference with Richard Agay; Telephone conference with Richard Agay; telephone conference with Judge's law clerk; telephone conference with Richard Agay; telephone conference with Rod Lewin; telephone conference with Rod Lewin; review Bidsal's Appendix..	1.20	\$450.00
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]



LEVINE GARFINKEL

Benjamin Golshani

August 06, 2019  
Page 2

	Hours	Amount
[REDACTED]	0.50	\$218.75
[REDACTED]	0.50	\$218.75
[REDACTED]	0.50	\$218.75
[REDACTED]	0.50	\$218.75
TOTAL FOR NEW SERVICES	16.50	\$6,187.50
PREVIOUS BALANCE		\$978.50
7/31/2019 Courtesy Discount per Louis E. Garfinkel, Esq.		(\$618.75)
Total adjustments (if applicable)		(\$618.75)
BALANCE DUE		\$6,547.25

Current	30 Days	60 Days	90 Days	120 Days
6,187.50	359.75	0.00	0.00	0.00

To insure proper credit, please include the account number or copy of invoice with your payment.

CLA000 6

**EXHIBIT “4”**

**EXHIBIT “4”**

**LEVINE & GARFINKEL**  
 1671 W. Horizon Ridge Pkway  
 Suite 230  
 Henderson, NV 89012  
 Tax ID 56-2349556  
 (702) 735-0451

Benjamin Golshani  
 c/o Law Offices of Rodney T. Lewin  
 Rod@rtlewin.com

September 05, 2019

In Reference To: **CLA PROPERTIES, LLC adv**  
**Shawn Bidsal**

Account No.: 35338.002

FOR PROFESSIONAL SERVICES

		Hours	Amount
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
8/5/2019 LEG	Review correspondence; review revisions to opposition to vacate arbitration award; telephone with Rod Lewin; telephone conference with Jack Liew; review appendix; telephone conference with Jack Liew; review revised draft of opposition; telephone conference with Rod Lewin; prepare opposition for filing.	1.90	\$712.50
8/12/2019 LEG	Telephone conference with Jim Shapiro regarding hearing.	0.10	NO CHARGE
8/13/2019 LEG	Review correspondence; draft correspondence to Jill Berghammer.	0.10	NO CHARGE
8/14/2019 LEG	Review correspondence from Jill Berghammer; review correspondence; draft multiple emails to Barb Lewin; review correspondence; draft multiple emails to Jill Berghammer; review correspondence; telephone conference with Ben Golshini; review correspondence; draft correspondence to Jill Berghammer; review correspondence.	0.40	\$150.00
8/26/2019 LEG	Review Bidsal's reply in support of counterclaim to vacate award.	0.30	\$112.50
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
8/29/2019 LEG	Prepare for argument on motion to confirm arbitrator's award.	1.70	\$637.50
8/30/2019 LEG	Telephone conference with Rod Lewin regarding hearing.	0.20	\$75.00
TOTAL FOR NEW SERVICES		9.00	\$3,300.00

LEVINE GARFINKEL

Benjamin Golshani

September 05, 2019

Page 2

Additional Charges :

	<u>Price</u>	<u>Amount</u>
8/5/2019 Wiznet fee to Clark County District Court - Appendix		3.50
Wiznet fee to Clark County District Court - Memorandum of Points	3.50	3.50
Wiznet fee to Clark County District Court - Exhibits	3.50	3.50
Wiznet fee to Clark County District Court - Exhibits Part 2	3.50	3.50
Wiznet fee to Clark County District Court - Exhibits Part 3	3.50	3.50
Wiznet fee to Clark County District Court - Exhibits Part 4	3.50	3.50
Wiznet fee to Clark County District Court - Exhibits Part 5	3.50	3.50
Wiznet fee to Clark County District Court - Exhibits Part 6	3.50	3.50
Total costs	3.50	<u>\$28.00</u>
TOTAL AMOUNT OF THIS BILL		<u>\$3,328.00</u>
PREVIOUS BALANCE		\$6,547.25
8/22/2019 Payment - thank you. Check No. ACH		(\$6,200.00)
8/31/2019 Courtesy Discount per Louis E. Garfinkel, Esq.		<u>(\$347.25)</u>
Total adjustments (if applicable)		<u>(\$6,547.25)</u>
BALANCE DUE		<u>\$3,328.00</u>

To insure proper credit, please include the account number or copy of invoice with your payment.

**EXHIBIT “5”**

**EXHIBIT “5”**

**LEVINE & GARFINKEL**  
1671 W. Horizon Ridge Pkway  
Suite 230  
Henderson, NV 89012  
Tax ID 56-2349556  
(702) 735-0451

Benjamin Golshani  
c/o Law Offices of Rodney T. Lewin  
Rod@rtlewin.com

October 03, 2019

In Reference To: **CLA PROPERTIES, LLC** adv  
**Shawn Bidsal**

Account No.: **35338.002**

FOR PROFESSIONAL SERVICES

		<u>Hours</u>	<u>Amount</u>
9/3/2019	LEG Prepare argument for petition to confirm arbitration award.	1.90	\$712.50
9/4/2019	LEG Prepare for oral argument on motion to confirm arbitrator's award; telephone conference with Richard Agay.	1.10	\$412.50
9/5/2019	LEG Telephone conference with Ben Golshani regarding hearing; prepare for hearing on motion to confirm arbitration award; draft supplement to appendix in support of motion to confirm arbitrator's award.	1.60	\$600.00
9/6/2019	LEG Review [REDACTED] telephone conference with Rod Lewin; prepare for hearing on motion to confirm arbitrator's award.	1.40	\$525.00
9/9/2019	LEG Prepare for hearing on motion to confirm arbitrator's award; telephone conference with Rod Lewin; telephone conference with Ben Golshani.	2.20	\$825.00
9/10/2019	LEG Prepare for hearing; travel to court for hearing on motion to confirm arbitrator's award; attend hearing; conference with Jim Shapiro; telephone conference with Rod Lewin; travel to office; telephone conference with Jim Shapiro; telephone conference with Judge's assistant.	2.90	\$1,087.50
9/11/2019	LEG Telephone conference with Sean McConnell regarding exhibits.	0.10	NO CHARGE
9/13/2019	LEG Prepare exhibits; telephone conference with Judge's assistant; draft correspondence to Jim Shapiro; telephone conference with Jill Berghammer; review correspondence	0.20	\$75.00
9/16/2019	LEG Draft correspondence to Judge Kishner; review correspondence; draft correspondence to Sandra Hassell; telephone conference with Rod Lewin.	0.20	\$75.00
9/17/2019	LEG Review court minutes; draft correspondence to Rod Lewin.	0.10	NO CHARGE
9/18/2019	LEG Review court docket; draft correspondence to counsel; telephone conference with Judge's assistant.	0.10	NO CHARGE
TOTAL FOR NEW SERVICES		11.80	\$4,312.50

LEVINE GARFINKEL -

Benjamin Golshani

October 03, 2019

Page 2

Additional Charges :

	<u>Price</u>	<u>Amount</u>
8/20/2019 Wiznet fee to Clark County District Court - Exhibits		3.50
	3.50	
9/17/2019 Photocopy Charge (Holo)		157.22
	157.22	
9/30/2019 Photocopy Charge		31.25
	31.25	
Total costs		<u>\$191.97</u>
TOTAL AMOUNT OF THIS BILL		<u>\$4,504.47</u>
PREVIOUS BALANCE		\$3,328.00
9/30/2019 Courtesy Discount per Louis E. Garfinkel, Esq.		<u>(\$900.00)</u>
Total adjustments (if applicable)		<u>(\$900.00)</u>
BALANCE DUE		<u>\$6,932.47</u>

To insure proper credit, please include the account number or copy of invoice with your payment.

**EXHIBIT “6”**

**EXHIBIT “6”**



**LEVINE & GARFINKEL**  
1671 W. Horizon Ridge Pkway  
Suite 230  
Henderson, NV 89012  
Tax ID 56-2349556  
(702) 735-0451

Benjamin Golshani  
c/o Law Offices of Rodney T. Lewin  
Rod@rtlewin.com

November 06, 2019

In Reference To: **CLA PROPERTIES, LLC adv**  
**Shawn Bidsal**

Account No.: **35338.002**

**FOR PROFESSIONAL SERVICES**

	<u>Hours</u>	<u>Amount</u>
10/18/2019 LEG Prepare for hearing on motion to confirm arbitrator's award.	2.30	NO CHARGE
10/21/2019 LEG Prepare for hearing on motion to confirm arbitrator's award; telephone conference with Ben Golshani; telephone conference with Rod Lewin; review memo from the court; telephone conference with Jill Berghammer; draft correspondence to Jim Shapiro; review correspondence; draft correspondence to Jill Berghammer.	1.60	\$600.00
<b>TOTAL FOR NEW SERVICES</b>	<u>3.90</u>	<u>\$600.00</u>
Additional Charges :		
	<u>Price</u>	
9/10/2019 Recorder's billing invoice	81.80	81.80
Total costs		<u>\$81.80</u>
<b>TOTAL AMOUNT OF THIS BILL</b>		<u>\$681.80</u>
<b>PREVIOUS BALANCE</b>		\$6,932.47
10/3/2019 Payment - thank you. Check No. ACH		(\$3,328.00)
10/31/2019 Payment - thank you. Check No. ACH		(\$3,604.47)
Total adjustments (if applicable)		<u>(\$6,932.47)</u>
<b>BALANCE DUE</b>		<u><u>\$681.80</u></u>

To insure proper credit, please include the account number or copy of invoice with your payment.

**EXHIBIT “7”**

**EXHIBIT “7”**

LEVINE GARFINKEL

Benjamin Golshani

December 05, 2019  
Page 2

In Reference To: *CLA PROPERTIES, LLC adv*  
*Shawn Bidsal*

Account No.: 35338.002

FOR PROFESSIONAL SERVICES

		<u>Hours</u>	<u>Amount</u>
11/8/2019	LEG Prepare for hearing on motion to confirm arbitrator's award.	1.30	\$487.50
11/12/2019	LEG Prepare for hearing on motion to confirm arbitrator's award.	2.70	\$1,012.50
	LEG Travel to court; attend hearing on motion to confirm arbitrator's award' telephone conference with Rod Lewin; travel to office.	3.90	\$1,462.50
11/13/2019	LEG Review minute order; draft correspondence to Rod Lewin; telephone conference with Ben Golshani.	0.30	\$112.50
11/14/2019	LEG Review correspondence; telephone conference with Richard Agay; research regarding motion for attorney's fees; draft correspondence to Richard Agay,	0.60	\$225.00
11/15/2019	LEG Legal research [REDACTED] draft correspondence to Richard Agay; review correspondence; telephone conference with Rod Lewin.	0.40	\$150.00
11/19/2019	LEG Review court docket; telephone conference with Rod Lewin; telephone conference with Ben Golshani.	0.20	\$75.00
11/22/2019	LEG Legal research [REDACTED] draft correspondence to Rod Lewin.	0.40	\$150.00
11/25/2019	LEG Telephone conference with Rod Lewin; telephone conference with Ben Golshani.	0.20	\$75.00
TOTAL FOR NEW SERVICES		10.00	\$3,750.00
PREVIOUS BALANCE			\$681.80
11/29/2019	Payment - thank you. Check No. ACH		(\$681.80)
11/30/2019	Courtesy Discount per Louis E. Garfinkel, Esq.		(\$750.00)
Total adjustments (if applicable)			(\$1,431.80)
BALANCE DUE			<u>\$3,000.00</u>

To insure proper credit, please include the account number or copy of invoice with your payment.

CLA000 12

## **EXHIBIT “5”**

## **EXHIBIT “5”**



1 ASAF  
2 Louis E. Garfinkel, Esq.  
3 Nevada Bar No. 3416  
4 Levine & Garfinkel  
5 1671 W. Horizon Ridge Parkway, Suite 220  
6 Henderson, NV 89012  
7 Tel: (702) 673-1612  
8 Fax: (702) 735-0198  
9 Email: lgarfinkel@lgealaw.com  
10 Attorneys for Petitioner CLA Properties, LLC

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 CLA PROPERTIES, LLC, a California  
14 limited liability company,

15 Petitioner,

16 v.

17 SHAWN BIDSAL, an individual,

18 Respondent.

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

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

19 STATE OF CALIFORNIA )  
20 )  
21 COUNTY OF LOS ANGELES)

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

23 1. I am an attorney at law duly licensed to practice before all the Courts of the State of  
24 California, and represented Claimant CLA Properties, LLC ("CLA") in the arbitration, the award  
25 of which this proceeding was brought to seek court confirmation and judgment. The facts set  
26 forth herein are based upon my personal knowledge, and if called to testify thereto, I could and  
27 would competently do so.  
28

1           2. Subject to below exceptions, attached hereto as Exhibit "1" are true and correct copies  
2 of the billing statements sent to CLA Properties relating to the arbitration regarding Green Valley  
3 Commerce, LLC. Some portions of the statements have been redacted either to protect attorney-  
4 client privileges or because they did not relate to this proceeding. I am also one of the custodians  
5 of records at the Law Offices of Rodney T. Lewin who maintains the files in connection with my  
6 firm's representation of CLA in this action. The bills attached as Exhibit "1" reflect the daily  
7 time entries made by me, Richard Agay, Michael Lavaee and legal assistants Jack Margolin and  
8 Ronald Faulk working on this matter under my supervision and direction. These billing records  
9 were made in the regular course of business, made at or near the actions described therein. The  
10 billing is recorded daily into a computer program and a monthly bill is created therefrom. The  
11 method employed to prepare the billing records insure that the records are accurate and  
12 trustworthy. The time spent on this matter was recorded in our file No. 7157. This file number  
13 was assigned for the litigation associated with arbitration between CLA and Mr. Bidsal.  
14  
15

16           3. The following persons assisted me in working on this action and performed work in  
17 connection with it: Richard Agay, Esq. whose normal hourly rate is \$395 per hour, Michael  
18 Lavaee who is of counsel to my firm and who at my directions conducted research and whose  
19 billed hourly rate is \$265.00 per hour of this file (discounted from his normal hourly rate of  
20 \$350.00 or more) and Jack Margolin and Ronald Faulk (legal assistants), whose normal hourly  
21 rates are \$135.00 per hour. In addition, I billed my time on this matter at my standard hourly rate  
22 of \$475.00 which is far below the hourly rate of similarly qualified and skilled attorneys in the  
23 Los Angeles community with similar experience and qualifications. I have been practicing  
24 business and real estate law since 1976 (43 years) and have had my own firm since 1981.  
25 Richard Agay, Esq. is of counsel to my firm, has been practicing law since 1957 (62 years), and  
26 was originally with the prominent Beverly Hills law firm Cooper Epstein & Hurwitz. Mr. Agay  
27  
28

1 was also the prevailing counsel before the Supreme Court and the creation of the so-called  
2 "Comden" rule, Comden v. Superior Court 20 Cal.3d 906 (1978). He was also trial counsel and  
3 appellate counsel in Young v. Rosenthal, 212 Cal.App.3d 96 (1989) which, when issued, was at  
4 the time in a published decision the highest award for frivolous appeal in favor of responding  
5 party. Mr. Agay's hourly rate of \$395.00 an hour is far below the hourly rate of similarly  
6 qualified and skilled attorneys in the Los Angeles community with similar experience and  
7 qualifications. Mr. Lavaee is also of counsel to my firm, has been practicing law for more than  
8 10 years and also has an MBA. Our local counsel, Louis Garfinkel, also worked on this matter  
9 and billed his time at his normal hourly rate of \$375.00 per hour. The rates charged by Mr. Agay,  
10 Mr. Lavaee and me, as well as my legal assistants (Mr. Margolin and Mr. Faulk) in connection  
11 with this action are commensurate with our experience and are well within (or are below) the  
12 rates charged by similarly qualified and experienced attorneys and legal assistants in other  
13 similarly-sized firms in Los Angeles handling matters such as this one.  
14  
15

16 4. I have reviewed all of the entries contained in the billing records submitted herewith.  
17 The billing records on a daily basis contain a reasonable description of the work performed and  
18 the time spent, all of which time was spent on CLA's behalf in this arbitration. The billing  
19 records accurately reflect the time spent each day and the entries were made soon after  
20 completion of the task referenced in the bills in the normal course of keeping track of the services  
21 provided. The description of services was also written by the individual performing the service.  
22 Each entry contained within the billing records for CLA reflects necessary and reasonable work  
23 in the prosecution and defense of this action. Added to the statements as attached in handwriting  
24 are the amounts deducted from those statements for services not directly related to this  
25 proceeding and the discount of the fees that were billed for this proceeding. The costs shown on  
26 statements applied to this proceeding.  
27  
28

1           5. Attached as Exhibit 2 is a schedule showing the amount of the statement as sent to  
2 client, the reduction of the amount of fees attributable to matters not directly related to this  
3 proceeding and the reduction of the fees for the discount given to the client. The total amount of  
4 the discounts on just the fees applicable strictly to this proceeding through November, 2019  
5 statements is 6,864.54.  
6

7           6. Some of the time spent in resisting Bidsal's Counterpetition to Vacate was spent ahead  
8 of its filing because the Counterpetition to Vacate the Award by Bidsal was anticipated, given  
9 that he had filed a Motion to Vacate previously in the Federal Court, and therefore we were able  
10 to commence preparation of opposition to that Counterpetition to Vacate ahead of its actual  
11 receipt.  
12

13           7. The total of these fees and costs due my firm, after reduction for discounts given the  
14 client as applicable to this proceeding through November, 2019 is \$ 49,010.79. The time spent  
15 was in fact precipitated by Bidsal's papers which amounted to nothing less than an attempt to  
16 retry the entire arbitration. I was aware that that was not proper, and that the arbitrator's being  
17 correct was not truly a legitimate issue. But after CLA had spent over a quarter of a million  
18 dollars to prevail in the arbitration I could not afford to be so cavalier as to rely on that position  
19 alone. Rather we painstakingly went through all the claims made by Bidsal and showed in detail  
20 each way in which he was wrong. Instead of our effort being one simply to show the Award, it  
21 became more like the defense of a judgment where the attacker had the right to seek a de novo  
22 review.  
23  
24

25           8. As reflected by Exhibit 1 the time spent on this proceeding by my firm through  
26 November, 2019 was (in hours) 19.45 by me, 94.65 by Mr. Agay, 13.85 by Mr. Lavaee, 28 by  
27 assistant Margolin and 0.66 by assistant Faulk.  
28



1           9. I have been practicing law for forty-two years. My practice has always focused on  
2 business and real estate litigation. Getting the favorable Award was terribly time-intensive.  
3 Getting that Award confirmed has proven to be equally difficult. It started on April 5, 2019 and  
4 did not finally conclude until December 6, 2019.  
5

6           10. For the time spent through November, 2019 by my office, CLA seeks attorneys' fees  
7 and costs of \$ 49,010.79. Added thereto and the fees and costs of Nevada counsel, Louis  
8 Garfinkel of \$16,409.52 (which includes his time for preparation of his affidavit and work on this  
9 motion), gives a total before December time by my firm of \$ 65,420.31.  
10

11           11. The statement for services rendered and costs incurred by my firm in December, 2019  
12 has not yet been prepared. However, I reviewed the time entries and determined that during  
13 December 2019 I spent 2.5 hours related to this proceeding, (including providing information  
14 included in the this Motion) and Mr. Agay spent 17.10 finalizing portions of the moving papers.  
15 At the rates above stated that amounts to \$1,187.50 for my time during December, 2019 and  
16 \$6,754.50 for Mr. Agay's time. Based thereon the total amounts billed and to be billed to CLA  
17 on this proceeding (and without January, 2020 time) is \$55,765.29. Adding that to Mr.  
18 Garfinkel's fees and costs the total through December, 2019 is \$ 72,174.81.  
19

20           12. Some time has been spent in January, 2020, but it has not yet been calculated. In  
21 addition, we can only guess at what if any opposition will be made to this motion. Thus I can  
22 only estimate fees incurred in any reply or oral argument. We shall, supply supplemental  
23 affidavit we that time becomes more certain, but for present purposes I estimate that there will be  
24

25 ///

26 ///

27 ///

28 ///

1 an additional \$15,000.00, which raises the total sought by CLA by this motion to \$87,174.81.  
2

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
\_\_\_\_\_  
RODNEY T. LEWIN

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SWORN TO AND SUBSCRIBED  
BEFORE me this 3rd day of January, 2020.



Angela Crawford  
NOTARY PUBLIC

My Commission Expires: August 11, 2020

## ACKNOWLEDGMENT

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

On January 3, 2020 before me, Angela Crawford, notary public  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Angela Crawford

(Seal)



**CERTIFICATE OF SERVICE**

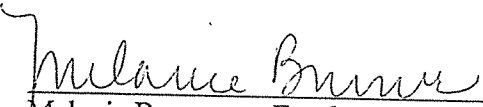
Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of LEVINE & GARFINKEL, and that on the 3<sup>rd</sup> day of January, 2020, I caused the foregoing **AFFIDAVIT OF RODNEY T. LEWIN, ESQ., IN SUPPORT OF CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS:**

☐ 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

☒ 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](mailto:jshapiro@smithshapiro.com)  
[acannon@smithshapiro.com](mailto:acannon@smithshapiro.com)  
*Attorneys for Respondent Shawn Bidsal*

  
\_\_\_\_\_  
Melanie Bruner, an Employee of  
LEVINE & GARFINKEL

**EXHIBIT “1”**

**EXHIBIT “1”**

RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

May 31, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157  
Invoice No. 20412

Professional Services

	Hours	Amount
05/01/19 RTL	0.20	95.00
RDA	0.25	98.75
RDA		
05/02/19 RDA	0.05	19.75
05/03/19 JM	3.00	1,185.00
05/06/19 RDA		
05/07/19 JM	0.30	40.50
	0.10	39.50
05/08/19 RDA	0.40	NO CHARGE
05/09/19 JM	0.20	79.00
	0.40	NO CHARGE
RDA		
05/13/19 RTL	1.00	395.00
RDA	0.35	166.75
	2.40	948.00
05/14/19 RTL		
RDA	0.50	237.50
05/18/19 RTL	1.35	533.25
05/20/19 RTL	-0.50	237.50
JM	0.60	285.00
RDA	0.80	NO CHARGE
	1.65	651.75
05/21/19 RTL	0.85	335.75
RTL	0.20	95.00
JM	0.10	NO CHARGE
	0.30	40.50
RTL	0.25	118.75
JM	0.40	54.00

REVIEW E-MAILS FROM LOUIS; REVIEW AND REVISE PETITION;  
CONFERENCE, INTRA-OFFICE RE SAME AND TO DO  
EDIT/RE-EDIT PETITION TO CONFIRM AWARD V.2 AND V.3  
REVIEWED PAST RESEARCH TO DETERMINE ADDITIONAL MATTERS  
NEEDED BECAUSE ISSUE WOULD BE RAISED IN STATE COURT AND  
MEMO RE ADDITIONAL RESEARCH NEEDED  
REVIEWED AND REVISED PETITION TO CONFIRM AWARD  
REVIEW PETITION AND EMAIL TO LOUIS.  
TELEPHONE CALL FROM LOUIS RE PETITION AND SERVICE ISSUES  
REVIEW/FILE/INDEX PETITION FOR CONFIRMATION OF ARBITRATION  
AWARD  
CONFERENCE, INTRA-OFFICE RE RESEARCH  
REVIEW/INDEX/DOWNLOAD/FILE SUMMONS OF PETITION FOR  
CONFIRMATION OF AWARD; NOTICE OF HEARING FOR PETITION TO  
CONFIRM ARBITRATION AWARD

BENJAMIN GOLSHANI

In Reference To: CLA PROPERTIES, LLC - #7157

May 31, 2019

Page 2

		Hours	Amount
05/21/19 ML	REVIEW RDA MEMO CONF WITH RTL		
05/22/19 ML	CONF W RTL RE FACTUAL ISSUES AND SCOPE OF RESEARCH	1.25	331.25
05/23/19 REF	COPYING OF PETITION FOR SERVICE, EMAIL TO DDS FOR SERVICE OF PETITION ON BIDSAL; SAVING FOR FILE	0.70	185.50
		0.33	55.00
		2.00	<del>530.00</del>
05/24/19 RTL	REVIEW BIDSAL SERVICE NOTIFICATION E-MAIL WITH LOUIS	0.05	NO CHARGE
REF	TELEPHONE CALL WITH DDS; EMAILS TO LOUIS RE PREPARATION OF PROOF OF SERVICE AND SENDING TO HIM THE PROOF ONCE RECEIVED. SAVING FOR FILE	0.33	55.00
05/28/19 RTL	TELEPHONE CALLS WITH LOUIS RE TELEPHONE CALL WITH SHAPIRO AND REVIEW STIPULATION	0.20	344.50
ML	REVIEW SUPREME COURT CASES RELATING TO ARBITRATION INCLUDING DIRECT TV, AND RESEARCH CALIFORNIA CASES CITING IT	2.50	662.50
05/29/19 ML	CONT. RESEARCH RE TO RICHARD MEMO	3.10	821.50
RDA	REVIEWED REVISED PETITION TO CONFIRM AWARD AND E-MAILS EXCHANGE RE SAME AND SERVICE	0.15	59.25
RDA	CONFERENCE, INTRA-OFFICE RE RESEARCH	0.15	59.25
05/30/19 ML	DRAFT MEMO RE RESEARCH AND RESPONSES TO RICHARD MEMO; REVIEW ANSWER, REVIEW ARB. AGRMT.; REVIEW AWARD	6.30	1,669.50
			<del>190.00</del>
			<del>237.00</del>
For professional services rendered		35.51	\$10,951.00
Additional Charges :			
05/31/19 COS	PHOTOCOPY CHARGES		77.40
COS	PHOTOCOPY CHARGES (COLOR)		51.00
Total costs			\$128.40
Total amount of this bill			\$11,079.40
Previous balance			\$17,606.20
4/17/2019 Payment - thank you			(\$1,234.95)
4/17/2019 Credit			(\$135.95)
5/14/2019 Payment - thank you			(\$10,000.00)
5/14/2019 Payment - thank you			(\$6,176.50)
Total payments and adjustments			(\$17,547.40)
Balance due			\$11,138.20

NOTE: A 10% COURTESY DISCOUNT ON CURRENT FEES OF \$10,951.00 (-\$1,095.10) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$9,855.90 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

Attorney Summary			
Name	Hours	Rate	Amount
JL MARGOLIN	1.00	135.00	\$135.00
MICHAEL LAVAE	17.15	265.00	\$4,544.75
RICHARD D. AGAY	11.75	395.00	\$4,641.25
RODNEY T. LEWIN	3.20	475.00	\$1,520.00

CLA000 2

BENJAMIN GOLSHANI

In Reference To: CLA PROPERTIES, LLC - #7157

May 31, 2019

Page 3

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
RONALD E. FAULK	0.66	165.00	\$110.00

*THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.*

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

CLA000 3



RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

June 30, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157  
Invoice No. 20434

Professional Services

		<u>Hours</u>	<u>Amount</u>
06/02/19	RTL CONFERENCE, INTRA-OFFICE RE ISSUES AND RESEARCH	0.70	332.50
06/03/19	RTL REVIEW AND REVISE STIPULATION FOR STATE CASE	0.20	95.00
	RTL CONFERENCE WITH CLIENT	0.50	237.50
06/04/19	JM FILE MANAGEMENT	0.30	40.50
06/07/19	RTL REVIEW STIPULATION AND E-MAIL	0.10	47.50
06/12/19	RDA E-MAIL RE PROCEEDINGS NEEDED AND HOW TO APPROACH	0.25	98.75
	RDA RESEARCH RE OPPOSITION TO MOTION TO VACATE; PREPARATION OF MEMORANDUM ON ADDITIONAL RESEARCH NEEDED	1.45	572.75
06/13/19	RDA CONTINUED ANALYSIS OF RESEARCH TO DETERMINE FURTHER RESEARCH NEEDED; RESEARCHING CALIFORNIA CASES AND READING KYOCERA	1.95	770.25
06/14/19	JM <del>REVIEWED STIPULATION; RESPONDED TO E-MAIL RE SAME</del>	<del>0.15</del>	<del>40.50</del>
06/20/19	RTL TELEPHONE CALL FROM LOUIS; CONFERENCE, INTRA-OFFICE RE TO DO	0.10	47.50
06/25/19	RDA <del>REVIEWED STIPULATION; RESPONDED TO E-MAIL RE SAME</del>	<del>0.15</del>	<del>67.50</del>
	RDA CONTINUED RESEARCH RE MOTION TO VACATE	0.15	59.25
06/26/19	RDA CONTINUED RESEARCH RE MOTION TO VACATE AND DRAFTING OPPOSITION	1.00	395.00
		2.95	1,165.25
06/27/19	RTL CONFERENCE WITH CLIENT	0.25	118.75
06/28/19	RDA CONTINUED RESEARCH RE MOTION TO VACATE AND DRAFTING OPPOSITION	1.50	592.50

For professional services rendered

12.20 \$4,681.00

Additional Charges :

06/01/19	COS DDS LEGAL SUPPORT INV. NO. 416285 - PROCESS SERVICE ON SHAWN BIDSAL (5/23/19)	103.90
06/30/19	COS PHOTOCOPY CHARGES	36.60
	COS PHOTOCOPY CHARGES (COLOR)	20.25

Total costs

\$160.75

Total amount of this bill

\$4,841.75

Previous balance

\$11,138.20

4,681.00  
TIME DELETED < 108.007  
4,573.00  
457.305  
24015.70  
160.75  
4,176.45  
(0.50)

CLA000 4

BENJAMIN GOLSHANI  
In Reference To: CLA PROPERTIES, LLC - #7157

June 30, 2019  
Page 2

	<u>Amount</u>
6/14/2019 Payment - thank you	(\$9,855.90)
6/14/2019 Credit	(\$1,282.30)
Total payments and adjustments	(\$11,138.20)
Balance due	<u>\$4,841.75</u>

NOTE: A 10% COURTESY DISCOUNT ON CURRENT FEES OF \$4,681.00 (-\$468.10) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$4,373.65 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

Name	Attorney Summary		
	Hours	Rate	Amount
JL MARGOLIN	1.10	135.00	\$148.50
RICHARD D. AGAY	9.25	395.00	\$3,653.75
RODNEY T. LEWIN	1.85	475.00	\$878.75

*THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.*

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

July 31, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157

Invoice No. 20573

Professional Services

		<u>Hours</u>	<u>Amount</u>
07/01/19	[REDACTED]		-166.25
07/03/19	RDA FURTHER RESEARCH AND DRAFTING RESPONSE TO MOTION TO VACATE	3.00	1,185.00
07/08/19	RDA FURTHER RESEARCH AND DRAFTING RESPONSE TO MOTION TO VACATE	3.50	1,382.50
07/10/19	RDA FURTHER RESEARCH AND DRAFTING RESPONSE TO MOTION TO VACATE	1.50	592.50
07/11/19	RDA FURTHER RESEARCH AND DRAFTING RESPONSE TO MOTION TO VACATE	2.00	790.00
07/16/19	RDA REVIEWED EXCHANGE OF E-MAILS RE OPPOSITION TO PETITION TO CONFIRM AND SOUGHT DATE AND RESEARCH AND DRAFTING RESPONSE TO PETITION TO VACATE	0.70	276.50
07/17/19	RTL CONFERENCE, INTRA-OFFICE RE ISSUES AND STRATEGY FOR DRAFTING OPPOSITION; MULTIPLE TELEPHONE CALL WITH LOUIS; REVIEW E-MAIL COMMUNICATIONS FOR LOUIS	1.35	641.25
	RDA CONTINUING RESEARCH RE RESPONSE TO PETITION TO VACATE	3.40	1,343.00
07/19/19	RDA CONTINUING RESEARCH RE RESPONSE TO PETITION TO VACATE; CONTINUE DRAFTING RESPONSE	3.65	1,441.75
07/22/19	RTL WORK ON (EDITING) OPPOSITION;	2.75	1,306.25
07/23/19	RTL ADDITIONAL EDITS TO OPPOSITION TO MOTION TO VACATE; CONFERENCE, INTRA-OFFICE RE ISSUES AND FURTHER EDITS/WORKUP	1.00	475.00
	RDA TELEPHONE CONFERENCE WITH GARFINKLE RE NEVADA RULES; DRAFTING REPLY RE MOTION TO CONFIRM	5.10	2,014.50
07/24/19	JM CONFERENCE WITH RDA; PHONE CALL WITH LOUIS GARFINKLE; DOWNLOAD PLEADINGS/BRIEFS; FILE MANAGEMENT	1.00	135.00
	RDA DRAFTING REPLY RE PETITION TO CONFIRM AND ARRANGING EXHIBITS; REVIEWING RULES RE FILING REQUIREMENTS	9.00	3,555.00
07/25/19	RTL REVIEW OPPOSITION TO MOTION FOR ATTORNEYS FEES AND TELEPHONE CALL WITH TO LOUIS	0.50	237.50
	JM CONFERENCES WITH RDA/RTL FOR FILE MANAGEMENT STRATEGY FROM ARBITRATION TO AWARD MOTIONS; FILE SUPPORT FOR RTL/RDA BRIEF REVIEWING BIDSAL APPENDIX OF EXHIBITS IN PREPARATION FOR GOLSHANI BRIEF APPENDIX OF EXHIBITS PER NEVADA RULE	2.00	270.00
	RDA DRAFTING REPLY RE PETITION TO CONFIRM; REVIEWED OPERATING AGREEMENT RE POSSIBLE RESTRICTION ON ENCUMBRANCE OF INTEREST	6.40	2,528.00
07/26/19	RTL REVIEW DRAFT IN PROGRESS AND EDIT	1.00	475.00
	JM FILE SUPPORT COMPILING EXHIBITS FOR REPLY BRIEF APPENDIX	4.00	540.00
	JM COMPLETE DOCUMENT COMPILATION IN FILE SUPPORT FOR BRIEF APPENDIX INCLUDING ARBITRATION TRANSCRIPT; PHONE CALL TO SAUL AT KNJ FOR PRINTING/LABELING QUOTE	2.00	270.00
07/28/19	RDA DRAFTING OPPOSITION	2.00	790.00
07/29/19	RDA DRAFTING OPPOSITION RE MOTION	1.00	395.00
07/30/19	JM COMPLETE APPENDIX OF EXHIBITS FILE SUPPORT; PHONE CALLS WITH KNJ PRINTING; CONFERENCES WITH RDA; TRANSFER HARD COPIES TO KNJ	5.00	675.00
	RDA DRAFTING OPPOSITION RE MOTION	10.00	3,950.00

CLA000 6

	Hours	Amount
07/31/19 JM FILE SUPPORT FOR RDA BRIEF WITH EXHIBITS APPENDIX; PHONE CALL WITH LOUIS GARFINKLE FOR INSTRUCTIONS	2.00	270.00
RDA DRAFTING OPPOSITION RE MOTION TO VACATE	9.50	3,752.50
For professional services rendered	83.70	\$29,457.50
Additional Charges :		
07/31/19 COS PHOTOCOPY CHARGES (LESS 20% DISCOUNT OF \$116.56)		466.24
COS PHOTOCOPY CHARGES - COLOR (LESS 20% DISCOUNT OF \$32.25)		129.00
Total costs		\$595.24
Total amount of this bill		\$30,052.74
Previous balance		\$4,841.75
7/15/2019 REFUND FROM JAMS		(\$1,345.60)
7/30/2019 Payment - thank you		(\$4,373.65)
Total payments and adjustments		(\$5,719.25)
Balance due		\$29,175.24

TIME DELETED 29,457.50  
166.257  
29,291.25  
DISCOUNT < 4,373.65 >  
24,917.60  
595.24  
25,492.81

NOTE: A 15% COURTESY DISCOUNT ON CURRENT FEES OF \$29,457.50 (-\$4,418.63) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$24,756.61 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

Name	Attorney Summary		
	Hours	Rate	Amount
JL MARGOLIN	16.00	135.00	\$2,160.00
RICHARD D. AGAY	60.75	395.00	\$23,996.25
RODNEY T. LEWIN	6.95	475.00	\$3,301.25

THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

August 31, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157

Invoice No. 20660

Professional Services

		<u>Hours</u>	<u>Amount</u>
08/01/19	RTL		
	JM	0.65	308.75
		4.00	540.00
	RDA	5.45	2,152.75
08/02/19	JM	0.60	81.00
	JM	0.40	54.00
	RTL	4.50	2,137.50
08/03/19	RDA	1.00	395.00
08/05/19	RTL	1.75	831.25
	JM	2.50	337.50
	JM	0.50	NO CHARGE
	RDA	2.15	849.25
08/12/19	RDA	0.15	NO CHARGE
08/14/19	JM	0.40	54.00
08/27/19	JM	2.00	270.00
	JM	0.30	40.50
	JM	0.40	54.00
	RDA	3.00	1,185.00

BENJAMIN GOLSHANI

In Reference To: CLA PROPERTIES, LLC - #7157

August 31, 2019

Page 2

	<u>Hours</u>	<u>Amount</u>
08/28/19 RDA CONTINUED REVIEWING BIDSAL REPLY BRIEF TO PREPARE POINTS FOR ORAL ARGUMENT; REVIEWING TRANSCRIPT AND PAPERS FOR SUPPORT POINTS FOR ORAL ARGUMENT	0.75	296.25
08/29/19 RTL CONFERENCE RE HEARING STRATEGY;	0.25	118.75
RDA CONTINUED REVIEWING BIDSAL REPLY BRIEF TO PREPARE POINTS FOR ORAL ARGUMENT; REVIEWING TRANSCRIPT AND PAPERS FOR SUPPORT POINTS FOR ORAL ARGUMENT	0.50	197.50
08/30/19 RTL TELEPHONE CALL FROM LOUIS RE HEARING PREPARATION	0.20	95.00
For professional services rendered	31.45	\$9,998.00
Additional Charges :		
08/12/19 COS CONGRUITY 360 BILLING NO. 00007287		383.44
08/31/19 COS PHOTOCOPY CHARGES		203.40
COS PHOTOCOPY CHARGES (COLOR)		280.50
Total costs		\$867.34
Total amount of this bill		\$10,865.34
Previous balance		\$29,175.24
8/21/2019 Payment - thank you		(\$24,756.61)
8/21/2019 Courtesy Credit per RTL		(\$4,418.63)
Total payments and adjustments		(\$29,175.24)
Balance due		\$10,865.34

NOTE: A 10% COURTESY DISCOUNT ON CURRENT FEES OF \$9,998.00 (-\$999.80) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$9,865.54 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

Attorney Summary			
<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
JL MARGOLIN	10.60	135.00	\$1,431.00
RICHARD D. AGAY	12.85	395.00	\$5,075.75
RODNEY T. LEWIN	7.35	475.00	\$3,491.25

THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

CLA000 9

RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

September 30, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157  
Invoice No. 20711

Professional Services

		Hours	Amount
09/04/19 JM	FILE SUPPORT FOR RDA		
RDA	TELEPHONE CALL FROM GARFINKLE RE ORAL ARGUMENT; CONTINUING	0.40	54.00
	REVIEW OF REPLY BRIEF TO DETERMINE BULLET POINTS FOR ORAL	3.05	1,204.75
09/05/19 RTL	ARGUMENT; REVIEWING TRANSCRIPT AND PRIOR CLA BRIEF		
	REVIEW AND EDIT ARGUMENT NOTES AND CONFERENCE, INTRA-OFFICE	0.50	237.50
RDA	RE FINALIZING TO SEND TO LOUIS		
	COMPLETING REVIEW OF REPLY BRIEF TO DETERMINE BULLET POINTS	5.50	2,172.50
	FOR ORAL ARGUMENT; REVIEWING TRANSCRIPT AND PRIOR CLA BRIEF;		
09/06/19 RTL	EDITING BULLET POINTS		
09/09/19 RTL	CONFERENCE WITH LOUIS RE STRATEGY AND ISSUES FOR ARGUMENT	0.25	118.75
	REVIEW LOUIS OUTLINE AND ARGUMENTS IN PREPARATION FOR	0.85	403.75
RTL	TELEPHONE CALL WITH LOUIS;		
09/10/19 RTL	TELEPHONE CALL WITH LOUIS RE HEARING POINTS AND STRATEGY;	0.25	118.75
09/17/19 RTL	TELEPHONE CALL FROM LOUIS; TELEPHONE CALL TO BEN	0.20	95.00
	REVIEW MINUTES OF HEARING; CONFERENCE, INTRA-OFFICE	0.10	47.50
For professional services rendered		11.10	\$4,452.50

Additional Charges :

09/30/19 COS PHOTOCOPY CHARGES		
Total costs	4,488.90	36.40
	D to count	36.40
Total amount of this bill	< 445.25 >	
Previous balance	4,043.65	\$4,488.90
9/30/2019 Payment - thank you		\$10,865.34
9/30/2019 Credit		(\$9,865.54)
Total payments and adjustments		(\$999.80)
		(\$10,865.34)
Balance due		\$4,488.90

NOTE: A 10% COURTESY DISCOUNT ON CURRENT FEES OF \$4,452.50 (-\$445.25) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$4,043.65 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

CLA000 10

BENJAMIN GOLSHANI

In Reference To: CLA PROPERTIES, LLC - #7157

September 30, 2019

Page 2

Name	Attorney Summary	Hours	Rate	Amount
JL MARGOLIN		0.40	135.00	\$54.00
RICHARD D. AGAY		8.55	395.00	\$3,377.25
RODNEY T. LEWIN		2.15	475.00	\$1,021.25

*THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.*

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

CLA000 11



RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

October 31, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157  
Invoice No. 20841

Professional Services

	Hours	Amount
10/21/19 RTL REVIEW NOTES AND TELEPHONE CALL WITH LOUIS RE HEARING STRATEGY;	0.35	166.25
For professional services rendered	0.35	\$166.25
Additional Charges :		
10/31/19 COS PHOTOCOPY CHARGES		3.20
COS PHOTOCOPY CHARGES (COLOR)		15.00
Total costs		\$18.20
Total amount of this bill		\$184.45
Previous balance		\$4,488.90
10/31/2019 Payment - thank you		(\$4,043.65)
10/31/2019 Credit		(\$445.25)
Total payments and adjustments		(\$4,488.90)
Balance due		\$184.45

NOTE: A 10% COURTESY DISCOUNT ON CURRENT FEES OF \$166.25 (-\$16.63) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$167.82 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

Attorney Summary			
Name	Hours	Rate	Amount
RODNEY T. LEWIN	0.35	475.00	\$166.25

THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.

CLA000 12

BENJAMIN GOLSHANI

In Reference To: CLA PROPERTIES, LLC - #7157

October 31, 2019

Page 2

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

RODNEY T. LEWIN, A PROFESSIONAL CORPORATION  
8665 WILSHIRE BLVD.  
SUITE 210  
BEVERLY HILLS, CA 90211-2931

November 30, 2019

BENJAMIN GOLSHANI  
2801 S. MAIN ST.  
LOS ANGELES, CA 90007

In Reference To: CLA PROPERTIES, LLC - #7157  
Invoice No. 20874

Professional Services

	<u>Hours</u>	<u>Amount</u>
11/12/19 RTL TELEPHONE CALL FROM LOUIS RE HEARING	0.15	71.25
11/14/19 RDA REVIEWED MINUTE ORDER AND RESPONDED TO GARFINKEL E-MAIL AND TELEPHONE CONFERENCE WITH GARFINKEL	0.25	98.75
11/15/19 RDA REVIEWED GARFINKEL E-MAIL RE ATTORNEY FEES AND RESPONDED	0.15	59.25
For professional services rendered	0.55	\$229.25
Additional Charges :		
11/30/19 COS PHOTOCOPY CHARGES		2.00
Total costs		\$200
Total amount of this bill		\$231.25
Previous balance		\$184.45
11/29/2019 Payment - thank you		(\$166.25)
11/29/2019 Credit		(\$18.20)
Total payments and adjustments		(\$184.45)
Balance due		\$231.25

DISCOUNT 22.93  
231.25  
208.32

NOTE: A 10% COURTESY DISCOUNT ON CURRENT FEES OF \$229.25 (-\$22.93) WILL BE GIVEN IF THE TOTAL DISCOUNTED BALANCE DUE OF \$208.32 IS PAID WITHIN TEN (10) DAYS. THANK YOU!

Attorney Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
RICHARD D. AGAY	0.40	395.00	\$158.00
RODNEY T. LEWIN	0.15	475.00	\$71.25

THIS FIRM IS A PROFESSIONAL CORPORATION (EIN #95-4822188).  
WE APPRECIATE TIMELY PAYMENTS. IF THERE IS A PROBLEM WITH YOUR BILL  
PLEASE CALL RODNEY T. LEWIN, TEL. NO. (310) 659-6771.

BENJAMIN GOLSHANI

In Reference To: CLA PROPERTIES, LLC - #7157

November 30, 2019

Page 2

PLEASE REMIT PAYMENT WITHIN 10 DAYS AFTER RECEIPT. THANK YOU.

**EXHIBIT “2”**

**EXHIBIT “2”**

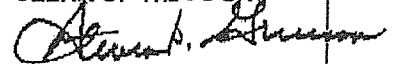
## EXHIBIT 2

### ADJUSTMENTS TO STATEMENTS

	April	May	June	July	August	Sept.	Oct.	Nov.
Statement Total Fees		10,951.00	4,681.00	29,457.50	9,998.00	4,452.50	166.25	229.25
Fees for Time Eliminated For Other Tasks		-5,661.50	-108.00	-166.25				
Net Fees For This Proceeding		5,289.95	4,573.00	29,291.25				
Discount of Fees For This Proceeding		-528.95	-457.30	-4,393.68	-999.80	-445.25	-16.63	-22.93
Net Fees Charged For This Proceeding		4,760.55	4,015.70	24,897.57	8,998.20	4,007.25	149.62	206.32
Costs		128.40	160.75	595.24	867.34	36.40	18.20	2.00
Fees and Costs Charged For This Proceeding After Discount	166.25	4,888.95	4,176.45	25,492.81	9,865.54	4,043.65	168.82	208.32

**EXHIBIT “6”**

**EXHIBIT “6”**



1 James E. Shapiro, Esq.  
2 Nevada Bar No. 7907  
3 jshapiro@smithshapiro.com  
4 Aimee M. Cannon, Esq.  
5 Nevada Bar No. 11780  
6 acannon@smithshapiro.com  
7 SMITH & SHAPIRO, PLLC  
8 3333 E. Serene Ave., Suite 130  
9 Henderson, Nevada 89074  
10 702-318-5033  
11 Attorneys for Respondent, SHAWN BIDSAL

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CLA, PROPERTIES, LLC, a California limited  
10 liability company,

11 Petitioner,

12 vs.

13 SHAWN BIDSAL, an individual,

14 Respondent.

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

Date: February 4, 2020  
Time: 10:00am

15 ORDER DENYING PETITIONER CLA PROPERTIES, LLC'S MOTION FOR  
16 ATTORNEY'S FEES AND COSTS

17 THIS MATTER having come before the Court on Petitioner CLA, PROPERTIES, LLC's  
18 ("CLA Properties") Motion for Attorney's Fees and Costs; CLA Properties appearing by and  
19 through their attorneys of record, LEVINE & GARFINKEL; Respondent SHAWN BIDSAL  
20 ("Bidsal") appearing by and through their attorneys of record, SMITH & SHAPIRO, PLLC; the  
21 Court having reviewed the papers and pleadings on file herein, having heard the arguments of  
22 counsel, the Court being fully advised in the premises, and good cause appearing, the Court finds  
23 and concludes as follows:

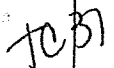
24 1. On or about June 15, 2011, CLA Properties and Bidsal signed an Operating  
25 Agreement (the "Operating Agreement") for Green Valley Commerce, LLC ("Green Valley").

26 \\\

27 \\\

28 \\\

FILED TO PROCEED





2. Section 14.1 of the Operating Agreement provides in pertinent part:

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 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 ....

3. Article X, Section d, of the Operating Agreement contains a choice of law provision, which provides that in all respects the Operating Agreement is governed and construed with the laws of the State of Nevada.

4. A dispute arose between CLA Properties and Bidsal, prompting CLA Properties to file a Demand for Arbitration with JAMS (the "Demand"). On page 3 of the Demand, CLA Properties recited same part of Section 14.1 outlined in paragraph 2 above, specifically referencing the United States Arbitration Act, but not citing nor relying upon the Nevada Arbitration Act.

5. An arbitration hearing was held, resulting in an arbitration award being issued in favor of CLA Properties (the "Arbitration Award").

6. On May 21, 2019, CLA Properties filed its Petition for Confirmation of Arbitration Award and Entry of Judgment (the "Petition").

7. In its Petition, CLA Properties sought confirmation of the underlying arbitration award pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq.<sup>1</sup>

<sup>1</sup> Specifically, paragraphs 11 through 16 of the Petition state:

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.

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."

1           8.       On December 6, 2019, this Court granted CLA Properties' Petition (the  
2       "Confirmation Order"). On page 6 of the Confirmation Order, the Court noted that: "the parties  
3       agreed the Court's decision to vacate the Award is properly governed by United States Arbitration  
4       Act, 9 U.S.C. § 9."

5           9.       On January 3, 2020, CLA Properties filed the present Motion.

6           10.      CLA Properties relies upon NRS 38.243, which is part of the Nevada Arbitration Act,  
7       as the legal basis on which it is seeking an award of attorney's fees.

8           11.      Bidsal argues that NRS 38.243 does not apply because Section 14.1 of the Operating  
9       Agreement specifically states that the JAMS rules govern the procedure, while the United States  
10      Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law.

11          12.      Relying upon WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. Adv. Op. 88, 360  
12      P.3d 1145 (Nev. 2015), CLA Properties argues that the United States Arbitration Act, 9 U.S.C. § 1,  
13      et seq. governs the procedure and Nevada law governs the substantive law.

14          13.      In WPH Architecture, Inc., the Nevada Supreme Court was dealing with a situation  
15      where there were only two choices: either the AAA rules or Nevada law applied. See WPH  
16      Architecture, Inc., 360 P.3d 1145. In resolving the issue, the Nevada Supreme Court concluded that  
17      Nevada law applied to the substantive legal issues and the AAA rules applied to the procedural  
18      issues. *Id.*

19          14.      For the reasons set forth next, and applying the principles set forth in WPH  
20      Architecture, Inc., the Court finds that the JAMS rules govern the procedural law and the United  
21      States Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law.

22  
23  
24      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.

25      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.

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

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

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

1           15.     When CLA Properties filed its Demand for Arbitration, which started the arbitration  
2 process, the only legal authorities cited by CLA Properties were the JAMS rules and the United  
3 States Arbitration Act, 9 U.S.C. § 1, et seq. CLA Properties did not cite to nor invoke the Nevada  
4 Arbitration Act.

5           16.     Further, when CLA Properties filed its Petition, CLA Properties again cited to and  
6 relied upon the United States Arbitration Act, 9 U.S.C. § 1, et seq. as the governing legal authority.

7           17.     By citing to and relying on the United States Arbitration Act, 9 U.S.C. § 1, et seq.  
8 when it initiated the arbitration proceedings and again when it filed the Petition, CLA Properties did  
9 not invoke the Nevada Arbitration Act, but sought relief under the United States Arbitration Act, 9  
10 U.S.C. § 1, et seq.

11           18.     As such, both the Arbitration Award and the order granting the Petition were based  
12 upon United States Arbitration Act, 9 U.S.C. § 1, et seq., as opposed to the Nevada Arbitration Act.

13           19.     Further, because CLA Properties never invoked the Nevada Arbitration Act as a basis  
14 on which the Petition should be confirmed, the Nevada Arbitration Act was not before the Court.

15           20.     Applying WPH Architecture, Inc. to the facts of this case, the JAMS rules governed  
16 the procedural law, while the United States Arbitration Act, 9 U.S.C. § 1, et seq. governed the  
17 substantive law.

18           21.     Having determined that the United States Arbitration Act, 9 U.S.C. § 1, et seq.  
19 governs the substantive law, the next question is whether attorneys fees are allowed under the United  
20 States Arbitration Act, 9 U.S.C. § 1, et seq.

21           22.     Applying the reasoning set forth in Crossville Medical Oncology, P.C. v. Glenwood  
22 Systems, LLC, 610 Fed Appx. 464 (6<sup>th</sup> Cir. 2015) to the facts of this case, the Court concludes that  
23 there is no basis on which to enter an award of attorneys fees.

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

1 NOW THEREFORE:

2 23. IT IS HEREBY ORDERED that CLA Properties' Motion is DENIED.

3 IT IS SO ORDERED this 2 day of February, 2020.


4 *msl*  
5   
6 JOANNA S. KISHNER  
DISTRICT COURT JUDGE

7 Respectfully Submitted by:

8 SMITH & SHAPIRO, PLLC

Approved as to Form:

LEVINE & GARFINKEL

9   
10 James E. Shapiro, Esq.  
11 Nevada Bar No. 7907  
12 Andrew S. Blaylock, Esq.  
13 Nevada Bar No. 13666  
14 3333 E. Serene Ave., Suite 130  
15 Henderson, NV 89074  
16 Attorneys for Shawn Bidsal

*Declined to sign*

17 Louis E. Garfinkel, Esq.  
18 Nevada Bar No. 3416  
19 1671 W. Horizon Ridge Pkwy., Suite 230  
20 Henderson, NV 89012  
21 Attorneys for CLA Properties, LLC

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

**EXHIBIT “7”**

**EXHIBIT “7”**



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

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited  
liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

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

**NOTICE OF ENTRY OF ORDER DENYING PETITIONER CLA PROPERTIES, LLC'S  
MOTION FOR ATTORNEY'S FEES AND COSTS**

PLEASE TAKE NOTICE that an ORDER DENYING PETITIONER CLA PROPERTIES,  
LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS, was entered in the above-entitled  
matter on the 5<sup>th</sup> day of February, 2020, a copy of which is attached hereto.

Dated this 5<sup>th</sup> day of February, 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*

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

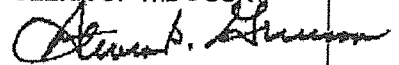
SMITH & SHAPIRO, PLLC  
3333 E. Serene Ave., Suite 130  
Henderson, NV 89074  
O:(702)318-5033 F:(702)318-5034

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 5th day of February, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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 A. Bidwell

An employee of Smith & Shapiro, PLLC



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

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited  
liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

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

Date: February 4, 2020  
Time: 10:00am

**ORDER DENYING PETITIONER CLA PROPERTIES, LLC'S MOTION FOR  
ATTORNEY'S FEES AND COSTS**

THIS MATTER having come before the Court on Petitioner CLA, PROPERTIES, LLC's ("CLA Properties") Motion for Attorney's Fees and Costs; CLA Properties appearing by and through their attorneys of record, LEVINE & GARFINKEL; Respondent SHAWN BIDSAL ("Bidsal") appearing by and through their attorneys of record, SMITH & SHAPIRO, PLLC; the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the Court being fully advised in the premises, and good cause appearing, the Court finds and concludes as follows:

1. On or about June 15, 2011, CLA Properties and Bidsal signed an Operating Agreement (the "Operating Agreement") for Green Valley Commerce, LLC ("Green Valley").

\\

\\

\\



2. Section 14.1 of the Operating Agreement provides in pertinent part:

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 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 ....

3. Article X, Section d, of the Operating Agreement contains a choice of law provision, which provides that in all respects the Operating Agreement is governed and construed with the laws of the State of Nevada.

4. A dispute arose between CLA Properties and Bidsal, prompting CLA Properties to file a Demand for Arbitration with JAMS (the "Demand"). On page 3 of the Demand, CLA Properties recited same part of Section 14.1 outlined in paragraph 2 above, specifically referencing the United States Arbitration Act, but not citing nor relying upon the Nevada Arbitration Act.

5. An arbitration hearing was held, resulting in an arbitration award being issued in favor of CLA Properties (the "Arbitration Award").

6. On May 21, 2019, CLA Properties filed its Petition for Confirmation of Arbitration Award and Entry of Judgment (the "Petition").

7. In its Petition, CLA Properties sought confirmation of the underlying arbitration award pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq.<sup>1</sup>

<sup>1</sup> Specifically, paragraphs 11 through 16 of the Petition state:

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.

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."

1           8.     On December 6, 2019, this Court granted CLA Properties' Petition (the  
2     "Confirmation Order"). On page 6 of the Confirmation Order, the Court noted that: "the parties  
3     agreed the Court's decision to vacate the Award is properly governed by United States Arbitration  
4     Act, 9 U.S.C. § 9."

5           9.     On January 3, 2020, CLA Properties filed the present Motion.

6           10.    CLA Properties relies upon NRS 38.243, which is part of the Nevada Arbitration Act,  
7     as the legal basis on which it is seeking an award of attorney's fees.

8           11.    Bidsal argues that NRS 38.243 does not apply because Section 14.1 of the Operating  
9     Agreement specifically states that the JAMS rules govern the procedure, while the United States  
10    Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law.

11          12.    Relying upon WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. Adv. Op. 88, 360  
12    P.3d 1145 (Nev. 2015), CLA Properties argues that the United States Arbitration Act, 9 U.S.C. § 1,  
13    et seq. governs the procedure and Nevada law governs the substantive law.

14          13.    In WPH Architecture, Inc., the Nevada Supreme Court was dealing with a situation  
15    where there were only two choices: either the AAA rules or Nevada law applied. *See WPH*  
16    Architecture, Inc., 360 P.3d 1145. In resolving the issue, the Nevada Supreme Court concluded that  
17    Nevada law applied to the substantive legal issues and the AAA rules applied to the procedural  
18    issues. *Id.*

19          14.    For the reasons set forth next, and applying the principles set forth in WPH  
20    Architecture, Inc., the Court finds that the JAMS rules govern the procedural law and the United  
21    States Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law.

22  
23  
24          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.

25          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.

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

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

1           15.     When CLA Properties filed its Demand for Arbitration, which started the arbitration  
2 process, the only legal authorities cited by CLA Properties were the JAMS rules and the United  
3 States Arbitration Act, 9 U.S.C. § 1, et seq. CLA Properties did not cite to nor invoke the Nevada  
4 Arbitration Act.

5           16.     Further, when CLA Properties filed its Petition, CLA Properties again cited to and  
6 relied upon the United States Arbitration Act, 9 U.S.C. § 1, et seq. as the governing legal authority.

7           17.     By citing to and relying on the United States Arbitration Act, 9 U.S.C. § 1, et seq.  
8 when it initiated the arbitration proceedings and again when it filed the Petition, CLA Properties did  
9 not invoke the Nevada Arbitration Act, but sought relief under the United States Arbitration Act, 9  
10 U.S.C. § 1, et seq.

11           18.     As such, both the Arbitration Award and the order granting the Petition were based  
12 upon United States Arbitration Act, 9 U.S.C. § 1, et seq., as opposed to the Nevada Arbitration Act.

13           19.     Further, because CLA Properties never invoked the Nevada Arbitration Act as a basis  
14 on which the Petition should be confirmed, the Nevada Arbitration Act was not before the Court.

15           20.     Applying WPH Architecture, Inc. to the facts of this case, the JAMS rules governed  
16 the procedural law, while the United States Arbitration Act, 9 U.S.C. § 1, et seq. governed the  
17 substantive law.

18           21.     Having determined that the United States Arbitration Act, 9 U.S.C. § 1, et seq.  
19 governs the substantive law, the next question is whether attorneys fees are allowed under the United  
20 States Arbitration Act, 9 U.S.C. § 1, et seq.

21           22.     Applying the reasoning set forth in Crossville Medical Oncology, P.C. v. Glenwood  
22 Systems, LLC, 610 Fed Appx. 464 (6<sup>th</sup> Cir. 2015) to the facts of this case, the Court concludes that  
23 there is no basis on which to enter an award of attorneys fees.

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

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

1 NOW THEREFORE:

2 23. IT IS HEREBY ORDERED that CLA Properties' Motion is DENIED.

3 IT IS SO ORDERED this 2 day of February, 2020.


4   
5  JOANNA S. KISHNER  
6 DISTRICT COURT JUDGE

7 Respectfully Submitted by:

8 SMITH & SHAPIRO, PLLC

Approved as to Form:

LEVINE & GARFINKEL

9   
10 James E. Shapiro, Esq.  
11 Nevada Bar No. 7907  
12 Andrew S. Blaylock, Esq.  
13 Nevada Bar No. 13666  
14 3333 E. Serene Ave., Suite 130  
15 Henderson, NV 89074  
16 Attorneys for Shawn Bidsal

*Declined to sign*  
17 Louis E. Garfinkel, Esq.  
18 Nevada Bar No. 3416  
19 1671 W. Horizon Ridge Pkwy., Suite 230  
20 Henderson, NV 89012  
21 Attorneys for CLA Properties, LLC  
22  
23  
24  
25  
26  
27  
28

## **EXHIBIT “8”**

## **EXHIBIT “8”**



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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CLA, PROPERTIES, LLC, a California limited liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

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

**AMENDED NOTICE OF ENTRY OF ORDER DENYING PETITIONER CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS**

PLEASE TAKE NOTICE that an ORDER DENYING PETITIONER CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS, was entered in the above-entitled matter on the 5<sup>th</sup> day of **March**, 2020, a copy of which is attached hereto.

Dated this 5<sup>th</sup> day of **March**, 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*

SMITH & SHAPIRO, PLLC

3333 E. Serene Ave., Suite 130

Henderson, NV 89074

O: (702) 318-5033 F: (702) 318-5034

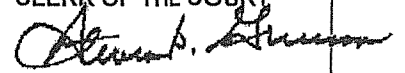
SMITH & SHAPIRO, PLLC  
3333 E. Serene Ave., Suite 130  
Henderson, NV 89074  
O: (702) 318-5033 F: (702) 318-5034

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 6th day of March, 2020, I served a true and correct copy of the foregoing AMENDED NOTICE OF ENTRY OF ORDER DENYING 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 A. Bidwell

An employee of Smith & Shapiro, PLLC



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

DISTRICT COURT  
CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,  
Respondent.

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

Date: February 4, 2020  
Time: 10:00am

**ORDER DENYING PETITIONER CLA PROPERTIES, LLC'S MOTION FOR ATTORNEY'S FEES AND COSTS**

THIS MATTER having come before the Court on Petitioner CLA, PROPERTIES, LLC's ("CLA Properties") Motion for Attorney's Fees and Costs; CLA Properties appearing by and through their attorneys of record, LEVINE & GARFINKEL; Respondent SHAWN BIDSAL ("Bidsal") appearing by and through their attorneys of record, SMITH & SHAPIRO, PLLC; the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the Court being fully advised in the premises, and good cause appearing, the Court finds and concludes as follows:

1. On or about June 15, 2011, CLA Properties and Bidsal signed an Operating Agreement (the "Operating Agreement") for Green Valley Commerce, LLC ("Green Valley").

\\

\\

\\



2. Section 14.1 of the Operating Agreement provides in pertinent part:

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 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 ....

3. Article X, Section d, of the Operating Agreement contains a choice of law provision, which provides that in all respects the Operating Agreement is governed and construed with the laws of the State of Nevada.

4. A dispute arose between CLA Properties and Bidsal, prompting CLA Properties to file a Demand for Arbitration with JAMS (the "Demand"). On page 3 of the Demand, CLA Properties recited same part of Section 14.1 outlined in paragraph 2 above, specifically referencing the United States Arbitration Act, but not citing nor relying upon the Nevada Arbitration Act.

5. An arbitration hearing was held, resulting in an arbitration award being issued in favor of CLA Properties (the "Arbitration Award").

6. On May 21, 2019, CLA Properties filed its Petition for Confirmation of Arbitration Award and Entry of Judgment (the "Petition").

7. In its Petition, CLA Properties sought confirmation of the underlying arbitration award pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq.<sup>1</sup>

<sup>1</sup> Specifically, paragraphs 11 through 16 of the Petition state:

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.

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."

1           8.     On December 6, 2019, this Court granted CLA Properties' Petition (the  
2     "Confirmation Order"). On page 6 of the Confirmation Order, the Court noted that: "the parties  
3     agreed the Court's decision to vacate the Award is properly governed by United States Arbitration  
4     Act, 9 U.S.C. § 9."

5           9.     On January 3, 2020, CLA Properties filed the present Motion.

6           10.    CLA Properties relies upon NRS 38.243, which is part of the Nevada Arbitration Act,  
7     as the legal basis on which it is seeking an award of attorney's fees.

8           11.    Bidsal argues that NRS 38.243 does not apply because Section 14.1 of the Operating  
9     Agreement specifically states that the JAMS rules govern the procedure, while the United States  
10    Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law.

11          12.    Relying upon WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. Adv. Op. 88, 360  
12    P.3d 1145 (Nev. 2015), CLA Properties argues that the United States Arbitration Act, 9 U.S.C. § 1,  
13    et seq. governs the procedure and Nevada law governs the substantive law.

14          13.    In WPH Architecture, Inc., the Nevada Supreme Court was dealing with a situation  
15    where there were only two choices: either the AAA rules or Nevada law applied. *See WPH*  
16    Architecture, Inc., 360 P.3d 1145. In resolving the issue, the Nevada Supreme Court concluded that  
17    Nevada law applied to the substantive legal issues and the AAA rules applied to the procedural  
18    issues. *Id.*

19          14.    For the reasons set forth next, and applying the principles set forth in WPH  
20    Architecture, Inc., the Court finds that the JAMS rules govern the procedural law and the United  
21    States Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law.

22  
23  
24          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.

25          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.

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

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

1           15.     When CLA Properties filed its Demand for Arbitration, which started the arbitration  
2 process, the only legal authorities cited by CLA Properties were the JAMS rules and the United  
3 States Arbitration Act, 9 U.S.C. § 1, et seq. CLA Properties did not cite to nor invoke the Nevada  
4 Arbitration Act.

5           16.     Further, when CLA Properties filed its Petition, CLA Properties again cited to and  
6 relied upon the United States Arbitration Act, 9 U.S.C. § 1, et seq. as the governing legal authority.

7           17.     By citing to and relying on the United States Arbitration Act, 9 U.S.C. § 1, et seq.  
8 when it initiated the arbitration proceedings and again when it filed the Petition, CLA Properties did  
9 not invoke the Nevada Arbitration Act, but sought relief under the United States Arbitration Act, 9  
10 U.S.C. § 1, et seq.

11           18.     As such, both the Arbitration Award and the order granting the Petition were based  
12 upon United States Arbitration Act, 9 U.S.C. § 1, et seq., as opposed to the Nevada Arbitration Act.

13           19.     Further, because CLA Properties never invoked the Nevada Arbitration Act as a basis  
14 on which the Petition should be confirmed, the Nevada Arbitration Act was not before the Court.

15           20.     Applying WPH Architecture, Inc. to the facts of this case, the JAMS rules governed  
16 the procedural law, while the United States Arbitration Act, 9 U.S.C. § 1, et seq. governed the  
17 substantive law.

18           21.     Having determined that the United States Arbitration Act, 9 U.S.C. § 1, et seq.  
19 governs the substantive law, the next question is whether attorneys fees are allowed under the United  
20 States Arbitration Act, 9 U.S.C. § 1, et seq.

21           22.     Applying the reasoning set forth in Crossville Medical Oncology, P.C. v. Glenwood  
22 Systems, LLC, 610 Fed Appx. 464 (6<sup>th</sup> Cir. 2015) to the facts of this case, the Court concludes that  
23 there is no basis on which to enter an award of attorneys fees.

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

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

1 NOW THEREFORE:

2 23. IT IS HEREBY ORDERED that CLA Properties' Motion is DENIED.

3 IT IS SO ORDERED this 2 day of February, 2020.

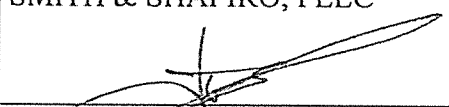
4   
5  JOANNA S. KISHNER  
6 DISTRICT COURT JUDGE

7 Respectfully Submitted by:

8 SMITH & SHAPIRO, PLLC

Approved as to Form:

LEVINE & GARFINKEL

9   
10 James E. Shapiro, Esq.  
11 Nevada Bar No. 7907  
12 Andrew S. Blaylock, Esq.  
13 Nevada Bar No. 13666  
14 3333 E. Serene Ave., Suite 130  
15 Henderson, NV 89074  
16 Attorneys for Shawn Bidsal

*Declined to sign*  
17 Louis E. Garfinkel, Esq.  
18 Nevada Bar No. 3416  
19 1671 W. Horizon Ridge Pkwy., Suite 230  
20 Henderson, NV 89012  
21 Attorneys for CLA Properties, LLC