

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

**NO. 82208**

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BETTY CHAN; and ASIAN AMERICAN REALTY & PROPERTY  
MANAGEMENT,

Electronically Filed  
May 26, 2021 05:29 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appellants,

vs.

WAYNE WU; JUDITH SULLIVAN; NEVADA REAL ESTATE CORP.; and  
JERRIN CHIU,

Respondents.

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**APPELLANTS' APPENDIX  
(Volume 3)**

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Appeal from

the Eighth Judicial District Court sitting in Clark County, Nevada

District Court Case No.: A-16-744109-C

District Court Judge: Hon. Eric Johnson

**R. DUANE FRIZELL, ESQ.**

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### **CERTIFICATE OF SERVICE**

I hereby certify pursuant to NRAP 25(c), that on May 26, 2021, I served a true and correct copy of the forgoing ***APPELLANTS' APPENDIX (Volume 3)***, together with any and all exhibits and attachments, via the Supreme Court's

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**Chan, et al. v. Wu, et al.**  
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<b>1</b>	11/21/2016	Affidavit of Service	Appx000027- Appx000030
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<b>1</b>	12/1/2016	Affidavit of Service	Appx000035- Appx000038
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<b>1</b>	12/7/2016	Certificate of Service	Appx000054 - Appx000055
<b>1</b>	12/19/2016	Reply to Counterclaim	Appx000056- Appx000060
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<b>1</b>		Exhibit 2 - Forms Associated with Purchase Agreement	Appx000080- Appx000107
<b>1</b>		Exhibit 3 - Addendum to Purchase Agreement and Escrow Instructions Sales Summary	Appx000108- Appx000110
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<b>1</b>		Exhibit 5 - Code of Ethics and Standards of Practice of the National Association of Realtors	Appx000114- Appx000117
<b>1</b>		Exhibit 6 - The Code of Ethics - Our Promise of Professionalism	Appx000118- Appx000121
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1	2/10/2017	Amended Reply to Counterclaim	Appx000132- Appx000136
1	2/14/2017	Plaintiff/Counterdefendants Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to Defendants/Counterclaimants Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000137- Appx000146
1		Exhibit - Declaration of Betty Chan in Support of Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000147- Appx000150
1	2/27/2017	Minutes of 02/27/2017 hearing, Plaintiffs' Motion for Stay Pending Arbitration--Defendants' and Counterclaimants' Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000151- Appx000152
1	3/30/2017	Order Granting Motion to Stay and Denying Motion to Dismiss and Motion for Summary Judgment	Appx000153- Appx000154
1	4/3/2017	Notice of Entry of Order Granting Motion to Stay and Denying Motion for summary Judgment	Appx000155- Appx000159
1	7/18/2018	Motion to Vacate or Modify Arbitration Award	Appx000160- Appx000175
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1		Exhibit 2 - Request and Agreement to Arbitrate (P00001 - P0044)	Appx000183- Appx000227
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2		Exhibit 4 - 04/20/2018 GLVAR letter to Nevada Real Estate Corporation	Appx000390- Appx000393



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<b>3</b>		Exhibit A - Gmail email 11/2/15	Appx000493- Appx000494
<b>3</b>		Exhibit B - Gmail email 11/2/15	Appx000495- Appx000496
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<b>3</b>		Exhibit D - City-Data.com Forum	Appx000501- Appx000502
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<b>3</b>		Exhibit D - Affidavit of Michael A. Olsen, Esq.	Appx000676- Appx000690
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4	10/25/2018	Plaintiffs/Counterdefendants Betty Chan and Asia American Realty & Property Management's Supplement to Plaintiffs Opposition Defendants/Counterclaimants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp., Jerrin Chiu, KB Home Sales-Nevada, Inc.'s: (1) First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for summary Judgment, and for Attorney Fees (Filed 09/05/18) and (2) Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause fo Summary Judgment, and for Attorneys fees (Filed 09/12/18)	Appx000708- Appx000727
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4		Exhibit 4 - 11/2/2015 Chiu email to Chan	Appx000746- Appx000748
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<b>4</b>	5/1/2019	Transcript of Hearing: Motion to Stay Execution on OST, Partial Opposition to Plaintiff's Motion to Stay Execution Pending Appeal (on an Ex Parte Application for an Order Shortening Time) and Demand for Supersedeas Bond and Countermotion to Amend Order)	Appx000865- Appx000880
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<b>5</b>		Exhibit 1 - Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs (filed Mar. 22, 2019)	Appx001121- Appx001128
<b>5</b>		Exhibit 2 - Motion to Vacate Entry of Order or Motion for Extension of Time to File	Appx001129- Appx001133
<b>5</b>		Exhibit 3 - Register of Actions (dated Jan. 7, 2020)	Appx001134- Appx001141
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<b>5</b>		Exhibit 8 - Supreme Court's Order to Show Cause (filed Nov. 14, 2019)	Appx001156- Appx001158
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<b>6</b>		Exhibit 11 - Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees (filed Aug. 6, 2018) [excerpts]	Appx001174- Appx001177
<b>6</b>		Exhibit 12 - Transcript (Oct. 31, 2018) [excerpts]	Appx001178- Appx001188

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6		Exhibit 17 - Order Dismissing Appeal (entered May 14, 2020)	Appx001208-Appx001212
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6		Exhibit 19 - Email from Betty Chan to GLVAR giving notice of intent to appeal arbitration	Appx001230-Appx001231
6		Exhibit 20 - Email from Betty Chan to GLVAR requesting arbitration (dated June 11, 2016).	Appx001232-Appx001233
6		Exhibit 21 - Defendant Wayne Wu's agreement with KB Home Las Vegas Inc. (dated Jan. 8, 2016).	Appx001234-Appx001235
6	7/13/2020	Reply in Support of Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel and Release of Bond Deposited on Appeal and Opposition to Countermotion for Summary Judgment on Defendant's Abuse of Process Counterclaim	Appx001236-Appx001249
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6		Exhibit 6 - the Code of Ethics - Our Promise of Professionalism	Appx001268-Appx001271
6		Exhibit 7 - Blackrock Legal Invoices	Appx001272-Appx001332
6	7/15/2020	Certificate of Service	Appx001333-Appx001334
6	7/21/2020	Minutes, All Pending Motions	Appx001335-Appx001336



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<b>6</b>		Exhibit 1 - Submitted in camera	Appx001364
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<b>7</b>		Exhibit 1 - Blackrock Invoices	Appx001369- Appx001401
<b>7</b>	8/13/2020	Certificate of Service	Appx001402- Appx001403
<b>7</b>	9/9/2020	Plaintiffs' Opposition to Defendants' Memorandum for Production of Invoices for Attorney's Fees and Costs and Countermotion to have Defendants' Invoices Filed and made Part of the Public Record	Appx001404- Appx001414
<b>7</b>	9/20/2020	Reply in Support of Memorandum for Production of Invoices for Attorney's Fees and Costs	Appx001415- Appx001425
<b>7</b>	9/11/2020	Certificate of Service	Appx001426- Appx001427
<b>7</b>	9/30/2020	Minute Order - all Pending Motions	Appx001428- Appx001429
<b>7</b>	9/30/2020	Transcript of Hearing: Plaintiff's Opposition to Defendant's Memorandum for Production of Invoices for Attorney's Fees and Costs and Countermotion to Have Defendant's Invoices Filed and made part of the Public Record.	Appx001430- Appx001452
<b>7</b>	11/18/2020	Transcript of Hearing: Order/Case Status	Appx001453- Appx001455
<b>7</b>	11/23/2020	Order Granting in Part Defendant's Motion for Summary Judgment, or in the Alternative, for Contractual Award of Attorney's Fees, for Writ of Execution on Plaintiff's Commissions Awarded by GLVAR Arbitration Panel, and Release of Bond Deposited on Appeal and Order Granting Plaintiffs' Countermotion for Summary Judgment	Appx001456- Appx001464
<b>7</b>	11/23/2020	Notice of Entry of Order	Appx001465- Appx001475

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<b>7</b>	12/22/2020	Notice of Cross Appeal	Appx001503- Appx001504
<b>7</b>	12/22/2020	Certificate of Service	Appx001505- Appx001506
<b>7</b>	1/14/2021	Order on Plaintiffs' Motion to Stay Execution Pending Appeal	Appx001507- Appx001515
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<b>7</b>	2/1/2021	Notice of Entry of Order on Plaintiff's Motion to Stay Execution Pending Appeal	Appx001520- Appx001530
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<b>1</b>	11/21/2016	Affidavit of Service	Appx000031- Appx000034
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<b>6</b>	8/11/2020	Memorandum for Production of Invoices for Attorney's Fees and Costs	Appx001355- Appx001364
<b>4</b>	10/31/2018	Memorandum of Costs and Disbursements	Appx000764- Appx000779
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<b>3</b>	8/22/2018	Minutes of 8/22/2018 Hearing as to Plaintiff's Reply in Support of Motion to Vacate or Modify Arbitration and Opposition/Motion	Appx000616- Appx000617
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<b>5</b>	1/22/2020	Minutes re Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an	Appx001006- Appx001007
<b>6</b>	7/21/2020	Minutes, All Pending Motions	Appx001335- Appx001336

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<b>1</b>	7/18/2018	Motion to Vacate or Modify Arbitration Award	Appx000160- Appx000464
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<b>1</b>	4/3/2017	Notice of Entry of Order Granting Motion to Stay and Denying Motion for summary Judgment	Appx000155- Appx000159
<b>5</b>	3/10/2020	Notice of Entry of Order on Plaintiffs' Motion to formally Resolve Motion for Reconsideration and to Certify Judgment as Final	Appx001023- Appx001030

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<b>1</b>	2/2/2017	Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for	Appx000066- Appx000121
<b>3</b>	8/6/2018	Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for	Appx000465- Appx000591
<b>5</b>	1/16/2020	Opposition to Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order shortening Time) and Countermotion	Appx000953- Appx001005
<b>3</b>	9/18/2018	Order Denying Motion to Vacate or Modify Arbitration Award	Appx000691- Appx000694
<b>4</b>	3/22/2019	Order Granting Defendants Countermotion for Summary Judgment and Attorney Fees and Costs	Appx000816- Appx000822
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<b>1</b>	3/30/2017	Order Granting Motion to Stay and Denying Motion to Dismiss and Motion for Summary Judgment	Appx000153- Appx000154
<b>5</b>	3/10/2020	Order on Plaintiffs' Motion to formally Resolve Motion for Reconsideration and to Certify Judgment as Final and Countermotion for Summary Judgment on Abuse of Process Claim	Appx001018- Appx001022

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<b>1</b>	2/14/2017	Plaintiff/Counterdefendants Reply to Opposition to Motion to Stay Pending Arbitration and Opposition to	Appx000137- Appx000150
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<b>7</b>	12/8/2020	Plaintiff's Amended Notice of Appeal	Appx001481- Appx001483
<b>4</b>	1/7/2020	Plaintiffs' Motion to Formally Resolve Motion for Reconsideration and to Certify Judgment as Final (on an Application for an Order Shortening Time)	Appx000892- Appx000952
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<b>4</b>	5/7/2019	Plaintiffs' Notice of Posting Supersedeas Bond	Appx000887- Appx000891
<b>7</b>	2/1/2021	Plaintiffs' Notice of Posting Supersedeas Bond	Appx001516- Appx001519
<b>7</b>	9/9/2020	Plaintiffs' Opposition to Defendants' Memorandum for Production of Invoices for Attorney's Fees and Costs and	Appx001404- Appx001414
<b>5</b>	7/8/2020	Plaintiff's Opposition to Defendant's Motion for summary Judgment, or in the Alternative, for Contractual Award of	Appx001097- Appx001235
<b>4</b>	10/25/2018	Plaintiffs/Counterdefendants Betty Chan and Asia American Realty & Property Management's Supplement to Plaintiffs	Appx000708- Appx000754
<b>7</b>	5/26/2021	Register of Actions	Appx001531- Appx001539
<b>5</b>	6/9/2020	Remittitur	Appx001090

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<b>6</b>	7/13/2020	Reply in Support of Motion for Summary Judgment, or in the alternative, for Contractual Award of Attorney's Fees, for Writ of	Appx001236- Appx001332
<b>3</b>	8/15/2018	Reply in Support of Motion to Vacate or Modify Arbitration Award and Opposition/Motion to Strike Improper Countermotion	Appx000592- Appx000615
<b>1</b>	12/19/2016	Reply to Counterclaim	Appx000056- Appx000060
<b>4</b>	10/29/2018	Reply to Plaintiff/Counterdefendants Supplement to Plaintiffs Opposition to Defendants/Counterclaimants 91) First supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorneys Fees and (2) Supplement to First Supplement to Countermotion	Appx000755- Appx000761
<b>3</b>	9/12/2018	Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for	Appx000674- Appx000690
<b>1</b>	2/7/2017	Supplement to Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment	Appx000126- Appx000131
<b>5</b>	6/9/2020	Supreme Court Clerk's Certificate, Judgment Dismissing Appeal	Appx001085- Appx001089
<b>3</b>	8/22/2018	Transcript of Hearing: All Pending Motions	Appx000618- Appx000648
<b>5</b>	1/22/2020	Transcript of Hearing: All Pending Motions	Appx001008- Appx001017
<b>6</b>	7/21/2020	Transcript of Hearing: All Pending Motions	Appx001337- Appx001354
<b>4</b>	10/31/2018	Transcript of Hearing: Defendants and Counterclaimants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu's	Appx000780- Appx000815
<b>4</b>	4/17/2019	Transcript of Hearing: Defendants' Motion for Writ of Execution	Appx000834- Appx000859
<b>4</b>	5/1/2019	Transcript of Hearing: Motion to Stay Execution on OST, Partial Opposition to Plaintiff's Motion to Stay Execution Pending	Appx000865- Appx000880
<b>7</b>	11/18/2020	Transcript of Hearing: Order/Case Status	Appx001453- Appx001455
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<b>5</b>	6/30/2020	Transcript of Hearing: Plaintiff's Motion to Strike or in the Alternative to Extend Briefing and Continue the Hearing On	Appx001091- Appx001096
<b>7</b>	9/30/2020	Transcript of Hearing: Plaintiff's Opposition to Defendant's Memorandum for Production of Invoices for Attorney's Fees and	Appx001430- Appx001452

## EXHIBIT 7

# **Asian American Realty & Property Management**

**4651 Spring Mountain Road #B1 Las Vegas NV 89102**

**Office (702) 222-0078 Fax (702) 993-6866 Email: 702aar@gmail.com**

May 17 2018

Chris Bishop  
President, GLVAR  
Via email: [chris.bishop@cbvegas.com](mailto:chris.bishop@cbvegas.com)

Ingrid Trillo  
Director, Professional Standards  
GLVAR  
Via email: [itrillo@glvar.org](mailto:itrillo@glvar.org)

Copy sent via Certificate of Mailing on 5/17/2018 to  
GLVAR  
6360 S Rainbow Blvd  
Las Vegas NV 89118

Re: Arbitration #16201A –Betty Chan/Asian American Realty & Property Management  
Vs. Wayne Wu, Agent and Judith Sullivan/Nevada Real  
Estate Corp

I am responding to the amended letter for Notice of Award of Arbitrators from Ms. Trillo dated 5/4/2018. Please be advised that I am going to continue my pending litigation case No. A-16-744109-C in District Court to vacate the Arbitration hearing and Awards.

I will not engage a procedure review with GLVAR because:

1) Procedure deficiency

a) Ms. Trillo rejected my request for a new hearing and that I can only file a procedural review. She said only items relating to procedural deficiency can be discussed.

There was only one item being arbitrated, “who deserves to be the procuring cause for the commission” In my humble opinion, it should not be just discussing procedures. Every words, every document, every procedure are essential to the decision of the Arbitration.

If there were a procedural deficiency, there would be a domino effect that will affect the outcome of the whole hearing.

The panel members should be very familiar with the procedure or at least there should be a little gathering or rehearsal type to refresh every one position or procedure before the hearing.

At the start of the hearing, Chairman mentioned that all parties present to refer to a document explaining procedure for hearing. None of all 12 people in the room had a copy of the document. Counsel went out for 10 minutes and came back with nothing. However the arbitration went on.

I am not a frequent flyer for arbitration. Last one I attended was from 25 years ago. Do I need to understand how the procedure goes today, I am sure I needed that. It also show how sloppy and unprepared GLVAR was for the hearing. Will the panel members also adopt the same attitude that the whole hearing was just a business as usual?

May be that was not considered to be a big deal for some. It was still considered as a procedure deficiency. To me, this is a very big deal. All of us came here to show respect to the rules and regulations of GLVAR and took it seriously dressed up and spent time assembling all the documents hoping to get a fair and professional arbitration. It is supposed to be better than going to court as only Realtors ourselves know what we are talking about.

That started out to be a joke.

b) I saw one panel member's eyes automatically shut down for 30 seconds. Twice! How much focus that member could offer throughout the long and tedious hearing under the member's physical condition.

How about another member, the arbitration material seemed to be fresh from the envelope, did not seem even one page was ever turned. How much that member had treated the hearing as important as I had?

The Chairman obviously seemed to be new at this. He constantly referred to the notes and needed to be reminded by another member what was missing. Throughout the hearing he had focused more how to be a good chairman following the agenda rather than paying attention of what I said and he stopped me twice from speaking. No offence. I just reported how I felt about the arbitration.

The Counsel, whom I did not know who he was, spent half of his time texting and working on his iphone when none of us was allowed to have our phone on.

Another member for personal reasons had to leave early.

One member suddenly walked in and asked if the arbitration had finished.

OMG!

2) I was denied a due process and right to defend myself.

As I have mentioned above, Chairman had stopped me from speaking twice. Of course he should stop me if I was talking something irrelevant, but I was trying to challenge the respondents' accusation in their response to the Arbitration. He lied about how much effort he had contributed to help the buyer selecting between two lots. The truth was there were no 2 lots. It was only one lot available for purchase when the buyer put a deposit down on that only one lot less than 24 hours after my showing.

Chairman stopped me from speaking so I could not finish explaining why that was a significant evidence proving their lies. I also could not finish challenging the rest of their fake statements. The right to defend myself was deprived of because of Chairman's interruption.

That was why later in the end, Chairman came back with a question "which lot would I recommend" He should not ask that question if he understood or allowed me to continue my defense. There was only one lot available to purchase, Respondent brought up two lots just to confuse or cover up the truth that he did nothing to contribute the purchase. I believed Chairman's misunderstanding had played an important role to the panel's decision.

3) It was not just a clerical mistake!

Not to mention that the award letter was sent out erroneously, as Ms Trillo said it did not change the outcome; it was just a clerical mistake on the cover letter that she made. (In other words, no big deal?) There was no apology and no explanation that went with the letter.

I could not see how much respect and responsibility had been given to this arbitration hearing. Overall speaking, it was not done properly, respectfully and professionally. How could the panel arrive a fair and accurate conclusion based on all of the above?

Coupled with the above mentioned deficiencies, that was not just a clerical mistake. It was a significant error more than harmless, a new hearing should be granted but I was told no way.

#### Redacted Settlement Discussion

. Obviously I did not do this just for money. My attorney fees were already gone above and beyond the commission.

Being in Service for 28 years, I felt obligated


a) to myself- protect my integrity and professionalism in the industry and restore my self esteem. I was so insulted by the greedy buyer and the lying agent.

- b) to buyers- they have to respect the Realtors that they work with
- c) to fellow Realtors- offering a kickback to steal other Realtors business is totally stupid and unethical. To sign a registration lying about being the one showing the buyer at his first visit so as cheating Builder for commission, that is a new low for all Realtors.

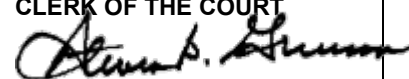
I am totally disappointed GLVAR has not changed a bit since my first arbitration 25 years ago. For whatever happened in the arbitration hearing, I could not trust GLVAR would be capable of providing a professional hearing any more. As such, I resort to legal action to fight for my obligations. I want that to be a known public record.

Thank you

Respectfully submitted,



Betty Chan



**OPP**

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Nevada Bar No. 6076

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*Attorneys for Defendants/Counterclaimants*

*Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*

*and Jerrin Chiu*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,

v.

WAYNE WU, JUDITH SULLIVAN,  
NEVADA REAL ESTATE CORP., JERRIN  
CHIU, KB HOME SALES – NEVADA INC.,

Defendants/Counterclaimants.

Case No: A-16-744109-C

Dept. No: XII

**OPPOSITION TO MOTION TO  
VACATE OR MODIFY  
ARBITRATION AWARD AND  
COUNTERMOTION TO  
RECOGNIZE WU AS THE  
PROCURING CAUSE, FOR  
SUMMARY JUDGMENT, AND  
FOR ATTORNEY FEES**

COMES NOW, Defendants and Counterclaimants, WAYNE WU (“Wu”), JUDITH SULLIVAN (“Sullivan”), NEVADA REAL ESTATE CORP. (“NREC”) and JERRIN CHIU (“Chiu”), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, submit their *Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees* and state as follows:

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///

## **BACKGROUND**

This dispute arose when Betty Chan failed to meet the expectations of a potential client, who was forced to hire another agent to help him find and purchase a house. Unfortunately, Ms. Chan has exceeded expectations in fulfilling her promises to use litigation as a means to impose unwarranted punishment on the defending parties by way of excessive legal fees and costs. The underlying commission at issue in this litigation should rightfully be paid to Wayne Wu, the agent that guided the buyer through the decision-making process and ultimately helped him obtain his home. Because Ms. Chan has used litigation as a weapon to force needless costs on her adversary out of spite, attorney fees should be awarded to the defending parties.

### **I. JERRIN CHIU ATTEMPTS TO USE BETTY CHAN TO PURCHASE A HOUSE DURING A SHORT WINDOW AROUND THE NEW YEAR**

On November 2, 2015, Dr. Jerrin Chiu emailed BETTY CHAN (“Chan”), officer and registered agent of ASIAN AMERICAN REALTY & PROPERTY MANAGEMENT, a corporation (“AAPM”), expressing interest in searching for a home to purchase while Dr. Chiu’s parents were in town to visit in late December. In the November 2, 2015 email, Dr. Chiu provided Chan with a relative price range, desired location, and expressed that he and his parents would be available to look at homes from December 30, 2015 to January 1, 2016. He noted that this might infringe on family time over the holidays.<sup>1</sup> Chan, with no objection to the days indicated by Dr. Chiu, agreed to show him and his parents some options.<sup>2</sup>

A few weeks later, Dr. Chiu contacted Chan again, confirming that she would accompany Dr. Chiu and his parents as they looked for a house. Chan confirmed the appointment. Dr. Chiu and Dr. Chiu’s father, Dr. Kwang Chiu (“Kwang”) sought out Chan because she spoke Mandarin Chinese, making it easier to communicate with Dr. Chiu’s parents. Dr. Chiu was also familiar

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<sup>1</sup> **Exhibit “A”**.

<sup>2</sup> **Exhibit “B”**.



1 with Chan because Dr. Chiu had used Chan as a real estate agent before in 2013 when he  
2 purchased a condo.

3 Chan admits that she did nothing to actually prepare for Dr. Chiu's home search until the  
4 day before he was supposed to begin viewing properties.<sup>3</sup> Nonetheless, on December 30, 2015  
5 Chan began to show Dr. Chiu and his parents some potential options to meet Dr. Chiu's  
6 conditions. Neither Dr. Chiu nor his parents ever entered into any form of written agreement  
7 with Chan. Chan showed them several previously-owned homes. Chan tried to persuade Dr. Chiu  
8 to purchase one of the previously-owned homes, but Dr. Chiu and his parents were not  
9 interested.<sup>4</sup>

10 As the day progressed, Chan began to rush through showings. "We then went to Toll  
11 Brothers. . . . We did not finish all the models. We were already very late for the 4th resale  
12 appointment and also late for KB . . . ."<sup>5</sup>

13 Unsurprising, this rush continued as Chan took Dr. Chiu and his parents to Tevare at  
14 Summerlin, a housing development by KB Home Sales – Nevada, Inc. ("KB Home  
15 Development"). There, Chan showed Dr. Chiu and his parents three model home floor plans:  
16 Model 1 (a single-story home); Model 2 (a two-story home); and Model 3 (another two-story  
17 home). During this visit to the KB Home Development, Chan also showed Dr. Chiu a few empty  
18 lots where the model home floor plans could be erected. It is important to note that the floor plan  
19 and lot combination ultimately purchased by Chiu was not presented to him by Chan but rather  
20 by the later retained agent, Wu.

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21  
22 <sup>3</sup> Exhibit 2 of Motion to Vacate, P0011, Betty Chan Statement, "The Preparation."

23 <sup>4</sup> Chan attached documents to show a proposed route. The proposed route covered several  
24 homes, none of which ultimately appealed to Chiu as demonstrated by his failure to purchase the  
25 same. Thus, the options Chan unsuccessfully proposed to sell to Dr. Chiu included property at  
Cannon Falls Avenue, Escondido Canyon Street, Asilo Blanco Avenue, Dove Meadow Way, and  
Wonderful Day Drive.

<sup>5</sup> Exhibit 2 of Motion to Vacate, P0011, Betty Chan Statement, "The Showing."

1 During the December 30th visit to KB Home Development, Chan pressured Dr. Chiu to  
2 purchase Lot 37 and to choose the Model 3 floorplan. Chan preferred Lot 37, claiming it would  
3 give Dr. Chiu a better view of the Vegas Strip. However, Dr. Chiu was not interested in having a  
4 view of the Vegas Strip, preferring to have a view of the mountains. He was also uninterested in  
5 the KB Home options because the development was outside the area he wanted to live,  
6 something he told Chan before the visit.

7 Additionally, Dr. Chiu disliked the Model 3 floorplan and expressed his distaste for the  
8 layout. Dr. Chiu initially held some mild interest in the Model 2 floorplan, however Chan's  
9 persistent pitch to sell Dr. Chiu a previously-built home or her preferred combination of Lot 37  
10 with the Model 3 floorplan, left Chiu, at the end of the day, uninterested and confused.

11 Moreover, Chan was unwilling to let Dr. Chiu's interests govern the schedule. "I told  
12 Buyer Jerrin that we had [an] appointment with another property at 1:30 pm and [were] already  
13 late so we needed to hurry."<sup>6</sup> Thus, Chan whisked Dr. Chiu and his parents away from the KB  
14 Home Development. Chan concluded the day with an email whose subject line read "3 properties  
15 we saw today." Chan's summary of the day identified only "3 properties that [Dr. Chiu] [was  
16 purportedly] interested" in purchasing: listings 1594880, 1594035, and 1592526 (hereafter  
17 "Three Resale Properties").<sup>7</sup> None of these met Dr. Chiu's needs or were purchased by him.

## 18 **II. CHAN BECOMES NON-RESPONSIVE AFTER THE RUSHED AND** 19 **INCOMPLETE SHOWINGS OF DECEMBER 30, 2015**

20 Despite Dr. Chiu's expressed desire to finalize his home selection within a tight  
21 timeframe, Chan became unresponsive after the initial rushed day of showings. This occurred  
22 despite Dr. Chiu's attempts to reach Chan. According to Chan, her non-responsive attitude  
23 during the exact time frame Dr. Chiu needed to make his decision was due to her pursuit of  
24 personal affairs, including going to see "fireworks" with her family. During arbitration, Chan

25 <sup>6</sup> Exhibit 2 of Motion to Vacate, P0012, Betty Chan Statement, "KB Home."

<sup>7</sup> P0051, **Exhibit "O"**; see also Exhibit 2 of Motion to Vacate, P0059-62.

1 admitted that she failed and refused to respond to Dr. Chiu's calls over the New Year's holiday,  
2 preferring instead to spend time with her visiting daughter.<sup>8</sup>

3 On December 31, 2015, Dr. Chiu and his parents—unaccompanied by the Chan who had  
4 abandoned them, and was not returning calls—returned to the KB Home Development. They  
5 called Chan at approximately 10:50 a.m., to express their desire to look at more options before  
6 Dr. Chiu's parents left town. Chan did not answer.

7 While waiting for Chan to return their call, Dr. Chiu and his parents, without the  
8 assistance of any broker, met with a KB Home representative and were informed that if they did  
9 not make a deposit towards a lot before the end of the day, they would be subject to the  
10 development-wide price increase of \$3,000.00.

11 Even though he had not yet decided to purchase a KB Home, Dr. Chiu—unable to  
12 contact Chan—decided to make a fully refundable earnest deposit of \$10,000.00 with KB Home  
13 to avoid the price increase on the KB Home lots. The deposit was made because it was fully  
14 refundable for fourteen (14) days. Therefore Dr. Chui, made the deposit with KB Homes based  
15 on the representation that the refund could be returned for fourteen days should he opt not to  
16 purchase from KB Homes.<sup>9</sup>

17 Notwithstanding the refundable deposit, Chiu was concerned with the KB Development's  
18 poor reputation and several poor online reviews regarding homes built by KB Homes. Thus, on  
19 January 1, 2016 and due to Chan's non-responsive behavior, Dr. Chiu posted a question on the  
20 city-data.com website forum inquiring about the integrity of homes built by KB Homes.<sup>10</sup>

21 On January 2, 2016, Kwang called Chan several times without answer and left a message.  
22 Chan had previously been made aware that time was of the essence for Dr. Chiu and she knew  
23

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24 <sup>8</sup> Exhibit 2 of Motion to Vacate, P0013–14, Betty Chan Statement, "Follow up."

25 <sup>9</sup> Affidavit of Jerrin Chiu, **Exhibit "C"**.

<sup>10</sup> A true and correct copy of the January 1, 2016 post is attached hereto as **Exhibit "D"**.

1 that Kwang and his wife had to return to California in two days and needed an agent to help them  
2 explore housing options and find a home to purchase.

3 On January 3, 2016, Kwang called Chan again and left another message. Dr. Chiu's  
4 parents had to leave, yet he still had not identified a house to purchase. Chan did not respond.  
5 Despite the urgency Dr. Chiu had expressed in identifying a house to purchase, Chan admits that  
6 she had no contact with Dr. Chiu from December 30, 2015 to January 5, 2016, the very days Dr.  
7 Chiu had indicated they needed help locating a home.<sup>11</sup>

8 **III. DR. CHIU SEARCHES FOR SOMEONE TO ANSWER HIS QUESTIONS SO HE**  
9 **CAN PURCHASE A HOUSE**

10 Frustrated that Chan failed and refused to respond to their calls and messages and running  
11 out of time to consider options together, Dr. Chiu and his parents began searching for other real  
12 estate agents that could guide them through a purchase. Kwang started the search by calling a  
13 few different agents, but none answered. Kwang remembered a former acquaintance who worked  
14 in the Vegas area as a broker, Wayne Wu ("Wu"). Kwang located Wu's number in a local  
15 newspaper and called Wu at approximately 1:40 p.m. on January 3, 2016.

16 Kwang recommended Wu to Chiu because of his expertise in architecture, ability to  
17 speak Mandarin, and his knowledge of the Chinese tradition of feng shui. Moreover, Wu was  
18 responsive to concerns and willing to accommodate his schedule to Dr. Chiu's short timeline  
19 even though he had no prior notice.

20 On January 7, 2016, Dr. Chiu met with Wu at the KB Home Development. Dr. Chiu  
21 expressed his frustrations in dealing with Chan, her forceful nature in trying to convince him to  
22 buy one of the Three Resale Properties, her pushing him (in the alternative) to purchase a KB  
23 Homes Model 3 floorplan, a plan Dr. Chiu was not impressed with, and her failure to respond to  
24 phone calls and voice messages.

25  

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<sup>11</sup> See Exhibit 2 of Motion to Vacate, P0013-14, Betty Chan Statement, "Follow up."

1 Wu listened to Dr. Chiu's criteria and began to identify properties that could potentially  
2 satisfy Dr. Chiu's objectives. Thus, he suggested Lot 43 and the Model 2 floorplan, a  
3 combination that had never even been suggested by Chan. Wu explained the implications of  
4 building the Model 2 floorplan on Lot 43, including how the combination would be effective at  
5 bringing in natural light with an impressive view of the mountains in conformity with principles  
6 of feng shui.

7 Dr Chiu found Wu's analysis convincing; Wu was also able to satisfy his concerns about  
8 KB Homes quality and access to the development, even though he initially deemed it to be  
9 outside his desired area. Based on Wu's recommendation, Chiu purchased Lot 43 with the Model  
10 2 floorplan on January 8, 2016.<sup>12</sup> Wu is the broker that procured the sale and the ONLY listed  
11 Broker on the purchase agreement<sup>13</sup> and the addendum.<sup>14</sup> There is no mention of Chan in any of  
12 the closing documents.

#### 13 **IV. CHAN USES THREATS AND DECEPTION TO ATTEMPT TO OBTAIN WU'S** 14 **COMMISSION**

15 Chan recognizes that she knew at least by January 15, 2015 that Dr. Chiu had been forced  
16 to find another real estate agent to meet his needs.<sup>15</sup> After waiting another week, Chan decided to  
17 go to KB Homes and attempt to unilaterally obtain the Commission for herself by claiming that  
18 Dr. Chiu had signed a registration card appointing her as agent.<sup>16</sup> Ms. Chan could not produce  
19 the card and KB Homes was unable to locate such a document, which did not deter Chan from  
20 trying to obtain Wu's Commission by threatening Dr. Chiu.

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21  
22 <sup>12</sup> **Exhibit "C"**.

23 <sup>13</sup> A true and correct copy of the purchase agreement is attached hereto as **Exhibit "E"**.

24 <sup>14</sup> A true and correct copy of the addendum to the purchase agreement is attached hereto as  
25 **Exhibit "F"**.

<sup>15</sup> Exhibit 2 of Motion to Vacate, P0014-15, Betty Chan Statement, at "The Other Agent's  
Intrusion."

<sup>16</sup> See Exhibit 2 of Motion to Vacate, P0015, Betty Chan Statement, "Registration Card."

Chan next hired Jeffrey R. Hall, Esq. of Hutchison & Steffen to send a demand letter to First American Title on March 24, 2016. Chan demanded she be paid Wu's Commission and claimed that "Mr. Chiu signed a broker registration identifying Ms. Chan as his agent on [December 31, 2015]." <sup>17</sup> But Chan's drive has really always been about punishing Wu for providing services to the client she abandoned.

Honestly from day one i met you my focus is not the commission, i felt insulted and humiliated, **another agent dared challenge me** and he really do not know who I am. I have been really sad more than i am angry. Last night i read many court cases. Even though **my card has disappeared**, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen **i do have few hundred thousand in hand that i can use**. If they are willing to go along with me to spend equal amount of money, **then I will be very happy to play their game**. I got my direction last nite, so i felt peaceful now. All i need KB to understand I don't hate kb for this, and i need them to **work with me on my plan**. Jana, i dont blame you either and take care of yourself. <sup>18</sup>

Unaware of Chan's ulterior motives, Wu, through counsel, requested a copy of the purported registration card from Chan's attorney on June 17, 2016. This request was renewed on June 21, 2016. Counsel for Chan responded: "I asked my client for the document referred to. She's been out of town and advised that she'd need a week to get back and go through her files." Chan never had the registration card, which she knew and admitted as early as February 2016, four months earlier. Apparently, her counsel figured out the same. After the week Chan purportedly needed to get home and find the document, Wu suddenly received notice that her counsel "no longer represent[ed] Betty Chan in this matter." <sup>19</sup> Mr. Hall had withdrawn as counsel.

Pursuant to Mr. Hall's confirmation that Chan was unrepresented, Chan was contacted directly requesting the purported registration card on June 29, 2016. Chan's response was to

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<sup>17</sup> **Exhibit "H"**; compare **Exhibit "I"** (showing Chan knew she did not have a registration card on February 5, 2016).

<sup>18</sup> **Exhibit "I"**.

<sup>19</sup> Email Chain between Laura Meyers, Michael A. Olsen, Esq., and Jeffrey Hall, Esq, attached hereto as **Exhibit "J"**.

1 inform that she had retained counsel that was currently out of town, but would follow up after  
2 having a chance to review the file.<sup>20</sup>

3 **V. CHAN USES THE DISTRICT COURT, GLVAR, AND TWO ADDITIONAL LAW**  
4 **FIRMS TO CHALLENGE PAYMENT OF WU'S COMMISSION**

5 On September 27, 2016, Chan—now represented by Avece M. Higbee, Esq. of Marquis  
6 Aurbach Coffing—committed an ethical violation of the GLVAR rules by filing a *Complaint* in  
7 the Eighth Judicial District Court, prior to submitting the matter to GLVAR for mediation and  
8 possible arbitration as required by rule.<sup>21</sup> Ms. Chan caused Dr. Chiu and Wu to incur thousands  
9 of dollars in attorney's fees and costs by initiating this litigation, in direct violation of her  
10 obligation to submit to arbitration. The claims listed in the *Complaint* (declaratory relief, breach  
11 of contract, and unjust enrichment) certainly were intended to extort payment of the Commission  
12 to Chan.<sup>22</sup>

13 Chan did not simply sue Wu. She also filed a frivolous action against Nevada Real Estate  
14 Corp. (the real estate company where Wu works), Judith Sullivan (designated Realtor® and  
15 officer of Nevada Real Estate Corp.), Dr. Chiu (the buyer), and KB Homes (the property  
16 developer/seller). Again the filing before this Court is directly in violation of Chan's obligation  
17 to submit this matter to GLVAR for binding arbitration. It was only after Defendants sought to  
18 dismiss this action that Chan filed a Motion to Stay, pending the outcome of the binding  
19 arbitration. Now, that she is not happy with the finding of the panel of 3 arbitrators, following a  
20 nearly 4 hour arbitration, she is attempting to take another bite at the apple.

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21 <sup>20</sup> Email Chain between Laura Meyers, paralegal and Betty Chan, attached hereto as **Exhibit**  
22 **"K"**.

23 <sup>21</sup> Arbitration Manual, Article 17, page 13 ("Realtors shall submit the dispute to arbitration in  
24 accordance with the policies of the Board rather than litigate the matter."); Part Ten – Arbitration  
25 of Disputes, Section 53(a) The Award, page 150 ("The award shall be in writing and signed by  
the arbitrators or a majority of them, shall state only the amount of the award, and, when so  
signed and transmitted to each of the parties, shall be valid and binding and shall not be subject  
to review or appeal.").

<sup>22</sup> See Complaint, ¶¶ 54–55; 64; 74, **Exhibit "L"**.

1 On November 15, 2016, Chan submitted her *Amended Complaint*, alleging, without any  
2 evidence, that Dr. Chiu sought out Wu in order to exclude Chan from the transaction because Wu  
3 offered a “commission kick-back.” Chan further alleged that because Chan was the first to  
4 introduce Dr. Chiu to the KB Home Development, Wu was not entitled to the subsequent  
5 commission received, regardless of her abandonment and dereliction.<sup>23</sup> Wu’s testimony during  
6 arbitration directly refuted Chan’s unfounded allegations about him giving some kind of “kick  
7 back.”

8 On December 6, 2016, Wu and Sullivan submitted their *Answer and Counterclaim* and  
9 asserted that Dr. Chiu and Chan never entered a written agreement and that there was never a  
10 meeting of the minds regarding the core terms of her representation. Dr. Chiu also asserted that  
11 there was never any written or verbal agreement setting forth the terms of any agreement  
12 between the parties. Wu and Sullivan further asserted that Chan fraudulently represented to Dr.  
13 Chiu and to First American Title Company that she possessed a broker registration card  
14 identifying her as Dr. Chiu’s agent without being able to produce any such document upon  
15 challenge.<sup>24</sup> Wu and Sullivan also noted that Chan had failed to bring this matter before the  
16 GLVAR as is required of Realtors®.

17 On January 13, 2017, Chan, through counsel, filed her *Motion for Stay Pending*  
18 *Arbitration* stating that Chan “submitted a claim for arbitration with the Greater Las Vegas  
19 Association of Realtors® pursuant to the Code of Ethics and Arbitration Manual for the National  
20 Association of Realtors®. In the event of disputes between Realtors®, Realtors® must submit  
21 the dispute to arbitration in accordance with the policies of GLVAR.”<sup>25</sup> However, Chan only  
22 remembered the arbitration policy over a year after Dr. Chiu entered a contract to purchase his  
23 home and months after having improperly filed the instant lawsuit.

24  
25 <sup>23</sup> See Chan’s *Amended Complaint*, **Exhibit “M”**.

<sup>24</sup> See **Exhibit “M”**; **Exhibit “H”**.

<sup>25</sup> See *Motion for Stay Pending Arbitration*, at 3:10–12.



1 Ten days after the Motion for Stay, Chan's second counsel, Avece Higbee, Esq.,  
2 submitted her *Motion to Withdraw as Counsel of Record for Plaintiffs Betty Chan and Asian*  
3 *American Realty & Property Management*. The motion requested that Avece Higbee, Esq. be  
4 permitted to withdraw because of "differences with Plaintiffs concerning action to be taken"  
5 going forward in the matter.

6 Wu and Sullivan opposed the motion and requested the Complaint be dismissed or  
7 summary judgment be granted. Notwithstanding, Chan represented to the Court that there were  
8 claims and parties that might remain unaffected by the potential arbitration. Accordingly, the  
9 Court decided to stay the A-Case pending the outcome of arbitration to evaluate whether there  
10 were any claims against any parties that should still be adjudicated after arbitration was  
11 completed.

12 On May 1, 2017, the District Court held a status check due to Chan's failure to provide  
13 any evidence that she had filed for arbitration. Because the named plaintiffs in the A-Case  
14 included a corporation, representation by counsel was required.<sup>26</sup> Chan retained Todd E.  
15 Kennedy, of Black & Lobello, her third law firm to handle the status check.

#### 16 **VI. CHAN REPUDIATES RESULT OF BINDING ARBITRATION**

17 On July 10, 2017, Respondents were finally made aware of a filing with the Arbitration  
18 Board. Of course, Chan did not recur to arbitration initially as required of all members of the  
19 GLVAR. Notwithstanding, she did eventually submit to arbitration as she should have from the  
20 outset. To initiate arbitration, Chan submitted her *Request and Agreement to Arbitrate (Member)*  
21 (hereafter "Agreement to Arbitrate"). In the Agreement to Arbitrate, Chan recognized that "by  
22 becoming and remaining a member of the Greater Las Vegas Association of Realtors®" she had  
23 "previously consented to arbitration through the Association under its Rules and regulations."<sup>27</sup>

24  
25 <sup>26</sup> EDCR 7.42(b) ("A corporation may not appear in proper person.").

<sup>27</sup> **Exhibit "Q"**, P0001.

Further, Chan acknowledged that she sought arbitration of a “dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics” between her and Wu.<sup>28</sup> She claimed that there was “due, unpaid and owing to [her] . . . the sum of \$13,795.32.”<sup>29</sup> And the scope of the arbitration was clearly laid out by Chan in the Agreement to Arbitrate.

**I request and consent to arbitration through the Association in accordance with the Code of Ethics and Arbitration Manual** (alternatively, “in accordance with the professional standards procedures set forth in the bylaws of the Board”). **I agree to abide by the arbitration award** and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, **I agree to pay that party costs and reasonable attorney’s fees incurred obtaining such confirmation and enforcement.**<sup>30</sup>

Pursuant to the Agreement to Arbitrate, an arbitration was held before the GLVAR on or about April 17, 2018. Following the nearly four hour arbitration the panel of arbitrators asked each counsel if they had been given the opportunity to fully and fairly present their entire case. Counsel for both parties responded in the affirmative. Because of a cover letter error in the original transmission of the *Award of Arbitrators* (hereafter “Award”) on April 20, 2018, the deadlines for challenges were extended to reflect re-transmission of the Award on April 27, 2018.

**The award must be paid no later than 5:00 p.m. on May 7, 2018,** either directly to the Respondent or to the Greater Las Vegas Association of REALTORS®. The funds will be deposited in a GLVAR escrow account and are held by GLVAR pending the outcome of a procedural review and/or legal challenge. A request for procedural review must be filed

<sup>28</sup> **Exhibit “Q”**, P0001, ¶ 3.

<sup>29</sup> **Exhibit “Q”**, P0001, ¶ 4.

<sup>30</sup> **Exhibit “Q”**, P0001, ¶ 5 (emphasis added).

1 within twenty (20) days of the award. Alternatively, a notice of legal challenge must be  
2 received within that same twenty (20) day period.<sup>31</sup>

3 Notwithstanding her consent to the arbitration and the rules governing the same, Chan  
4 has since repudiated the Award. On May 17, 2018, the last day for Chan to seek procedural  
5 review of the arbitration, she defiantly declared “I will not engage [in] a procedur[al] review with  
6 GLVAR . . . .”<sup>32</sup> After a diatribe of purported procedural deficiencies—which Chan refused to  
7 actually raise before the GLVAR—Chan openly criticized the GLVAR.

8 I am totally disappointed GLVAR has not changed a bit since my first arbitration 25 years  
9 ago. For whatever happened in the arbitration hearing, I could not trust GLVAR would be  
10 capable of providing a professional hearing any more. As such, I resort to legal action to  
11 fight for my obligations. I want that to be a known public record.<sup>33</sup>

12 Now, after refusing to follow proper procedure by filing a procedural review with  
13 GLVAR and after allowing several more months to elapse, Chan has filed her present motion to  
14 vacate award on June 18, 2018.

### 15 LEGAL ANALYSIS

16 Understanding the difficulties facing her in avoiding the result of arbitration, Chan now  
17 seeks to overturn the Award. Quickly glossing over the actual standard that governs review of  
18 arbitration awards, Chan hopes to garner support for her campaign to inflict unnecessary  
19 litigation expenses on the Defendants, all without mentioning her “burden of proving, by clear  
20 and convincing evidence, the statutory or common-law ground relied upon for challenging the  
21 award.”<sup>34</sup>

#### 22 I. CHAN HAS FAILED TO MEET ANY STANDARD ALLOWING REVIEW OF 23 THE ARBITRATION AWARD

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24 <sup>31</sup> Exhibit “R”.

25 <sup>32</sup> Exhibit “S”.

<sup>33</sup> Exhibit “S”.

<sup>34</sup> See Health Plan of Nevada, Inc. v. Rainbow Medical, LLC, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004).

1 In order to effectively challenge an arbitration award a party must demonstrate (1)  
2 applicable statutory grounds provided in NRS 38.241; (2) that the award was arbitrary,  
3 capricious, or unsupported by the agreement; or (3) that the arbitrator manifestly disregarded the  
4 law.<sup>35</sup>

5 Statutory grounds to vacate an arbitration award may apply if a contesting party  
6 demonstrates by clear and convincing evidence that an “arbitrator exceeded his or her powers.”<sup>36</sup>  
7 This burden proves to be quite high as “Courts presume that arbitrators are acting within the  
8 scope of their authority.”<sup>37</sup>

9 However, allegations that an arbitrator misinterpreted the agreement or made factual or  
10 legal errors do not support vacating an award as being in excess of the arbitrator's  
11 powers. Arbitrators do not exceed their powers if their interpretation of an agreement, even  
12 if erroneous, **is rationally grounded in the agreement**. The question is whether the  
13 arbitrator had the authority under the agreement to decide an issue, not whether the issue  
14 was correctly decided. Review under excess-of-authority grounds is limited and only  
15 granted in very unusual circumstances. An award should be enforced so long as the  
16 arbitrator is arguably construing or applying the contract. **If there is a colorable**  
17 **justification for the outcome, the award should be confirmed**.<sup>38</sup>

18 NRS 38.241 may also allow review of an arbitration award when the contesting party  
19 demonstrates by clear and convincing evidence that the “award was procured by corruption,  
20 fraud or other undue means.”<sup>39</sup> However, the contesting party must meet this burden by  
21 demonstrating that the arbitration award was obtained by intentional misrepresentations related  
22 to the arbitration proceedings.<sup>40</sup>

23 As to common law grounds, to establish that an award was arbitrary, capricious, or  
24 unsupported by the agreement to arbitrate, the contesting party must establish, by clear and  
25

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22 <sup>35</sup> Clark County Education Association v. Clark County School District, 122 Nev. 337, 341–42;  
131 P.3d 5, 8 (2006).

23 <sup>36</sup> NRS 38.241(1)(d).

24 <sup>37</sup> Health Plan of Nevada, Inc., 120 Nev. at 697, 100 P.3d at 178.

25 <sup>38</sup> Health Plan of Nevada, Inc., 120 Nev. at 697–98, 100 P.3d at 178 (emphasis added) (citations  
omitted).

<sup>39</sup> NRS 38.241(1)(a).

<sup>40</sup> See, e.g., Sylver v. Regents Bank, NA, 129 Nev. Adv. Op. 30, 300 P.3d 718 (2013).

1 convincing evidence, that the award “was unsupported by substantial evidence.”<sup>41</sup> “The  
2 arbitrary-and-capricious standard does not permit a reviewing court to vacate an arbitrator’s  
3 award based on misinterpretation of the law.”<sup>42</sup>

4 Similarly, manifest disregard of the law “limits the reviewing court’s concern to whether  
5 the arbitrator consciously ignored or missed the law.”<sup>43</sup> Thus, when reviewing an arbitration  
6 award under the common law, “neither standard permits a reviewing court to consider the  
7 arbitrator’s interpretation of the law.”<sup>44</sup> “When searching for a manifest disregard for the law, a  
8 court should attempt to locate arbitrators who appreciate the significance of clearly governing  
9 legal principles but decide to ignore or pay no attention to those principles.”<sup>45</sup>

10 Thus, “Nevada recognizes both common-law grounds and statutory grounds for  
11 examining an arbitration award. **However, the scope of judicial review of an arbitration**  
12 **award is limited and is nothing like the scope of an appellate court’s review of a trial**  
13 **court’s decision.**”<sup>46</sup>

14 Because Chan, who now complains that the Award was not a proper interpretation of the  
15 law, has failed to demonstrate clear and convincing evidence that any of these standards have  
16 been met, the Award must be confirmed.

#### 17 **A. The GLVAR Did Not Exceed Its Power, Nor Was the Award Obtained by Fraud**

18 The issue presented to the GLVAR by way of Chan’s Agreement to Arbitrate, contrary to  
19 Chan’s post hoc simplification, was who was entitled to \$13,795.32 pursuant to a “dispute  
20 arising out of the real estate business.”<sup>47</sup> Although procuring cause was certainly briefed by the  
21 parties, the GLVAR was not bound exclusively to make a determination of procuring cause, but

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22 <sup>41</sup> Clark County Education Association, 122 Nev. at 341–42; 131 P.3d at 8.

23 <sup>42</sup> Clark County Education Association, 122 Nev. at 343–44; 131 P.3d at 9.

24 <sup>43</sup> Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

24 <sup>44</sup> Clark County Education Association, 122 Nev. at 342; 131 P.3d at 9.

25 <sup>45</sup> Clark County Education Association, 122 Nev. at 344; 131 P.3d at 10 (citation omitted).

<sup>46</sup> Health Plan of Nevada, Inc., 120 Nev. at 695, 100 P.3d at 176.

<sup>47</sup> **Exhibit “Q”**, at ¶¶ 3–4.

1 rather had broad authority to arbitrate the issue of who should be entitled to any portion of the  
2 \$13,795.32 pursuant to the Arbitration Manual as demonstrated by Chan's Agreement to  
3 Arbitrate.

4 The Arbitration Manual lists a number of issues that may be subject to arbitration,  
5 including disputes where multiple brokers claim to be owed money from a commission.<sup>48</sup> The  
6 Arbitration Manual recognizes that brokers may claim that they have a right to commission  
7 proceeds due to the procuring cause standard.<sup>49</sup>

8 The Nevada Supreme Court has determined how "a court . . . decide[s] which [broker]  
9 was the 'procuring' or 'inducing' cause of the sale."<sup>50</sup> To be the procuring cause of a sale, the  
10 broker's conduct must be more than merely trifling.<sup>51</sup> "Merely introducing the eventual  
11 purchaser is not . . . enough."<sup>52</sup> A broker cannot be the procuring cause when it is shown that  
12 they have "abandoned efforts or been helplessly ineffective."<sup>53</sup> Courts have also held that merely  
13 introducing or alerting a prospective buyer that a property is available is usually insufficient to  
14 constitute a procuring cause.<sup>54</sup> Several jurisdictions have held that the broker's efforts must be  
15 the **predominating cause** of the sale.<sup>55</sup> Clearly, given the division of the commission in this  
16 case the Arbitrators found Wayne Wu to be both the procuring cause and the predominating  
17 cause of the sale.

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18  
19 <sup>48</sup> *Code of Ethics and Arbitration Manual*, Standard of Practice 17-4(1).

20 <sup>49</sup> *Code of Ethics and Arbitration Manual*, Standard of Practice 17-4(1).

21 <sup>50</sup> Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 9, 409 P.2d 627, 629 (1966) (citations omitted).

22 <sup>51</sup> Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 629.

23 <sup>52</sup> Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 629.

24 <sup>53</sup> Bartsas Realty, Inc., 82 Nev. at 9, 409 P.2d at 630; see also Levy Wolf Real Estate Brokerage,  
Inc. v. Lizza Industries, Inc., 500 N.Y.S. 2d 37, 118 A.D.2d 688 (N.Y. App. Div. 1986).

25 <sup>54</sup> See United Farm Agency of Alabama, Inc. v. Green, 466 So. 2d 118 (Ala. 1988); Greene v.  
Hellman, 51 N.Y.2d 197, 412 N.E.2d 1301 (1980).

<sup>55</sup> See Carmichael v. Agur Realty Co., 574 So. 2d 603 (Miss. 1990); Ham v. Morris, 711 S.W.2d  
187 (Mo. 1986); A N Associates, Inc. v. Quotron Systems, Inc., 605 N.Y.S. 2d 178, 159 Misc.  
2d 515, (Civ. Ct. N.Y. Cnty. 1993); Vincent v. Weber, 13 Ohio Misc. 280, 232 N.E. 2d 671  
(Mun. Ct. 1965).

1 Notwithstanding the authority to determine that one broker has acted as the procuring  
2 cause, the Arbitration Manual explicitly confers authority to split an award.

3 While awards are generally for the full amount in question (which may be required by state  
4 law), in exceptional cases, awards may be split between the parties (again, except where  
5 prohibited by state law). Split awards are the exception rather than the rule and should be  
6 utilized only when Hearing Panels determine that the transaction would have resulted only  
7 through the combined efforts of both parties. It should also be considered that questions of  
8 representation and entitlement to compensation are separate issues.<sup>56</sup>

9 The authority of the GLVAR to split a commission adds an additional layer of  
10 complexity to an arbitration proceeding determining the amounts of money to be allocated to  
11 each party. "It is for the arbitrators to determine which issues were actually 'necessary' to the  
12 ultimate decision."<sup>57</sup>

13 Thus, an arbitration decision is final and conclusive *because the parties have agreed that it*  
14 *be so*. By ensuring that an arbitrator's decision is final and binding, courts simply assure  
15 that the parties receive the benefit of their bargain.

16 Moreover, "[a]rbitrators, unless specifically required to act in conformity with rules of law,  
17 may base their decision upon broad principles of justice and equity, and in doing so may  
18 expressly or impliedly reject a claim that a party might successfully have asserted in a  
19 judicial action."

20 . . .  
21 Parties who stipulate in an agreement that controversies that may arise out of it shall be  
22 settled by arbitration, may expect not only to reap the advantages that flow from the use of  
23 that nontechnical, summary procedure, but also to find themselves bound by an award  
24 reached by paths neither marked nor traceable and not subject to judicial review.<sup>58</sup>

25 Arbitrators wield significant power to craft an award considering all legal, factual, and  
26 equitable nuances in a matter. The GLVAR relies on this authority in providing arbitration  
27 decisions.

28 The National Association's Professional Standards Committee has consistently taken the  
29 position that arbitration awards should not include findings of fact or rationale for the  
30 arbitrators' award among the reasons for this are the fact that arbitration awards are not

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31 <sup>56</sup> *Code of Ethics and Arbitration Manual*, Appendix II to Part Ten: Arbitration Guidelines  
(Suggested Factors for Consideration by a Hearing Panel in Arbitration), at 158.

32 <sup>57</sup> *Hall v. Superior Court*, 18 Cal. App. 4th 427, 436, 22 Cal. Rptr. 2d 376, 381 (1993).

33 <sup>58</sup> *Moncharsh v. Heily & Blase*, 3 Cal. 4th 1, 10-11, 832 P.2d 899, 903-04 (1992).

1     appealable on the merits but generally only on the limited procedural bases established in  
2     the governing state arbitration statute; that the issues considered by Hearing Panels are  
3     often myriad and complex, and the reasoning for an award may be equally complex and  
4     difficult to reduce to writing; and that the inclusion of written findings of fact or rationale  
5     (or both) would conceivably result in attempts to use such detail as “precedent” in  
6     subsequent hearings which might or might not involve similar facts.<sup>59</sup>

7     Despite the authoritative finality that this gives to their decision, in the specific case of  
8     the GLVAR a process for procedural review is nonetheless provided to the parties.

9     After the award has been transmitted to each of the parties, they have twenty (20) days to  
10    request procedural review of the arbitration hearing procedure by the Board of Directors.  
11    The non-prevailing party shall also have the same twenty (20) days following transmittal  
12    of the award to notify the Professional Standards Administrator that a legal challenge to  
13    the validity of the award has been initiated.

14    If no such procedural review is requested, the award becomes **final and binding following**  
15    **the twenty (20) day period**. However, if procedural review is requested, the award is not  
16    considered final and binding until after the Board of Directors has concluded that the  
17    hearing was conducted in a manner consistent with the Board’s procedures and the parties  
18    had been afforded due process.<sup>60</sup>

19    In addition to the explicit provisions of the Arbitration Manual, the April 27, 2018 letter  
20    communicating the Award put the parties on notice that “A request for procedural review must  
21    be filed within twenty (20) days of the award. Alternatively, a notice of legal challenge must be  
22    received within that same twenty (20) day period.”

23    In this matter, Chan explicitly refused to seek any procedural review of the Award before  
24    the GLVAR. This even though Chan was advised that she had the right to raise any challenges  
25    that she felt affected her due process or the fairness of the award. Of course, a procedural review  
26    by the GLVAR would have done little to advance Chan’s plan to make defendants continue to  
27    incur thousands of dollars in legal fees and costs. Nonetheless, Chan has waived the opportunity

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28    <sup>59</sup> Arbitration Manual, at Appendix II to Part Ten: Arbitration Guidelines (Suggested Factors for  
29    Consideration by a Hearing Panel in Arbitration), Sample Fact Situation Analysis, page 162; see  
30    also Arbitration Manual, Appendix V to Part Ten: Arbitration Hearing Checklist, (33), page 174  
31    (“The award shall be in writing and signed by the arbitrators or a majority of them, and shall  
32    state only the amount of the award, and when transmitted to each of the parties shall not be  
33    subject to review or appeal.”).

34    <sup>60</sup> Arbitration Manual, at Part Ten – Arbitration of Disputes, Section 53(c), page 150.



1 to seek review of the Award, which became final and binding when Chan failed to bring a good  
2 faith challenge through the procedural review process provided by the GLVAR.

3 By any means, Chan's claim that the GLVAR exceeded its power relies on her faulty  
4 reasoning that because "there is no contract between the two competing brokers" the arbitration  
5 was merely an ethical formality requiring the GLVAR to engage exclusively in a procuring cause  
6 analysis.<sup>61</sup> As demonstrated by the Agreement to Arbitrate executed by Chan, the scope of the  
7 arbitration conferred on the GLVAR the authority to address the distribution of \$13,795.32 in  
8 conformity with the Arbitration Manual. After substantial briefing and documentation was  
9 submitted to the GLVAR, a hearing was conducted and the GLVAR reached clear findings.

10 The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable  
11 dispute between Betty Chan, Asian American Realty [Complainant] and Wayne Wu and  
12 Judith Sullivan, Nevada Real Estate Corp [Respondent] certify that on April 17th, 2018,  
13 we heard the evidence of the parties and having heard all the evidence and arguments of  
14 the parties, a majority of the panel finds there is due and owing \$3,448.83 to be paid by  
15 Respondent to Complainant and the remaining \$10,346.49 be paid to Respondent from title  
16 company.<sup>62</sup>

17 In conformity with GLVAR policy as established by the Arbitration Manual, the Award  
18 followed the binding principles and clearly pronounced the award of the Hearing Panel. Yet  
19 Chan now argues that the only issue before the GLVAR was regarding procuring cause and  
20 attempts to demonstrate that the final decision was a legal misinterpretation. Even if Chan could  
21 demonstrate by clear and convincing evidence that the only issue before the GLVAR was to  
22 determine procuring cause, which she cannot, a misinterpretation of the law is not a valid basis to  
23 challenge an arbitration award under NRS 38.241. The GLVAR's Award was rationally based in  
24 the Agreement to Arbitrate and considered issues authorized by the Arbitration Manual. Thus,  
25 the Award must be confirmed.

61 See Motion to Vacate, at 9:21-24.

62 Exhibit "R".

1 To the extent that this Court is willing to entertain a modification of the Award to  
2 eliminate division of the \$13,795.32, said amount should be awarded entirely to Wu. Procuring  
3 cause analysis would favor Wu, as implicitly indicated by the award. Although the GLVAR  
4 decided to exercise its discretionary, equitable authority to divide the commission, it awarded a  
5 much larger amount to Wu. Specifically, the Award orders that seventy-five percent (75%) of the  
6 \$13,795.32 be awarded to Wu.

7 The reason is clear: the GLVAR found Wu to be the predominating cause of the sale, and  
8 accordingly awarded him with a predominating share of the commission. Because he was the  
9 predominating cause of the sale, should the Court be inclined to limit the award of the  
10 \$13,795.32 to one individual, clearly the GLVAR in reviewing the facts concluded that Wu was  
11 the procuring cause. Although the GLVAR decided to give a nominal twenty-five percent (25%)  
12 portion of the funds to Chan, Wu asserts a counter-motion that any revision of the Award on  
13 grounds related to procuring cause must order the full \$13,795.32 be distributed to him.

14 **B. The GLVAR's Award Is Not Arbitrary and Capricious, Nor Was It Obtained by**  
15 **Fraud**

16 Chan falls woefully short of her burden to establish by clear and convincing evidence that  
17 the Award was not supported by substantial evidence as required to demonstrate that it was  
18 arbitrary and capricious. Although "the scope of judicial review of an arbitration award is limited  
19 and is nothing like the scope of an appellate court's review of a trial court's decision,"<sup>63</sup> a party  
20 seeking to fulfill their burden of proof in challenging an arbitration award must cite to a record.  
21 Merely referring to previous briefing is not sufficient to allow review of a matter.<sup>64</sup>

22  
23  
24  
25 <sup>63</sup> Health Plan of Nevada, Inc., 120 Nev. at 695, 100 P.3d at 176.

<sup>64</sup> See Thomas v. State, 120 Nev. 37, 43, 83 P.3d 818, 822 (2004).

1 GLVAR arbitration proceedings establish a method for parties to preserve a record. “The  
2 Board shall have a court reporter present at the hearing or shall record the hearing. Parties may,  
3 at the Board’s discretion, record the hearing or utilize a court reporter at their own expense.”<sup>65</sup>

4 Use of the record is important in part due to the inability of a party to defeat an arbitration  
5 award by raising arguments not previously raised. “Failure to raise the claim before the  
6 arbitrator, however, waives the claim for any future judicial review.”<sup>66</sup>

7 Any other conclusion is inconsistent with the basic purpose of private arbitration, which is  
8 to finally decide a dispute between the parties. Moreover, we cannot permit a party to sit  
9 on his rights, content in the knowledge that should he suffer an adverse decision, he could  
10 then raise the illegality issue in a motion to vacate the arbitrator's award. A contrary rule  
11 would condone a level of “procedural gamesmanship” that we have condemned as  
12 “undermining the advantages of arbitration.”<sup>67</sup>

13 Like her attempt to invoke a statutory basis to challenge the Award, Chan attempts to  
14 meet her burden of clear and convincing evidence under the arbitrary and capricious standard by  
15 claiming the GLVAR was confined to a finding of procuring cause. “By failing to do so, and  
16 indeed splitting the commission, the Panel has acted arbitrarily, manifestly disregarded the law,  
17 and their action is unsupported by agreement.”<sup>68</sup>

18 Just as she did before the GLVAR, Chan recites a purported laundry list of things she did  
19 in her efforts to obtain a commission. She likewise ignores all the substantial evidence produced  
20 to the GLVAR to demonstrate that it was Wu that actually assisted Dr. Chiu in determining  
21 which house to purchase when Chan disappeared after pushing one of Three Resale Properties on  
22 Dr. Chiu.

23 Indeed, Chan fails to even cite to the record of the hearing or offer any explanation that  
24 can disturb the presumption that the Award was based on substantial evidence and must be  
25

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<sup>65</sup> Arbitration Manual, at Part Seven – Arbitration General Provisions, Section 31. Conduct of Hearing, page 137.

<sup>66</sup> Moncharsh v. Heily & Blase, 3 Cal. 4th 1, 31, 832 P.2d 899, 918 (1992).

<sup>67</sup> Moncharsh, 3 Cal. 4th at 30, 832 P.2d at 917.

<sup>68</sup> Motion to Vacate, at 11:3–5.

1 affirmed. Nor does Chan provide any citation to any record to demonstrate any fraudulent  
2 conduct in the arbitration proceedings, which are also presumed to have proceeded in the normal  
3 course. Chan cannot point to a procedural challenge wherein she alleged any irregularity because  
4 she intentionally refused to pursue any such challenge.

5 Notwithstanding her failure to cite the underlying record, Chan has identified language in  
6 a contract to which she is not a party in an effort to undermine the Award with arguments she did  
7 not raise before the GLVAR although it was available to Chan at that time.<sup>69</sup> This new argument  
8 is not properly before the Court as it raises issues waived by Chan in the arbitration itself. Chan  
9 must not be allowed to continue the procedural gamesmanship that she has manifested  
10 throughout these proceedings in an attempt to drive up the costs. To the extent Chan felt any of  
11 the arguments she now raises for the first time had any merit, these should have been raised  
12 before the GLVAR, not waived by waiting to use the arguments after the binding arbitration  
13 Award was entered.

14 Moreover, the arbitration was not limited in scope as suggested by Chan despite her  
15 Agreement to Arbitrate; it was within the authority of the GLVAR to hear all evidence regarding  
16 the real estate dispute that arose between the parties and adjudicate the dispute accordingly. The  
17 GLVAR did review all the evidence and heard arguments from the parties. It had substantial  
18 evidence before it to find that Wu worked with Dr. Chiu to identify and complete a real estate  
19 transaction that would meet Dr. Chiu's needs. Because Chan has failed to show any proof that  
20 the GLVAR lacked substantial evidence she has not met her burden of clear and convincing  
21 evidence and the Award must be affirmed nor demonstrated any fraud in the arbitration  
22 proceeding. The Award must be confirmed.

### 23 C. The GLVAR Did Not Manifestly Disregard the Law

24 \_\_\_\_\_  
25 <sup>69</sup> See Motion to Vacate, at 13:14 – 24 (recognizing that Chan was not a party to the agreement  
which she now uses for the first time in her ongoing procedural gamesmanship).

1 Again relying on her overly narrow focus on procuring cause, Chan claims that “the  
2 Award manifestly disregards the law . . . because it . . . makes an implicit finding that cannot  
3 exist: more than one procuring cause.”<sup>70</sup> Chan fails to demonstrate that the Award actually relies  
4 on the implication that she urges be deduced based on her post hoc simplification of the  
5 arbitration proceedings. As the procuring cause, the GLVAR awarded the majority (75%) of the  
6 \$13,795.32 to Wu, but also exercised its authority under the Arbitration Manual to split the  
7 Award and provide Chan with the nominal remainder.

8 And the GLVAR’s decision to do so is not subject to review where, as is this case here,  
9 nothing has been done to meet the burden of proving by clear and convincing evidence that the  
10 GLVAR was attempting to flaunt and openly disregard legal authority. Although Chan insists  
11 that the GLVAR can be implied to have misinterpreted the law, mere misinterpretations of the  
12 law do not constitute manifest disregard for the law for purposes of overturning the Award. As  
13 such the Award must be confirmed.

## 14 **II. COUNTERMOTION FOR SUMMARY JUDGMENT**

15 Chan, a member of the GLVAR, was required to “submit the dispute to arbitration in  
16 accordance with the polices of the [GLVAR] rather than litigate the matter.” Not only was Chan  
17 required to submit to arbitration rather than litigate this matter before the District Court, such  
18 arbitration was binding. By filing her Complaint with this Court, Chan deliberately violated  
19 Local, State, and National codes of ethics. Chan ignored the mandate to arbitrate the matter  
20 before the GLVAR, wasting both this Court’s time and resources. Not only did Chan waste this  
21 Court’s resources and time, but Chan has also filed this matter before the Court to harass and  
22 unnecessarily drive up Defendants’ cost of defense.

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23  
24  
25 <sup>70</sup> Motion to Vacate, at 12:3–4.

1 A party is entitled to summary judgment when there are no genuine issues of material  
2 fact in dispute and the moving party is entitled to summary judgment as a matter of law.<sup>71</sup> In  
3 Wood v. Safeway, Inc., 121 P.3d 1026 (2005), the Nevada Supreme Court stated that a factual  
4 dispute is “genuine” when the evidence is such that a rational trier of fact could return a verdict  
5 for the nonmoving party.<sup>72</sup> Once the moving party has shown that there is no genuine dispute as  
6 to material facts, the burden shifts to the nonmoving party to set forth specific facts  
7 demonstrating the existence of a genuine issue for trial or have summary judgment entered  
8 against that party.<sup>73</sup> In meeting this burden, the nonmoving party, “is not entitled to build a case  
9 on the gossamer threads of whimsy, speculation and conjecture.”<sup>74</sup>

10 The Award represents the final, binding resolution of the entire real estate dispute  
11 between the parties in this matter. The Award necessarily precludes any additional review of this  
12 case except under NRS 38.241 or the two common law grounds. Because Chan has failed to  
13 justify any relief under any of these standards, the Award must stand. And since no material facts  
14 are or can be disputed in light of the Award, summary judgment should be granted in favor of  
15 Defendants and against Plaintiff.

16 **III. COUNTERMOTION THAT FEES BE AWARDED AGAINST CHAN PURSUANT**  
17 **TO EDCR 7.60(B) AND THE AGREEMENT TO ARBITRATE**

18 Defendants request that the Court award its attorneys’ fees related to this litigation.  
19 EDCR 7.60(b) allows the Court to “impose upon an attorney or a party any and all sanctions  
20 which may, under the facts of the case, be reasonable, including the imposition of fines, costs or  
21 attorney's fees when an attorney or a party without just cause” “[p]resents to the court a motion  
22  
23

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24 <sup>71</sup> NRCP 56.

25 <sup>72</sup> See also NRCP 56.

<sup>73</sup> NGA #2, LLC v. Rains, 113 Nev. 1151, 1156, 946 P.2d 163, 166 (1997).

<sup>74</sup> Collins v. Union Federal Savings and Loan Association, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (citations omitted).

or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted” or “[s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.”<sup>75</sup>

Moreover, in the Agreement to Arbitrate Chan explicitly agreed that “In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, **I agree to pay that party costs and reasonable attorney’s fees incurred obtaining such confirmation and enforcement.**”<sup>76</sup>

“[I]n determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount . . . .”<sup>77</sup> Nevada courts have long relied upon the factors in Brunzell v. Golden Gate Nat’l Bank to determine reasonability of fees, including:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.<sup>78</sup>

Any attorney fee award must be based on a Brunzell analysis.

**A. Brunzell Factor #1: “the qualities of the advocate: his ability, his training, education, experience, professional standing and skill”<sup>79</sup>**

Counsel for Petitioner, Michael A. Olsen, Esq. is a founding partner of his firm and has been a member of the State Bar of Nevada for over twenty years. He is a graduate of Utah State University and BYU’s J. Reuben Clark Law School. His abilities as an advocate have been recognized through numerous awards and honors, and Mr. Olsen’s abilities have been honed through, among other experience, regular appearances in the Eighth Judicial District Court on contested matters.

<sup>75</sup> EDCR 7.60(b)(1), (3).

<sup>76</sup> **Exhibit “Q”**, P0001, ¶ 5 (emphasis added).

<sup>77</sup> Shuette v. Beazer Homes Holding Corp., 121 Nev. 837, 864, 124 P.3d 530 (2005).

<sup>78</sup> Brunzell v. Golden Gate Nat’l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

<sup>79</sup> Brunzell, 85 Nev. at 349.

1 Roman C. Harper, Esq. is a graduate of the University of North Carolina and BYU's J.  
2 Reuben Clark Law School.

3 **B. Brunzell Factor #2: “the character of the work to be done: its difficulty, its**  
4 **intricacy, its importance, time and skill required, the responsibility imposed and the**  
5 **prominence and character of the parties where they affect the importance of the**  
6 **litigation”<sup>80</sup>**

7 This matter has involved unnecessary briefing and research, motion practice before this  
8 Court before Chan made any attempt to arbitrate this matter, followed by refusal by Chan to  
9 comply with the Award. Chan completely disregarded the requirement of seeking procedural  
10 review of the Award before the GLVAR, and now seeks to prolong this matter further by  
11 continuing litigation before this Court without any legal basis to do so.

12 The time expended to oppose the current motion to vacate and litigate before this court at  
13 all would not have been required had Chan followed her ethical duty to arbitrate and complied  
14 with GLVAR procedures subsequent to the Award. Yet Chan has demonstrated absolute resolve  
15 in making these proceedings as expensive and harmful to the Defendants as she possibly can.<sup>81</sup>  
16 Individuals with a right to a commission like Wu should not be forced to incur legal fees and  
17 costs that far exceed the commission to protect their right to the same. Nor should Chan be  
18 permitted to use the judiciary as an indiscriminate weapon against anyone who dare contradict  
19 her.

20 **C. Brunzell Factor #3: “the work actually performed by the lawyer: the skill,**  
21 **time and attention given to the work”<sup>82</sup>**

22 Chan's attempt to obtain funds to which she is not entitled and litigate against Defendants  
23 has required investment of a substantial amount of time and effort to prepare and provide a  
24 proper defense, including against motion practice unwarranted under the GLVAR ethical rules  
25

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<sup>80</sup> Brunzell, 85 Nev. at 349.

<sup>81</sup> Exhibit “I” (“So happen **i do have few hundred thousand in hand that i can use**. If they are  
willing to go along with me to spend equal amount of money, **then I will be very happy to play**  
**their game.**”).

<sup>82</sup> Brunzell, 85 Nev. at 349.



1 binding on Chan. Now, Plaintiff seeks to set aside the arbitration Award because it ruled against  
2 her. Defendants' counsel have been required to invest numerous hours in defending against the  
3 improper attempts to use this Court to deprive Wu of funds that should be properly distributed to  
4 him.

5 **D. Brunzell Factor #4: “the result: whether the attorney was successful and  
6 what benefits were derived”<sup>83</sup>**

7 Defendants have already been successful in demonstrating to the GLVAR that they were  
8 entitled to the majority of the funds at issue in this matter. Specifically, \$10,346.49 of  
9 \$13,795.32 was awarded to Wu. Defendants also prevailed previously in demonstrating that  
10 arbitration was required and that Chan had failed to proceed with arbitration instead of filing the  
11 complaint that initiated this action. Chan specifically acknowledged in the Agreement to  
12 Arbitrate that fees and costs incurred to enforce the Award against her would be payable by her.

13 While “good judgment would dictate that each of these factors be given consideration by  
14 the trier of fact and that no one element should predominate or be given undue weight,”<sup>84</sup> each  
15 factor strongly supports an award of attorneys' fees and costs in favor of Defendants. Thus,  
16 Defendants request an award of attorney fees and costs pursuant to EDCR 7.60(b) and the  
17 Agreement to Arbitrate.

18 **CONCLUSION**

19 This Court should deny Chan's Motion to Vacate, confirm the Award, and enter  
20 summary judgment in this matter. The Award properly disposed of the underlying issues in this  
21 matter in accordance with the Arbitration Manual and the Agreement to Arbitrate submitted by  
22 Chan to the GLVAR. Chan has done nothing to demonstrate that any statutory or common law  
23 grounds exist, let alone by clear and convincing evidence, to justify vacating the Award. To the  
24 extent any modification to the Award is warranted, it should be modified to award the entire

25 <sup>83</sup> Brunzell, 85 Nev. at 349.

<sup>84</sup> Brunzell, 85 Nev. at 349–50.

1 \$13,795.32 to Wu as he was the procuring cause of the underlying real estate transaction.

2 Finally, Chan should be ordered to pay the fees, unnecessarily caused by her, which she also  
3 agreed to pay by way of the Agreement to Arbitrate.

4  
5 WHEREFORE, Defendants request the following relief:

6 1. That this Court deny Plaintiff's *Motion to Vacate or Modify Arbitration*  
7 *Award*;

8 2. That this Court enter an Order Granting Summary Judgment;

9 3. That this Court award Defendants the fees and costs they have been forced  
10 to incur by Chan; and

11 4. For such other and further relief as the Court deems just and proper.

12 DATED this 6th day of AUGUST 2018.

13  
14 /s/ Roman C. Harper, Esq.

15 MICHAEL A. OLSEN, ESQ.

16 Nevada Bar No. 6076

17 ROMAN C. HARPER, ESQ.

18 Nevada Bar No. 14374

19 **GOODSELL & OLSEN, LLP**

20 10155 W. Twain Ave., Suite 100

21 Las Vegas, Nevada 89147

22 *Attorneys for Defendants/Counterclaimants*

23 *Wayne Wu, Judith Sullivan, Nevada Real Estate*

24 *Corp. and Jerrin Chiu*  
25

## **EXHIBIT “A”**



Betty Chan <aalender@gmail.com>

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## Looking for new house!

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Jerrin Chiu <jchiuey@gmail.com>  
To: Betty Chan <aalender@gmail.com>

Mon, Nov 2, 2015 at 3:07 PM

Hello Betty,

How have you been? Hope all is well. So I am going to be looking for a new house! I think you spoke with my dad last month. So they are coming to visit again at the end of this year. We were hoping that you can show us some houses around new years time? We are free Dec 30 morning/afternoon, and all day Dec 31 and Jan 1st. I know that is holidays so you may be busy with family. But if you are free, maybe you can show us some houses? I will be looking for around \$250-\$400k house around boca park, preferably 5 miles within my work. Thanks Betty! Hope to talk to you soon.

---

Jerrin

## **EXHIBIT “B”**



Betty Chan <aalender@gmail.com>

---

## Looking for new house!

---

Betty Chan <aalender@gmail.com>  
To: Jerrin Chiu <jchiuey@gmail.com>

Mon, Nov 2, 2015 at 4:29 PM

Sure. Thank you for using my service again.  
Betty  
[Quoted text hidden]

## **EXHIBIT “C”**

AFFIDAVIT OF JERRIN CHIU

State of Nevada )  
County of Clark ) ss:

JERRIN CHIU, being first duly sworn, deposes and says that I am over the age of 18 years, have personal knowledge of and am competent to testify to the following facts.

1. I have never been convicted of a felony.  
2. I currently live at 477 Cabrial Peak, Las Vegas, Nevada 89138.  
3. I have personal knowledge of the facts stated in the *Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment* and believe them to be accurate.

4. I emailed Betty Chan on November 2, 2015 requesting her assistance in looking for real estate.

5. On December 30, 2015, Betty Chan picked up my parents and me and showed us three previously-owned homes and three model homes at the Tevare KB Home Development in Summerlin.

6. I felt pressured to purchase Betty Chan's preferred selection of Lot 37 and the Model 3 floorplan. I did not like that option and declined moving forward with the purchase of a home, or even making an offer on that date.

7. Initially, I lacked interest in the KB Home Development options because the Development was located outside of the parameters I gave to Betty Chan previously.

8. Despite being uncertain about buying a KB home, I submitted a refundable \$10,000.00 deposit to KB Home on December 31, 2015 because I was informed that I would face a \$3,000.00 price increase on the lots if I did not submit the deposit before the New Year. I



1 would not have made the deposit but for being informed that it was refundable for 14 days if I  
2 decided not to move forward with purchasing a home. Betty Chan was not taking our calls and  
3 did not represent me in making the deposit with KB Homes on December 31, 2015.

4  
5 9. My father, Kwang Chiu, called Betty Chan the morning of December 31, 2015  
6 seeking further assistance from her. She did not respond to the call.

7 10. My father called Betty Chan several times and left a voice message on January 2,  
8 2016. Again, Chan did not answer the January 2, 2016 calls.

9 11. My father called Betty Chan on January 3, 2016 and left a voice message. Betty  
10 Chan did not answer.

11  
12 12. I was frustrated with Betty Chan because she did not answer several phone calls  
13 and voice messages from my father despite knowing that my parents were leaving town and time  
14 was of the essence. It was due to her non-responsiveness that my parents and I determined to  
15 seek assistance from another agent.

16  
17 13. After calling a couple of other possible agents, my father recommended Wayne  
18 Wu as a replacement real estate agent and called Wayne on my behalf.

19 14. I met with Wayne Wu on January 7, 2016 at the KB Home Development and  
20 Wayne convinced me to purchase Lot 43 with the Model 2 floorplan.

21 ///

22 ///

23 ///

24 ///

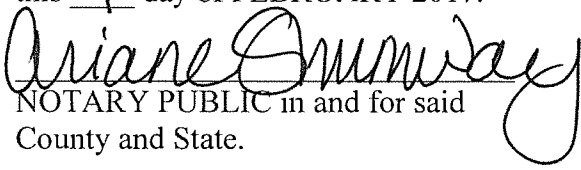
25 ///

15. In addition to being the agent that actually presented me with a home/lot combination that I was comfortable with, Mr. Wu was the only agent that actually performed any work on negotiating a purchase contract, opening escrow and ultimately closing the purchase. FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 7 day of FEBRUARY 2017.

  
JERRIN CHIU

SIGNED AND SWORN to before me  
this 7 day of FEBRUARY 2017.

  
NOTARY PUBLIC in and for said  
County and State.



## **EXHIBIT “D”**



City-Data Forum &gt; U.S. Forums &gt; Nevada &gt; Las Vegas

**KB homes anyone? (to buy, living in, homeowner)**User Name  User Name ☒ Remember MePassword   (Register)

**Please register** to participate in our discussions with 2 million other members - it's free and quick! Some forums can only be seen by registered members. After you **create your account**, you'll be able to customize options and access all our 15,000 new posts/day with fewer ads.

View **detailed profile** (Advanced) or search  
site with City, County or Zip Code**Search Forums** (Advanced)

Closed



Start a New Thread

01-01-2016, 01:49 AM

chiuey

Original Poster

44 posts, read 28,609 times  
Reputation: 17

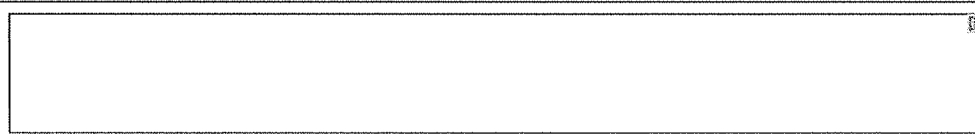
Advertisements



THOMSON REUTERS

Had a previous post about living in Tevere/Paseo village but didn't have many replies. I guess my follow up question is the home I am looking for is made by KB homes which have gotten many bad reviews in the previous years. Can anyone give any insight whether they are okay to buy now? or should I still stay clear from them? Thanks.

Rate this post positively



01-01-2016, 04:26 AM

jet757f

Location: Orange County  
978 posts, read 1,283,645 times  
Reputation: 766

I bought a new one in Ca and thought it was fine. No problems,

Rate this post positively

01-01-2016, 11:13 AM

Everdeen

3,475 posts, read 3,532,424 times  
Reputation: 4531

Knock on the doors of the other homeowners in the development and ask them. 🙏

Rate this post positively

01-02-2016, 12:35 PM

yellowbelle ★

1,495 posts, read 1,758,070 times  
Reputation: 3509

One of the reasons you may not have received many replies is because per the TOS:

Quote:

This is not the right place for consumer complaints. Such posts present defamation issues and they don't give the other side the opportunity to present their side of the argument.

If anyone would like to chime in, please do so via direct message.

My posts as a Moderator are in **RED**.

Helpful links: [FAQ](#) ~ [Forum Rules](#) ~ [TOS](#) ~ [Infractions and Thread Deletion FAQs](#)

Full Mod List

~ If you're not kind on the internet, then you're not kind. ~

Rate this post positively

Please **register** to post and access all features of our very popular forum. It is free and quick. Over \$68,000 in prizes has already been given out to active posters on our forum. Additional giveaways are planned.

Detailed information about all U.S. cities, counties, and zip codes on our site: [City-data.com](http://www.city-data.com).



Closed

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- Ryan Homes Delaware, 8 r
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## **EXHIBIT “E”**



**PACKET #1:**

- (1) BUYER'S DEPOSIT(S) (Earnest Money and Options Deposit)
- (2) THIRD-PARTY DEPOSIT ACKNOWLEDGMENT (if applicable)
- (3) RECONCILIATION OF SALES PRICE (if applicable)
- (4) SALES TRANSACTION CHECKLIST
- (5) MAIL-OUT COVER LETTER (if applicable)
- (6) SALES COMMISSIONS PAYROLL FORM
- (7) PURCHASE AGREEMENT
- (8) ADDITIONAL CO-BUYERS ADDENDUM (if applicable)
- (9) Affiliated Lender AND AUTHORIZATION TO SHARE FINANCIAL INFORMATION
- (10) NON-REFUNDABLE DEPOSIT ACKNOWLEDGEMENT (if applicable)
- (11) AVAILABILITY OF DESIRED MODEL AND/OR ELEVATION
- (12) EXISTING HOME ADDENDUM
- (13) THIRD-PARTY HOME INSPECTION
- (14) SELECTED OPTIONS
- (15) AVAILABLE OPTIONS WITH CUTOFF CODE "A"
- (16) GENERAL CONDITIONS OF ESCROW
- (17) REGIONAL GAMING DISTRICT OVERLAYS MAP DISCLOSURE
- (18) BROKER REGISTRATION AND COMMISSION AGREEMENT (if applicable)
- (19) COMMISSION CREDIT DISCLOSURE (if applicable)
- (20) DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE (AGENCY DISCLOSURE)
- (21) LENDER DISCLOSURE
- (22) ACKNOWLEDGEMENT OF RECEIPT OF RESIDENTIAL DISCLOSURE GUIDE
- (23) AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE

**PACKET #2:**

- (24) KB HOME NEW HOME LIMITED WARRANTY AGREEMENT, VOLUME 1
- (25) TENTATIVE LAND USE AND ZONING DISCLOSURE MAP (site plan)
- (26) RECEIPT FOR DOCUMENTS
- (27) CONSTRUCTION SITE VISIT/BUYER'S ASSUMPTION OF RISK
- (28) STANDARD DISCLOSURES TO BE SIGNED WITH CONTRACT
- (29) KB HOME STUDIO DISCLOSURE
- (30) SUBSEQUENT DISCLOSURES
- (31) EPG DISCLOSURE
- (32) FOR YOUR PROTECTION! GET A HOME INSPECTION (FHA Buyers Only)
- (33) PLOT PLAN (if available)
- (34) LONG FORM DISCLOSURE
- (35) PUBLIC OFFERING STATEMENT (if applicable)

**PACKET #3:**

TO MARKETING:

- (36) EXTERIOR COLOR DISCLOSURE

TO HOUSECALLS:

- (37) HOMEBUYER SURVEY

TRACT/PHASE TEVARE - 415 / 28 LOT/BLOCK 43 / 1

SALESPERSON Jana McNeff

BUYER Jerrin Chiu

BUYER

DATE 1/8/2016

**CONSTRUCTION OF THE HOME / PRE-DRYWALL ORIENTATION**

FEATURES may differ from models. Seller may substitute other materials, fixtures, or methods of construction, if, in Seller's judgment, substitutions become necessary or desirable.

PRE-DRYWALL ORIENTATION - If the home you are purchasing is not past the framing stage of construction, Salesperson will schedule an appointment for you to walk the home with Seller's representative. Please review all options at that time.

EXTERIOR COLOR OF HOME - Of great importance to Seller and to our homebuyers is the overall appearance of the community. Because of this, Seller selects, coordinates, and finalizes all exterior paint colors/schemes of the homes.

LANDSCAPING/SIDEWALKS - Installed on production basis; no choice of trees or shrubs (if applicable). In some communities, sidewalks may only be installed on one side of the street. Check with Salesperson for information.

OUTSIDE WORK DONE ON THE HOME - NEVER permitted at any time until after escrow closes (title recorded) - VOIDS WARRANTIES

**THE LOAN**

YOUR LOAN - Loan application is required within 3 days from date of Purchase Agreement. Loan approval is required within 30 days from date of Purchase Agreement.

LENDER PROCEDURE - Complete cooperation; information provided may require further clarification and more documents.

**KB HOME STUDIO OPTIONS**

FLOORING SELECTIONS - Must be selected and paid for as per the terms of the Purchase Agreement. Flooring selections are final at time of selection.

PRE-SELECTED ITEMS OR PREVIOUSLY INSTALLED ITEMS - Must be sold with the house. Buyer acknowledges all previously installed options by signing a Selected Options Addendum.

OPTIONAL ITEMS - Items must be selected, and paid for, per the terms of the Purchase Agreement and the KB Home Studio Disclosure. Optional items are final at time of selection.

REFUNDS ON OPTIONAL ITEMS - Monies for optional items and/or carpet will become non-refundable as per the terms of the KB Home Studio Disclosure.

PROCESSING FEES FOR OPTIONAL ITEMS - A fee of \$150 per item is charged for any reselection of optional items, per the terms of the KB Home Studio Disclosure.

**LOCK IN YOUR RATE**

COMPLETION OF HOME - All dates given are tentative and NEVER guaranteed. Choosing to lock in a rate does not affect the completion date of the home.

**PREPARE TO MOVE IN**

FIRE INSURANCE - Lenders will require evidence of fire insurance coverage in escrow. Lenders will NOT accept binders. Fire Insurance coverage is highly recommended for cash buyers also.

KB HOME Insurance Agency Inc. - Phone number: 800-446-3371

**NEW HOME ORIENTATION**

NEW HOME ORIENTATION - The Salesperson will schedule a New Home Orientation for you. At this time, you will inspect the home with a KB HOME representative. The representative will provide you with a Homeowner's Manual.

NEW HOME ORIENTATION ITEMS - Seller will have up to 3 business days to complete most items noted during the New Home Orientation following the initial Orientation. Seller may take up to 30 days to complete some items.

**CLOSING TIME**

CLOSING ESCROW - Close of escrow takes place upon the recording of your loan and/or title transfer.

CLOSING FUNDS - Must be provided in the form of a wire transfer of readily available funds. (Amount determined by Escrow.)

**PICK UP YOUR KEYS**

KEY RELEASE - Released only after you complete your New Home Orientation and loan is recorded.

UTILITIES - Buyer's responsibility to turn on/transfer utilities in own name. If utilities are on in Seller's name, they will automatically be disconnected 48 hours after move-in or close of escrow, whichever occurs first.

CANCELLATION POLICY - Buyer may cancel at any time prior to the Non-Refundable Deposit Date (as defined in the Purchase Agreement) and obtain a refund of the Earnest Money and Options Deposit fewer costs incurred. Buyer's Deposit is non-refundable after the Non-Refundable Deposit Date as defined in the Purchase Agreement and KB HOME Studio Disclosure.

**CUSTOMER SERVICE POLICY**

WARRANTY VS. MAINTENANCE ITEMS - Read any and all applicable limited warranty agreement(s), the Limited Warranty Performance Standards, and maintenance documents carefully to determine if Seller or Buyer is responsible for correcting any problem that arises during any applicable warranty period.

CUSTOMER SERVICE POLICY - Use Customer Service forms to request Customer Service work. Written Customer Service requests help expedite scheduling and follow-up. Subcontractors' telephone numbers are provided in walk-through manual for the Homeowner to contact directly. Call the main office for emergencies ONLY.

BUYER UNDERSTANDS AND ACCEPTS THE ABOVE AND ACKNOWLEDGES RECEIPT OF THIS CHECKLIST BY SIGNING BELOW.

Buyer Signature

Date

Buyer Signature

Date



**PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS  
TRANSACTION SUMMARY**

☒ Original  
☐ Rewrite  
☐ No Existing Home  
☒ Existing Home

Owner Occupied?: ☒ Yes ☐ No  
 Broker?: ☒ Yes ☐ No

Buyer: Jerrin Chiu  
 Salesperson: Jana McNeff (Print)  
 Community: Tevare  
 Seller: KB Home Las Vegas, Inc. (Print)

**1. Property:**

Community: Tevare Project: 415 Lot/Block: 43 / 1 Plan Type/Elevation: JN / C  
 Street Address: 477 CABRAL PEAK STREET Las Vegas NV 89138  
 Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**2. Buyer:**

Buyer: Jerrin Chiu  
 First: \_\_\_\_\_ Initial: \_\_\_\_\_ Last: \_\_\_\_\_  
 Present Address: 2101 Jade Creek Street, Unit 206 Las Vegas NV 89117  
 Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Telephone: \_\_\_\_\_ Business Telephone: \_\_\_\_\_  
 E-mail Address: jchiuey@gmail.com Cell Phone: (510) 932-3057  
 Co-Buyer: \_\_\_\_\_  
 First: \_\_\_\_\_ Initial: \_\_\_\_\_ Last: \_\_\_\_\_  
 Present Address: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Home Telephone: \_\_\_\_\_ Business Telephone: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

**3. Buyer's Choice of Escrow Services, Title Insurance Company, and Lender ("Service Providers"):**

- Buyer may select any Service Providers of Buyer's choice.
- Buyer is NOT required to use any of the Service Providers recommended by Seller listed below.
- Buyer must choose one of the two options in each below section 4, 5, and 6 by checking either: (a) the first checkbox with Seller's recommended Service Provider in each section or (b) the second checkbox with Buyer filling in the applicable name and address of Buyer's choices for Service Providers in each section

**4. Escrow Holder:**

Buyer selects:

- ☒ Seller's recommended Escrow Company:  
EATCO, Address: 8311 W. Sunset Rd. Ste. 150 Las Vegas NV 89113  
☐ A different Escrow Company chosen by Buyer (print name and address below)  
 Escrow Company Name: \_\_\_\_\_ Address: \_\_\_\_\_

**5. Title Insurance Company:**

Buyer selects:

- ☒ Seller's recommended Title Insurance Company:  
EATCO, Address: 8311 W. Sunset Rd. Ste. 150 Las Vegas NV 89113  
☐ A different Title Insurance Company chosen by Buyer (print name and address below)  
 Title Insurance Company Name: \_\_\_\_\_ Address: \_\_\_\_\_

**6. Financing:**

☒ Conventional Loan ☐ VA Loan ☐ FHA Loan ☐ CASH

Lender: Home Community Mortgage

Lender Address: 8345 W. Sunset, #100, Las Vegas, 89113

**7. Purchase Price:**

**8. Buyer's Deposit(s):**

Base Purchase Price (including Elevation Premium)	\$376,790.00	Earnest Money Deposit (Check one)	\$10,000.00
Lot Premium	\$25,000.00	<input checked="" type="checkbox"/> Received with this Purchase Agreement (Ck. No. 1097 payable to Seller)	
Options:	\$2,975.00	<input type="checkbox"/> Previously received	
Other (see paragraph 10 for details):	\$0.00	<input type="checkbox"/> Transferred from _____	
	\$0.00	"A" Options Deposit (Ck. No. payable to Seller) <u>ck #1099</u>	<u>50.00 297.00</u>
*Total Purchase Price:	\$404,765.00	Total Deposit: <u>XJC</u>	<u>10,297.00</u>

\*The Total Purchase Price does not include any of the following costs or expenses: Buyer's closing and escrow fees and charges, Buyer's lender fees, swimming pool or related options, any additional options set forth in an Options Contract signed by Buyer, flooring, or any incentives set forth except as expressly stated otherwise therein, in paragraph 11 of this Transaction Summary of the Purchase Agreement and Escrow Instructions.

**9. Significant Dates/Deadlines:**

Original Sale Date: 1/8/2016 Rewrite Date: \_\_\_\_\_ Estimated Closing Date: To Be Determined

Date Total Deposit (Earnest Money Deposit and "A" Options Deposit) Becomes Non-Refundable: (Buyer to initial the applicable selection(s), and write N/A where not applicable.)

sc 5 days after Original Sale Date, see attached Non-Refundable Deposit Addendum

n/a 5 days after Original Sale Date, if Estimated Closing Date is within 45 days from Original Sale Date or Model Home Purchase or if Buyer is paying cash

Loan Application Deadline: 3 days from Original Sale Date

Loan Approval Deadline: 30 days from Original Sale Date

KB HOME Studio Browse Appointment Date: 1/21

KB HOME Studio Final Appointment Date: 1/28

Buyer's Down Payment into Escrow: As required per Loan Approval or upon signing closing documents

Buyer's Rate Lock: 30 days prior to estimated COE Loan Docs into Escrow: within 48 hours before Buyer's New Home Orientation Date

Close of Escrow: Within 3 business days after Buyer is notified the Property is substantially complete

BUYER(S) INITIALS: (JC)

3 Appx 000505


11. Additional Terms and Conditions:

Provided that Buyer complies with all the terms of the Purchase Agreement. Seller agrees to accept \$10,000.00 as Buyer's deposit collected at the time of purchase/reservation, as the Earnest Money Deposit for this transaction, instead of the amount that is 10% of the Purchase Price required by the Existing Home Addendum. This shall supersede the Addendum to Purchase Agreement, Existing Home.

12. Estimated Closing Date:

Many unforeseen factors can affect the actual completion of the home, and any anticipated final completion date for the home to be constructed on the Property is only a target date. Seller will endeavor to keep Buyer informed should any change to the completion schedule occur, but cannot guarantee it.

BUYER(S) INITIALS: SC ( )      Tract/Project TEVARE - 415 /415      Lot/Block 43 / 1

THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.



# PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ AND UNDERSTOOD PRIOR TO SIGNING. THIS IS A BINDING CONTRACT BY WHICH YOU AGREE TO PURCHASE AN INTEREST IN REAL PROPERTY. YOU SHOULD EXAMINE YOUR RIGHTS OF REVOCATION CONTAINED ELSEWHERE IN THIS CONTRACT.**

This Purchase Agreement and Escrow Instructions ("Agreement") is entered into between Seller and Buyer for the sale and purchase of certain real property and improvements thereon ("Property") as more particularly described in the foregoing Transaction Summary attached hereto and incorporated herein by this reference. Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller subject to the terms and conditions which are set forth herein. Seller and Buyer shall sometimes be referred to herein as the "Parties." The Parties agree as follows:

1. **Property Description.** The description of the Property is set forth in the attached Transaction Summary. Seller has constructed or will construct the residence within the Property substantially in accordance with Seller's plans and specifications (and any amendments thereto) pertaining to the residence which are on file with the building department of the City or County in which the Property is located. The residence is not being constructed specifically for Buyer nor to the precise specifications or design of any model home displayed by Seller. This Agreement is an agreement to purchase a completed residence. Seller is not acting as Buyer's contractor.
2. **Purchase Price and Deposit.** Concurrently with the execution of the Agreement, Buyer has delivered to Seller an earnest money deposit and an "A" options deposit in the amount set forth in Paragraph 8 of the foregoing Transaction Summary (collectively, the "Deposit"), by check made payable to Seller, as set forth in the Transaction Summary. The Purchase Price of the Property may be increased and Buyer may be required to deposit additional amounts as set forth in any addenda attached hereto and made a part of this Agreement pursuant to Paragraph 22 below and pursuant to the terms of any option/upgrade work orders/contracts provided by Seller and signed by Buyer concurrently herewith or after the date of this Agreement for optional and upgrade improvements to the Property. As a result of Seller maintaining the Deposit, Seller may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions ("Collateral Benefits"). All Collateral Benefits shall accrue to the sole benefit of Seller, and Seller shall have no obligation to account to the Buyer for the value of any such Collateral Benefits.
  - 2.1. The Deposit shall become non-refundable to Buyer and shall be deemed fully earned by Seller, regardless of whether Buyer's Loan (defined below) is approved or disapproved, on the "Date Earnest Money Deposit Becomes Non-Refundable," as set forth in Paragraph 9 of the foregoing Transaction Summary ("Non-Refundable Deposit Date"). At any time prior to the Non-Refundable Deposit Date, Buyer may cancel this Agreement, and the Deposit, less any costs incurred, shall be returned to Buyer.
3. **Financing.**
  - 3.1. **Cash Transactions.** If Buyer will be paying cash to complete the purchase of the Property:
    - (i) Within five (5) calendar days of executing this Agreement, Buyer agrees to provide Seller with evidence satisfactory to Seller that sufficient cash is available to complete this purchase;
    - (ii) Buyer agrees to execute any written forms reasonably necessary for Seller to make such verification;
    - (iii) during the term of escrow, Buyer agrees to maintain said source of cash at a balance equal to or greater than the Total Purchase Price and associated closing costs; and
    - (iv) the balance of the Total Purchase Price shall be deposited with the Escrow Company referred to in the Transaction Summary ("Escrow Holder"), in the form of a cashier's check or via a wire transfer of readily available funds not later than one business day prior to the scheduled Close of Escrow (defined below).

Seller reserves the right to re-verify the cash amount any time during the term of Escrow, and if necessary funds are not maintained during the period, Buyer shall be deemed in default of this Agreement. Seller may, at its sole option, terminate this Agreement, in which event Seller may exercise any or all of its rights set forth in Paragraph 9 below and Seller shall have no further obligation to Buyer with respect to this Agreement or the Property.
  - 3.2. **Loan Application.** Buyer shall apply for a home loan ("Loan") through either Seller's Affiliated Lender, Home Community Mortgage, LLC ("Home Community Mortgage") or any other institutional lender selected by Buyer (whichever is chosen by Buyer being referred to as "Lender") within three (3) days after Buyer signs this Agreement. Buyer acknowledges that he/she has been afforded the opportunity to obtain the Loan from a Lender of Buyer's choosing, and, if Affiliated Lender has been selected as the Lender, that Buyer freely selected Affiliated Lender by his/her own choice. Buyer further acknowledges that Buyer shall be responsible for all costs and fees charged by a Lender through which Buyer has requested financing. Buyer shall provide Seller with a copy of the completed loan application immediately upon submittal thereof to Lender. Buyer agrees in good faith to take all steps and provide all information and supporting documentation required by the Lender for processing the loan application, including, without limitation, providing statements of identity, employment verifications, tax returns, pay stubs, notes, trust deeds, credit reports, loan escrow instructions, etc. Buyer shall promptly deliver to Lender any additional information or documentation required by the Lender and execute all documents required by Lender. In addition, even if Buyer is paying cash for the Property and does not intend to obtain third party financing, Buyer(s) agree, to fully complete and provide the Seller the additional documentation described above, at the time of purchase
  - 3.3. **Loan Approval/Disapproval.** Buyer shall, in good faith, apply for a Loan and diligently pursue Loan approval. Buyer acknowledges that Buyer's obligation to purchase the Property is not contingent upon Buyer obtaining Loan approval and that Buyer's Deposit shall become non-refundable to Buyer on the Non-Refundable Deposit Date, irrespective of whether the Loan is approved. Additionally, if Buyer fails to obtain written notification from Lender of unconditional Loan approval within thirty (30) days after the "Original Sale Date" as set forth in Paragraph 9 of the Transaction Summary, or any other time period as agreed to by Buyer and Seller, in writing, then Buyer or Seller may, by written notice to the other and to Escrow Holder, cancel this Agreement. In the event of such cancellation (a) Buyer shall have no right to purchase the Property and shall have no claim or interest in or to the Property, and (b) if such cancellation occurs before the Non-Refundable Deposit Date, all funds previously deposited by Buyer, less any escrow costs, credit report and loan charges incurred, shall be returned to Buyer, unless Seller is entitled to retain any such amounts pursuant to any option/upgrade work orders/contracts. If such cancellation occurs after the Non-Refundable Deposit Date, Seller shall retain Buyer's Deposit and all other funds previously deposited by Buyer to which Seller may be entitled pursuant to any option/upgrade work orders/contracts, all remaining funds shall be returned to Buyer and neither party shall have any further obligation, right, or liability whatsoever.
  - 3.4. **Buyer's Loan Default.** Buyer shall be in material default of this Agreement as a result of any of the following:
    - (i) any failure by Buyer to timely apply for a Loan as provided herein;
    - (ii) any voluntary act of Buyer undertaken for the purpose of preventing Lender from approving the Loan;
    - (iii) any request by Buyer that Lender not approve the Loan;
    - (iv) a failure by Buyer to furnish all documents and information required by the Lender within the time limits specified herein;
    - (v) any material misrepresentation or other default resulting in Lender's disapproval of the Loan;
    - (vi) any failure to properly sign all documents and take any and all actions required by Lender to approve or timely fund the Loan;
    - (vii) if purchasing with cash, failure to provide to Seller in a timely manner evidence of availability of cash as provided herein; or
    - (viii) any failure by Buyer to furnish all Loan documents to Escrow Holder on or before three (3) days prior to the Close of Escrow.

Notwithstanding anything to the contrary, in the event of such default, Seller may, at its option, exercise any or all of its rights set forth in Paragraph 9 below.

BUYER(S) INITIALS: (X) ( )

Tract/Project TEVARE - 415/415

Lot/Block 43 / 1



- 3.5. Rate Locks. Buyer has been advised that Seller's construction completion dates are tentative and subject to change at any time. Therefore, Buyer understands and agrees that Seller is not involved in and is not responsible for interest rate lock agreements made between Buyer and Buyer's lender, even if the lender is Affiliated Lender. Further, Buyer understands and agrees that should Buyer lock in a particular interest rate with its lender and should said lock expire prior to the completion of Seller's Property, neither Seller nor Buyer's lender, including but not limited to Affiliated Lender, is responsible for any change in Buyer's interest rate and neither Seller nor Buyer's lender, including but not limited to Affiliated Lender, will contribute to any costs involved in extending or re-locking Buyer's lock agreement.
- 3.6. Loan Terms. THE TERMS AND CONDITIONS OF THE LOAN ARE A MATTER OF CONCERN SOLELY BETWEEN BUYER AND LENDER AND SHALL NOT IN ANY WAY AFFECT THE RIGHTS OR OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT. BUYER ACKNOWLEDGES THAT SELLER MAKES NO REPRESENTATION THAT THE INTEREST RATE PREVAILING AT THE CLOSE OF ESCROW WILL BE THE RATE QUOTED BY THE LENDER TO THE BUYER AT THE TIME OF LOAN APPROVAL. BUYER ACKNOWLEDGES THAT THE SALE AND PURCHASE OF THE PROPERTY IS NOT CONTINGENT UPON BUYER'S ABILITY TO RETAIN THE INTEREST RATE QUOTED AT THE TIME OF LOAN APPROVAL AND THAT BUYER WILL BE REQUIRED TO PAY THE INTEREST RATE CHARGED BY THE LENDER AT THE CLOSE OF ESCROW. BUYER AGREES TO MAKE SUCH IMPOUND PAYMENTS FOR REAL PROPERTY TAXES AND ASSESSMENTS, HOMEOWNERS' ASSOCIATION ASSESSMENTS (WHEN APPLICABLE), AND FIRE AND OTHER HAZARD INSURANCE PREMIUMS AS MAY BE REQUIRED BY OR AS MAY BE NEGOTIATED WITH THE LENDER.
- 3.7. No Obligation to Use Home Community Mortgage. Buyer acknowledges that there is no obligation on the part of Buyer whatsoever to use the lending services of Home Community Mortgage. Buyer may select any lending institution of his/her choice for the purpose of securing mortgage financing and is not limited to Home Community Mortgage.
- 3.8. Not a Loan Application or Commitment. By signing this Agreement, Buyer acknowledges that this Agreement does not constitute either a loan application to, or loan approval or commitment by, any Lender. Buyer shall be solely responsible for obtaining the Loan.
- 3.9. Affiliated Lender. Seller's Affiliated Lender is Home Community Mortgage, LLC ("Home Community Mortgage" or "Affiliated Lender"). Buyer is NOT required to use Affiliated Lender as Buyer's lender. Buyer may select any lending institution of his or her choice for the purpose of securing mortgage financing and is NOT in any way whatsoever limited to obtaining financing from Affiliated Lender. Seller and Affiliated Lender are independently responsible for the products and services each company offers. Although Buyer is not required to use the services of Affiliated Lender prior to entering into a Purchase Agreement to purchase a Home from Seller, Buyer may be required to be prequalified for financing in order to establish Buyer's ability to complete the Home purchase. If so, Buyer may be required to provide to Affiliated Lender the basic information required on Affiliated Lender's loan application form and to permit credit reports to be obtained by Seller and Affiliated Lender in order to permit Affiliated Lender to prequalify Buyer as a qualified prospective Buyer. Prequalification involves no out of pocket costs to Buyer. In addition, Buyer is hereby notified that one of Seller's affiliates (KB Home) has entered into an arrangement with Affiliated Lender pursuant to which KB Home provides marketing services on behalf of Affiliated Lender. KB Home receives compensation from Affiliated Lender from providing these services.
- 3.10. Lender Information Release. By executing this Agreement, Buyer authorizes Lender to release to Seller or its representatives any and all information concerning the status of Buyer's Loan, including, but not limited to, the Loan application, Loan submittal, conditions to Loan approval, written Loan approval, written denial of Loan approval and reasons therefore, status of Loan documents, and funding conditions and requirements.
- 3.11. Buyer's Credit Information. Buyer hereby authorizes Seller or Affiliated Lender, to conduct a credit check on Buyer and Buyer agrees to execute such further written authorizations reasonably necessary to enable Seller and/or, Affiliated Lender, to conduct such a credit check.

Buyer's Initials

Buyer's Initials

4. Escrow.

- 4.1. Escrow Instructions; Opening of Escrow. Seller shall deposit an executed copy of this Agreement with Escrow Holder which shall thereafter constitute the escrow instructions of the Parties. The terms and provisions hereof may be modified from time to time during the pendency of Escrow only by mutual written agreement of the Parties. Any attempt to modify the Agreement without the written consent of both parties shall be void and without legal effect. Promptly after Seller executes this Agreement, the Parties shall open the Escrow by delivering a fully executed copy of this Agreement to Escrow Holder. Escrow Holder's General Provisions are set forth in the **General Conditions of Escrow** addendum attached to this Agreement. Seller and Buyer agree that, as between Buyer and Seller, in the event of any conflict between the **General Conditions of Escrow** addendum and this Agreement, this Agreement shall be controlling. Buyer and Seller shall execute and deposit with Escrow Holder such further funds, instructions, documents and forms consistent with the terms of this Agreement and necessary to consummate the sale and purchase of the Property in accordance with the terms of this Agreement as may be required by Escrow Holder or Seller. **Buyer is NOT required to use any escrow service provider or title insurance provider recommended by Seller. Buyer may select any escrow service provider and title insurance company of his or her choice.**
- 4.2. Close of Escrow. Unless the Escrow is earlier terminated as provided herein, Escrow shall close (the "close of escrow") within three (3) business days after notification to Buyer that the Property is substantially completed. At least one business day prior to the Close of Escrow, Buyer shall (a) deposit or cause to be deposited with Escrow the balance of the Purchase Price and all closing costs and fees to be paid by Buyer and all documents necessary to close Escrow, **This amount must be provided in the form of a wire transfer of readily available funds, or a cashier's check made payable to the escrow company referred to in the Transaction Summary; Personal Checks and out-of-state cashier's checks will not be accepted;** (b) Seller shall likewise deliver to Escrow all funds and documents necessary to close Escrow, including a fully executed and notarized Grant, Bargain and Sale Deed for the conveyance of title to the Property to Buyer, and (c) Buyer shall perform a New Home Orientation and inspect the completed residence as provided in Paragraph 12 below. Seller shall have up to thirty (30) days after the New Home Orientation to enable Seller to complete some or all of the corrective work identified at the New Home Orientation inspection. If, after notice and tender of its required performance by Seller, Buyer does not schedule or attend a New Home Orientation of the Property or is not ready to close Escrow within the time set forth herein, Buyer shall be in material default of its obligations under this Agreement. **IF REQUESTED BY BUYER, SELLER MAY, AT SELLER'S SOLE OPTION, EXTEND THE TIME FOR CLOSING OF ESCROW, PROVIDED BUYER PAYS SELLER A NONREFUNDABLE FEE ("HOLDING FEE") IN THE AMOUNT OF \$100.00 PER DAY ON THE PROPERTY. THE HOLDING FEE SHALL NOT BE APPLICABLE TO THE PURCHASE PRICE OF THE PROPERTY.**

If Buyer is using FHA or VA financing, Buyer understands that Close of Escrow may be delayed beyond date of completion of house construction if subdivision improvements are not completed. In such cases, Buyer may agree to pay the Holding Fee and take possession of the house after the date Notice of Completion of the house is recorded, with Seller's approval. Buyer understands that notwithstanding the payment of the Holding Fee, the Property shall still belong to Seller and Buyer shall have no interest in the Property until the Close of Escrow. For the purposes of this Agreement, the Close of Escrow shall be the date the Deed is recorded in the Official Records of the County in which the Property is located.

THE ACTUAL CLOSING DATE MAY VARY FROM THE ESTIMATED CLOSING DATE SET FORTH IN THE TRANSACTION SUMMARY. BUYER HEREBY ACCEPTS THE UNCERTAINTY OF THE DATE ESTIMATED FOR THE CLOSE OF ESCROW. SELLER WILL NOT BE RESPONSIBLE FOR INCONVENIENCE, LOSS, OR EXPENSE TO BUYER RESULTING FROM DELAYS IN CONSTRUCTION COMPLETION AND CLOSE OF ESCROW.

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4.3. Appraisals

(i) Appraised Value. Buyer acknowledges that the purchase of the Home is not contingent upon Buyer obtaining an appraisal equal to the purchase price of the Home. Buyer also acknowledges that should the appraised value of the Home be less than the purchase price of the Home, Buyer will be required to pay the difference, in cash, at the close of escrow.

(ii) Appraisal Comps. Buyer acknowledges that the details of their purchase price, including options and flooring, may be provided to appraisers by Seller during escrow or after the close of escrow for the sole purpose of obtaining appraisal values for future KB HOME properties.

4.4. Authorized Disbursements to Third Parties. Provided that the Property is not located within a Common Interest Community, as defined by Nevada Revised Statutes 116.110323, Buyer's Deposit may be used to cover the costs, fees, and charges for credit reports, escrow services, contract coordination services, preliminary title reports, appraisals, and loan origination and processing. Buyer understands that from the amount so deposited, the Seller may make disbursements to third parties immediately upon receipt of billing. Buyer further understands that disbursements made to third parties pursuant to this paragraph are not refundable and that neither Seller, Broker nor Escrow Holder shall be liable therefore. Any portion of said funds which has not been disbursed to third parties by the Close of Escrow or by the earlier termination of this Agreement shall be refunded to Buyer, unless Seller is entitled to retain such amounts pursuant to Paragraph 9 below. If the actual amount of impounds and/or closing costs, including the fees listed above, exceeds the Deposit, then Buyer shall immediately upon receipt of notification of this amount, deposit with Escrow Holder the additional amount due. Notwithstanding the above, if Buyer obtains a loan guaranteed by VA, the amount deposited by Buyer pursuant to this Agreement shall not exceed the amounts permitted by applicable VA regulations.

4.5. Closing Costs. Buyer shall pay all lender closing costs escrow costs, contract coordination costs and one half (1/2) of the Real Property Transfer Tax amount. The cost of title insurance shall be allocated between Buyer and Seller in accordance with the usual custom in the County in which the Property is located, unless otherwise indicated in this Agreement. The total Purchase Price of the Property is based on the assumption that title insurance will be provided by the company selected by Seller. Buyer may request that such service be provided by another; however, in such case Seller shall not pay title costs in excess of the rate for escrow and title costs that would be charged by Seller's recommended title company in the County where the Property is located. Buyer shall pay or reimburse Seller through Escrow for any excess costs over what Seller would have normally paid.

4.6. Taxes/Prorations. All taxes, bonds and assessments, homeowners association assessments, if any, and other charges applicable to the Property shall be prorated as of the Close of Escrow based upon a thirty (30) day month and the most current available bills, statements and other information. In the event the estimate for the current fiscal year differs from the most current available bill or statement, the Buyer and Seller agree to refund to the other, as appropriate, any excess proration. Buyer acknowledges that the County Tax Assessor may not yet have separately assessed the lots/units in the project in which case the foregoing proration shall be based upon Buyer's pro rata share of the unsegregated tax bill for the total number of unsegregated lots/units in the Project. Buyer further acknowledges and understands that the Tax Assessor has the authority to re-assess newly constructed homes after Buyer acquires title to the home and that upon such re-assessment, the Tax Assessor may then issue a supplemental tax bill to Buyer for the tax difference resulting from any re-assessment. Buyer acknowledges and understands that Seller has no control over the Assessment, nor the timing or the amount of any supplemental bill resulting from the re-assessment and Seller accepts no responsibility for adjusted taxes.

4.7. Insurance Coverage. To prevent a delay in closing of escrow, no later than five (5) calendar days prior to Close of Escrow Buyer shall provide Escrow Holder with evidence of insurance coverage acceptable to Buyer's Lender. If Buyer does not provide evidence that insurance coverage has been arranged, then Buyer agrees that Escrow Holder may purchase and Buyer shall accept and pay for such insurance coverage as is required by Buyer's Lender from an insurance company to be selected by Seller.

5. Title to the Property

5.1. Vesting. Title to the Property shall vest as specified by Buyer to Escrow Holder prior to the Close of Escrow.

**NOTE: The manner of vesting title is at the sole discretion of the Buyer. The manner of taking title to the Property can have significant legal and tax consequences. Buyer is advised to give this matter serious consideration and consult with an attorney or tax consultant for advice.**

5.2. Exceptions to Title. Title to the Property shall be given to Buyer subject to taxes for the current fiscal year and covenants, conditions, restrictions, reservations, easements, and rights of way, of record or to be recorded by the Seller, any loans placed on said Property by Buyer in financing this purchase, and reservations of water, oil, gas, mineral and hydrocarbon substances rights. A preliminary title report from the title insurance company showing matters of record will be provided to Buyer by the Escrow Company.

6. Compliance with Building Codes and Regulations. Buyer understands and agrees that the various steps of construction shall be deemed to have been satisfactorily performed in compliance with all existing and prevailing regulations at time of construction, when approved by the appropriate governmental authorities. Buyer understands and agrees that Seller shall only be responsible for compliance with building codes and other such regulations in effect at the time of construction of the house, and not for changes in codes, regulations, or technology occurring after building plan approval by applicable governmental agencies.

7. Construction Delays. In the event of flood, fire, earthquake, acts of God, shortages, priorities, allocations or rationing by any governmental authority, public or private utility, subcontractor or supplier, or other cause beyond Seller's reasonable control which affects the availability or promptness of delivery of labor, materials, energy or utility sources, connections or services required by Seller or its contractor to perform this Agreement, or in the event of civil riot, insurrection, war or foreign military commitments resulting in a material economic disruption of the ordinary prices or practices of the building industry, then Seller's time for performance shall be extended for the period of delay caused by such event.

8. Buyer's Right of Cancellation. Seller is acting as a "speculative builder" in this transaction and as such is constructing the house to its own standards to be offered for sale as constructed when completed. Seller is not acting as contractor for the Buyer and is not obligated or agreeing to construct the house to Buyer's standards, satisfaction, or schedule. Buyer shall inspect the house and lot upon completion and on the basis of Buyer's independent inspection shall, if satisfied with the house and lot when and as completed, so indicate by completing this purchase. If Buyer is not satisfied with the house and lot as completed, if construction is not completed when desired, or if substitutions are not satisfactory to Buyer, Buyer may cancel this agreement by notifying Seller. In this event, if cancellation occurs prior to the Non-Refundable Deposit Date, all funds previously deposited by Buyer, less any escrow costs, credit report and loan charges, and less any amounts which Seller is entitled to retain pursuant to any option/upgrade work orders/contracts, shall be returned to Buyer and neither party shall have any further obligation, right or liability whatsoever. If such cancellation occurs after the Non-Refundable Deposit Date, Seller shall retain Buyer's Deposit and all other funds previously deposited by Buyer to which Seller may be entitled pursuant to any option/upgrade work orders/contracts, all remaining funds shall be returned to Buyer and neither party shall have any further obligation, right, or liability whatsoever. Notwithstanding the foregoing, Seller shall endeavor to complete the construction of the dwelling on the Property within twelve (12) months after the date of execution of this Agreement or such earlier time as may be required by the VA or FHA if Buyer obtains a VA or FHA loan. If, through no fault of Buyer, Escrow is not closed within this twelve (12) month time period or such extended time period mutually agreed to in writing by Seller and Buyer; or if the house or other improvements of the Property are destroyed or materially damaged prior to the Close of Escrow; or with regard to Buyers with VA loans who are unable to obtain VA financing, if the house as constructed, or changes and substitutions made to the house are not in substantial conformity with plans, specifications, and change orders on file with the Veterans Administration, then Buyer shall have the following options:

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EXCEPT AS PROVIDED IN THE PRECEDING PARAGRAPH OF THIS SECTION 10, ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES, OR DISPUTES (EACH A "DISPUTE") BY OR BETWEEN THE PARTIES HERETO, EXCEPT FOR DISPUTES CONTROLLED BY THE DISPUTE RESOLUTION

PROVISIONS IN THE KB HOME LIMITED WARRANTY (AS SUCH TERM IS DEFINED BELOW), ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SALE OF THE PROPERTY BY SELLER, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING, WITHOUT LIMITATION, ANY DISPUTE OVER (1) THE DISPOSITION OF ANY DEPOSITS HEREUNDER, (2) BREACH OF CONTRACT, (3) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (4) NONDISCLOSURE, (5) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (6) ANY CLAIM RELATED TO CONSTRUCTION OR INSTALLATION OF ANY IMPROVEMENTS ON THE PROPERTY OR PROJECT, THE GRADING OF THE PROPERTY OR PROJECT, OR ANY WORK OR SERVICES PERFORMED BY OR ON BEHALF OF SELLER ON OR IN CONNECTION WITH THE PROPERTY OR PROJECT, INCLUDING, WITHOUT LIMITATION, CLAIMS OF ANY ALLEGED DEFECT (INCLUDING, WITHOUT LIMITATION, DISPUTES SUBJECT TO THE PROVISIONS OF NRS 40.600 TO 40.695; OR (7) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS AGREEMENT, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THIS AGREEMENT, OR ANY PROVISION OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ALLEGATIONS OF UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, WHETHER SUCH DISPUTE ARISES BEFORE OR AFTER THE CLOSE OF ESCROW, SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH IN THIS PARAGRAPH.

THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS AGREEMENT, OR THIS PARAGRAPH, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS PARAGRAPH, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS PARAGRAPH, INCLUDING, WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS PARAGRAPH AND NOT BY A COURT OF LAW.

ANY AND ALL SUCH DISPUTES SHALL BE SUBMITTED TO BINDING ARBITRATION BY AND PURSUANT TO THE RULES OF AMERICAN ARBITRATION ASSOCIATION, 6795 N. PALM AVENUE, FLOOR 2, FRESNO, CA 93704, (877) 528-0880 (HEREINAFTER, "AAA") IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION. IN THE EVENT AAA IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE ARBITRATION SERVICE IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION SHALL BE FOLLOWED.

10.1 GENERAL ARBITRATION PROVISIONS.

- (i) Buyer and Seller expressly agree and acknowledge that this Agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act.
- (ii) To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.
- (iii) This paragraph shall inure to the benefit of, and be enforceable by, Seller's subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom buyer contends is responsible for all or any portion of a Dispute.
- (iv) In the event any Dispute is submitted to arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration.
- (v) The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. Buyer and Seller expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the property is located.
- (vi) The participation by any party in any judicial or other proceeding relating to any matter arbitral hereunder shall not be asserted or accepted as a reason to delay or to refuse to participate in arbitration hereunder, or to refuse to enforce this paragraph.
- (vii) The fees to initiate the arbitration shall be advanced by Seller. Subsequent fees and costs of the arbitration and/or the arbitrator shall be borne equally by the parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator ultimately shall be borne as determined by the arbitrator.
- (viii) The arbitrator appointed to serve shall be a neutral and impartial individual.
- (ix) The venue of the arbitration shall be in the County where the property is located unless the parties agree in writing to another location.
- (x) If any provision of this paragraph shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

NOTICE: BUYER AND SELLER AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS PARAGRAPH ENTITLED "ARBITRATION OF DISPUTES" DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND NEVADA ARBITRATION LAW, TO THE EXTENT NEVADA LAW IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND BUYER AND SELLER ARE GIVING UP ANY RIGHTS BUYER AND SELLER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW BUYER AND SELLER ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS PARAGRAPH ENTITLED

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SELLER DOES NOT ASSUME ANY OBLIGATION TO SERVICE OR REPAIR SUCH CONSUMER PRODUCTS OR GOODS. THEY ARE INCLUDED ON AN "AS IS" BASIS WITH BUYER ASSUMING THE ENTIRE COST OF ALL NECESSARY SERVICE, REPAIR, OR REPLACEMENT IN THE EVENT OF DEFECT IN QUALITY OR PERFORMANCE.

NOTWITHSTANDING ANY OTHER PROVISION HEREIN, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED AND EXCLUDED BY SELLER TO THE MAXIMUM EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, HABITABILITY AND WORKMANSHIP. I (WE), THE BUYER, HAVE READ AND UNDERSTAND THE ABOVE PARAGRAPH AND ACKNOWLEDGE RECEIPT OF A COPY OF THE ABOVE-REFERENCED KB HOME LIMITED WARRANTY AND DISCLAIMER OF IMPLIED WARRANTIES.

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Buyer's Initials

16. Obligation to Provide Documents to Subsequent Buyers, Obligation to Provide Information to Seller. As to any documents provided pursuant hereto, or in conjunction herewith, including, without limitation, the KB Home Limited Warranty, the Warranty Performance Standards and Seller's Homeowner Manual, Buyer hereby acknowledges that Buyer is obligated to, and hereby agrees to, provide copies of such documents to any subsequent purchasers of the Property from Buyer. Buyer further hereby acknowledges that Buyer is obligated to, and hereby agrees to, provide Seller promptly at the time of the sale with the names of any subsequent purchasers of the Property from Buyer.
17. Recordation of Documents. Buyer acknowledges and hereby agrees that Seller may, at Seller's election, but shall not be obligated to, record against title to the Property (or record notice of the existence of) the KB Home Limited Warranty, the Warranty Performance Standards and/or all or portions of Seller's Homeowner Manual, and such other documents as may be reasonably necessary to effectuate the intent and purposes of said documents.
18. Lot and Off-site Improvements. Lot and street improvement work will be provided by Seller in accordance with plans filed with the appropriate governmental agency. Seller shall make all reasonable efforts to install streets and off-site improvements prior to Close of Escrow, but if all other requirements hereunder have been met and Seller is unable, for reasons beyond its control, to install said improvements prior to Close of Escrow, Buyer agrees that Escrow may close without installation of said improvements, provided the dwelling is habitable, accessible and suitable for occupancy. Buyer further agrees to execute all documents necessary to close Escrow, and Seller agrees to install and complete such improvements within a reasonable time, without additional cost to Buyer. In such event, Buyer agrees to grant Seller an easement to enter upon the Property to perform the work necessary to complete such improvements. Buyer shall be responsible for any damages resulting from any changes made by Buyer to the established drainage pattern or lot grading.
19. FHA and VA Loans. With regard to FHA and VA Loans, it is expressly agreed that notwithstanding any other provisions of this Agreement, the Buyer shall not incur any penalty by forfeiture of the Deposit or be obligated to complete the purchase of the Property if the purchase price of the Property exceeds the appraised value of the Property for mortgage insurance purposes by FHA or the Reasonable Value established by VA. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the FHA appraisal or VA Reasonable Value. A spot appraisal will be required and will be ordered by the lender from FHA or the VA.
20. General Provisions.
  - 20.1. Entire Agreement. Except for the KB HOME Limited Warranty applicable to the Property, this Agreement is intended by Buyer and Seller as the final expression and complete and exclusive statement of their agreement with respect to the provisions of this Agreement, and any prior or contemporaneous oral or written agreements or understandings which may contradict, explain or supplement these terms shall not be admissible or effective for any purpose. No salesperson, agent or employee of Seller has the authority to make any representations which contradict or alter any terms of this Agreement. There are no collateral understandings, representations or agreements between the parties with respect to the transaction contemplated herein, other than those contained in this Agreement and any written amendments or addenda hereto or written disclosures provided to Buyer in connection with this Agreement.
  - 20.2. Amendment. From time to time following acceptance of the Agreement by Seller, Buyer and Seller may amend this Agreement by completing and signing a Terms and Conditions Addendum. Any such Addendum that refers to Buyer and the Property, once signed by Buyer and accepted by Seller, shall constitute an amendment to the Transaction Summary attached to this Agreement. This Agreement may not be otherwise altered except in writing signed by Buyer and Seller expressly stating that it amends this Agreement.
  - 20.3. No Assignment. This Agreement and Escrow may not be assigned or otherwise transferred, voluntarily or by operation of law, by Buyer without the written consent of Seller, which consent may be withheld by Seller at its sole discretion, and any attempt to do so shall be void and shall constitute a default by Buyer.
  - 20.4. Severability. If any provision of the Agreement or its application to any party or circumstance is declared invalid or unenforceable by an appropriate court, then the remaining provisions (and the affected provision to the extent it is not so declared) shall remain valid and enforceable and in full force and effect.
  - 20.5. No Waivers. The waiver by Seller of any provision of this Agreement or any default by Buyer is effective only if it is in writing and shall not be considered as a waiver of any other provision of default. The waiver by the Seller of a breach of any provision of this agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach, whether of the same or another provision of this Agreement.
  - 20.6. Joint Obligations. If Buyer is comprised of more than one person or entity, then each party comprising Buyer shall be jointly and severally responsible for the performance of Buyer's obligations under this Agreement.
  - 20.7. Interpretation. Headings in this Agreement are included for reference purposes only and shall not affect the meaning of any provisions of this Agreement.
  - 20.8. Notices. All notices to Buyer and Seller shall be personally delivered, including by telephonic telegram, courier or messenger service, or by ordinary or certified mail to the address of Buyer and Seller set forth in this Agreement. Delivery of a notice shall be deemed made on the date of actual delivery if it is personally delivered or sent by certified mail or two (2) business days after it is deposited in the mail if it is sent by ordinary mail. Notices to Seller shall be addressed as follows: Attn: Division President, KB Home Las Vegas, Inc., 5795 Badura Ave., Suite 180, Las Vegas, NV 89118.
  - 20.9. Cooperation. Buyer and Seller agree to execute all instruments and documents and to take all actions as may be required herein and by Escrow Holder and Lender, if any, to consummate the sale and purchase herein contemplated.
  - 20.10. No Tax Withholding. Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor (i.e., Seller) is a foreign person. To inform Buyer that withholding of tax is not required in connection with this transaction, Seller certifies that Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate.
  - 20.11. Buyer's Acknowledgments. Buyer has read and understands all of the terms of this Agreement and all Addenda referred to below which are checked as being applicable and which are attached hereto. This Agreement does not create a fiduciary relationship between Seller or Seller's sales representative(s) on the one hand and Buyer on the other hand.



20.12. Time is of the Essence. Buyer acknowledges that (i) time is of the very essence in the performance of Buyer's obligations under this Agreement, and (ii) any delay in Buyer's performance under this Agreement will prejudice Seller.

20.13. Offer and Acceptance. Buyer acknowledges and understands that Buyer's signing this document constitutes only an offer to purchase the Property from Seller. The signature of a representative of KB Home Sales - Nevada Inc., as set forth in the Receipt of Deposit section below, shall NOT constitute the acceptance of Seller. Only a written acceptance by Seller's authorized agent, in the space indicated below, shall constitute Seller's ratification of this Agreement.

20.14. Choice of Law. This contract is to be construed according to the laws of the State of Nevada and specifically Chapter 119 of NRS.

21. Residential Construction Recovery Fund. Pursuant to NRS 624.520, Buyer is hereby notified that payment may be available from the Residential Construction Recovery Fund (the "Fund") if Buyer is damaged financially by work performed on the Property pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in Nevada. To obtain information relating to the Fund and filing a claim for recovery from the Fund, you may contact the State Contractor's Board, which is located at 2310 Corporate Circle, Suite 200, Henderson, Nevada 89074, (702) 486-1100.

22. Addenda. The following addenda are attached to and incorporated into this Agreement without the necessity of being executed on behalf of Seller (unless any modification to the printed form is made, in which case Seller's signature shall be required in order for such modification to be effective), provided that the box adjacent to such addenda has been checked and Buyer has separately signed such addenda. [Check all that apply]:

<input type="checkbox"/>	Additional Co-Buyer(s) Addendum
<input checked="" type="checkbox"/>	Affiliated Lender and Authorization to Share Financial Information
<input type="checkbox"/>	Model Home Sale
<input checked="" type="checkbox"/>	Non-Refundable Deposit Acknowledgement
<input checked="" type="checkbox"/>	Availability of Desired Model and/or Elevation Addendum
<input checked="" type="checkbox"/>	Existing Home Addendum
<input checked="" type="checkbox"/>	Third Party Home Inspection Contractors Addendum
<input checked="" type="checkbox"/>	Selected Options Addendum
<input checked="" type="checkbox"/>	Available Options with Cutoff Code "A" Addendum
<input checked="" type="checkbox"/>	General Conditions of Escrow
<input checked="" type="checkbox"/>	Broker Registration and Commission Agreement
<input checked="" type="checkbox"/>	Duties Owed by A Nevada Real Estate Licensee
<input checked="" type="checkbox"/>	Lender Disclosure

23. Other Terms.

I HAVE FULLY READ AND UNDERSTAND THIS AGREEMENT. I OFFER TO PURCHASE THE PROPERTY SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. I UNDERSTAND THIS OFFER IS NOT A BINDING CONTRACT AND SELLER HAS NO OBLIGATION UNTIL THIS CONTRACT IS ACCEPTED BY THE SELLER. THE SALESPERSON IS NOT THE SELLER AND IS NOT AUTHORIZED TO ACCEPT THIS OFFER.

The purchaser of any subdivision or any lot, parcel, unit or interest in any subdivision not exempted pursuant to the provisions of NRS 119.120 or 119.122 may cancel the contract of sale, by written notice, until midnight of the fifth calendar day following the date of execution of the contract, unless the contract prescribes a longer period for cancellation. The right of cancellation may not be waived. Any attempt by the developer to obtain such a waiver results in a contract which is voidable by the purchaser. The notice of cancellation must be delivered personally to the developer or sent by certified mail or telegraph to the business address of the developer. The developer shall, within 15 days after receipt of the notice of cancellation, return all payments made by purchaser.

Serrin Chiu 1/8/16  
Buyer Date  
(Print Name)

\_\_\_\_\_  
Co-Buyer Date  
(Print Name)

RECEIPT OF THE DEPOSIT SPECIFIED ABOVE IS HEREBY ACKNOWLEDGED AND PRESENTATION OF THIS OFFER TO SELLER IS BEING MADE BY:

KB Home Sales - Nevada Inc.  
By Jana McNeer Broker  
Salesperson

This offer is accepted and the undersigned Seller agrees to sell the Property subject to the terms and conditions contained in this Agreement, including Section 10, entitled Arbitration of Disputes, and including those addenda attached hereto and referred to in Paragraph 22 above, next to which there is a check mark.

KB Home Las Vegas, Inc.  
\_\_\_\_\_  
Authorized Agent Seller  
Date

Tract/Project TEVARE - 415/415 Lot/Block 43 / 1



**Affiliated Lender AND AUTHORIZATION TO SHARE FINANCIAL INFORMATION  
ADDENDUM TO THE PURCHASE AGREEMENT AND LONG FORM DISCLOSURES**


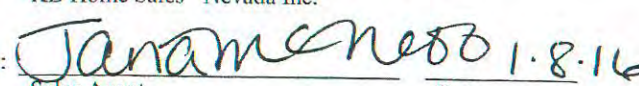
Community: Tevare Date of Agreement: 1/8/2016  
Buyer: Jerrin Chiu  
Buyer: \_\_\_\_\_  
Property: Lot 43 Block 1 Section/Phase \_\_\_\_\_ / 28  
Address: 477 CABRAL PEAK STREET, Las Vegas, NV 89138

This Affiliated Lender and Authorization to Share Financial Information Addendum to the Purchase Agreement and Long Form Disclosures ("Addendum") is attached to and made a part of that certain Purchase Agreement (the "Agreement") between the Buyer(s) described above and the Seller described below, and that certain long form disclosure statement provided to the Buyer(s) described above in connection with the Agreement, covering the real property as described above ("Property"). If any provision of this Addendum conflicts with any provision of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

1. Seller recommends that Buyer obtain financing from Seller's Affiliated Lender, Home Community Mortgage, LLC ("Home Community Mortgage"). Home Community Mortgage is an affiliate of Seller and Seller's parent company KB Home owns 49.9% of Home Community Mortgage.
  2. All references in the Agreement and Seller's long form disclosures to Seller's Affiliated Lender or preferred lender shall be deemed to refer to Home Community Mortgage. Buyer is not required to use Home Community Mortgage as their lender and is NOT in any way whatsoever limited to obtaining financing from Home Community Mortgage. Buyer has the absolute right to decline any Seller offers or incentives that are contingent upon financing with Home Community Mortgage and Buyer is free to use any qualified lender of their choosing.
  3. Although Buyer is not required to use the services of Home Community Mortgage prior to entering into a Purchase Agreement to purchase the Property from Seller, Buyer may be required to verify Buyer's ability to obtain financing in order to establish Buyer's ability to complete the purchase of the Property. If so, Buyer may, at Seller's discretion, be required to complete and sign Home Community Mortgage's standard form of authorization to obtain a credit report and to use and disclose consumer credit information ("Credit Authorization"), which Home Community Mortgage may use to evaluate Buyer's financial wherewithal to purchase the Property and to evaluate Buyer as a qualified prospective Buyer.
- Buyer understands that the Credit Authorization, if required, is not and does not in any way constitute an application for a mortgage loan and that Buyer must separately obtain, complete and submit a mortgage application with, and meet the underwriting standards of either: (a) Home Community Mortgage if Buyer chooses to use Home Community Mortgage as Buyer's lender, or (b) any other qualified lender selected by Buyer.
- 4. Buyer authorizes Seller to discuss and share Buyer's customer and financial information (related to the Buyer's purchase transaction of the Property from Seller) with Home Community Mortgage and/or any other qualified lender selected by Buyer, for the purposes of assisting Seller in evaluating, facilitating, processing, and coordinating Buyer's purchase of the Property.**

This Addendum shall not be binding on Seller until accepted by an authorized representative of Seller in the space provided below. Seller's Sales Agent is not an authorized representative of Seller for these purposes.

Seller's Sales Agent:  
KB Home Sales - Nevada Inc.

 _____ Buyer	<u>1/8/16</u> _____ Date	By:  _____ Sales Agent	<u>1.8.16</u> _____ Date
_____ Buyer	_____ Date		

Accepted by Seller:  
KB Home Las Vegas, Inc.

By: \_\_\_\_\_  
Authorized Representative of Seller      Date



## ADDENDUM TO PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

### NON-REFUNDABLE DEPOSIT ACKNOWLEDGEMENT

BUYER(S): Jerrin Chiu  
PROPERTY  
ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138  
COMMUNITY: Tevare PROJECT: 415 LOT/BLOCK: 43 / 1

This Addendum to Purchase Agreement and Escrow Instructions (the "Addendum") is attached to and made a part of that certain Purchase Agreement and Escrow Instructions dated 1/8/2016 between Buyer(s) and Seller, covering the real property described above (the "Agreement"). All capitalized terms used in this Addendum, but not defined herein, shall have the meanings assigned to such terms in the Agreement.

Buyer acknowledges and agrees that the Deposit shall become non-refundable and shall be retained by the Seller on the date which is five (5) days after the Original Sale Date (the "Non-Refundable Deposit Date"), except that after the Non-Refundable Deposit Date, Buyer may obtain a refund of its Deposit in accordance with Sections 8(a), 9.2, 19 and 20.13 of the Agreement; provided the following occur:

(i) Buyer fails to obtain written notification from Lender of unconditional Loan approval within thirty (30) days after the Original Sale Date (the "Approval Deadline");


(ii) Buyer fully cooperated with the Loan approval process in good faith, including, without limitation, providing to Lender all documentation requested by Lender; and

(iii) Buyer obtained his/her Loan file from the Lender, permitted Seller and any lender designated by Seller ("Seller's Lender") to review such Loan file and provided Seller's Lender an opportunity to qualify Buyer for a Loan;

then Buyer or Seller may, by written notice to the other and Escrow Holder, cancel the Agreement, and (A) if such cancellation occurs before the Approval Deadline, the Deposit and all other funds previously deposited by Buyer, less any escrow costs, credit report and loan charges incurred, shall be returned to Buyer, unless Seller is entitled to retain any such amounts pursuant to any option/upgrade work orders/contracts; and (B) if such cancellation occurs after the Approval Deadline, the Deposit and all other funds subsequently deposited by Buyer shall be retained by the Seller.

**THIS ADDENDUM SUPERSEDES ANY PORTION OF THE AGREEMENT OR THE TRANSACTION SUMMARY INCONSISTENT OR IN CONFLICT WITH THE TERMS HEREOF.**

#### APPROVED AND AGREED TO:

  
Buyer

KB Home Las Vegas, Inc.  
Seller

Buyer  
1/8/16  
Date

\_\_\_\_\_  
Authorized Agent  
\_\_\_\_\_  
Date



# AVAILABILITY OF DESIRED FLOORPLAN AND/OR ELEVATION

DATE OF PURCHASE AGREEMENT: 1/8/2016

BUYER(S): Jerrin Chiu

COMMUNITY: Tevare

TRACT/ PHASE: TEVARE - 415 / 28

LOT/ BLOCK: 43 / 1

"PROPERTY" ADDRESS: 477 CABRAL PEAK STREET

Las Vegas

NV

89138

DESIRED FLOORPLAN: JN

ARCHITECTURAL PLAN: 235.2625

DESIRED ELEVATION: C

GARAGE: R

This Addendum to Purchase Agreement ("Addendum") is attached to and made a part of that certain Purchase Agreement (the "Agreement") between Buyer(s) and Seller, covering the real property as described above. If any portion of this Addendum conflicts with any portion of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

## SALESPERSON TO CHECK ONE OF THE FOLLOWING

NA The above-referenced floorplan and elevation have been previously selected by Seller for this property. Buyer hereby acknowledges and understands that Seller may or may not have already received approval from the applicable building department or other municipal agency to construct a home on this property with the previously-selected floorplan and/or elevation. Should Seller receive notification from the applicable entity that the previously-selected floorplan and/or elevation has not been approved for construction on this property, Seller will advise Buyer of such within ten (10) days after receiving said notification. Should that occur, Buyer may elect one of the options as stated in Paragraphs (a) and (b) below, not later than ten (10) days after notification to Buyer. Buyer acknowledges that these are the sole options in this event. If Buyer fails to elect one of the specified options within the ten-day period, Buyer shall be deemed to have elected to terminate the Purchase Agreement as provided in Paragraph 2 below.

✓ Seller will provide Buyer with a copy of the plot plan within four (4) to six (6) weeks from the date of the Agreement for the floorplan selected by Buyer and approved by Seller and for which a construction permit was obtained. If a start date has not been set on Buyer's contracted home at the time of entering into a Purchase Agreement, Buyer will, depending upon the available lot inventory in the Community, generally be able to select the floorplan (the "Desired Floorplan") and the elevation (the "Desired Elevation") that Buyer desires to be constructed on the lot he/she has selected. Approval of the Desired Floorplan and/or the Desired Elevation is subject to the restrictions set forth below and to the Community's "Lot Fit" analysis, which identifies the types of floorplans and elevations that Seller believes to be suitable for each particular lot then for sale in the Community.

Buyer should understand, however, that in certain situations (a) Seller may not have received, as of the date of Buyer's execution of the contract, all necessary approvals from the applicable building department or other municipal agency to build the Desired Floorplan and/or the Desired Elevation on the contracted lot and/or (b) it is possible that Seller will not be able to obtain a permit, or it will otherwise be impractical, to construct the Buyer's Desired Floorplan or Desired Elevation on the contracted lot despite the Lot Fit. In either of such events, Seller shall promptly notify the Buyer and, not later than ten (10) days after Buyer's receipt of such notice, Buyer will be able to elect one of the following options, which will be Buyer's sole options:

- (a) Select a different Floorplan and/or Elevation that would be possible and practical to construct on Buyer's lot and enter into a new contract or contract addendum outlining the revised terms of agreement.
- (b) Elect to have the Desired Floorplan and Desired Elevation constructed on a different Lot within the community on which it is possible and practical to construct Buyer's Desired Floorplan and Desired Elevation and enter into a new contract or contract addendum outlining the revised terms of agreement.

If option (b) is selected, the purchase price may be adjusted to account for differences between the prices of the floorplans or to account for lot location. The price adjustment would be consistent with Seller's general pricing structure within the Community. Buyer shall not be entitled to any other adjustment in price as a penalty against Seller or as compensation to Buyer. If, within three (3) days after Seller receives notice from Buyer that Buyer elects an option in this Paragraph 1, Buyer and Seller are unable to agree on the pricing for Buyer's selected different Floorplan and/or Elevation or Lot, then Seller shall have the option to terminate the Agreement at any time thereafter and the provisions of Paragraph 2, below, shall apply. Seller will provide Buyer with a copy of the plot plan within four (4) to six (6) weeks from the date of the Agreement for the floorplan selected by Buyer and approved by Seller and for which a construction permit was obtained. Buyer acknowledges that the construction schedule for the home shall be extended to account for this change.

If Buyer fails to elect one of the above within the ten (10)-day period, Buyer shall be deemed to have elected to terminate the Purchase Agreement, in which case (i) all funds previously deposited shall be returned to Buyer less any authorized disbursements as provided in the Purchase Agreement and (ii) neither party shall have any further obligation to each other under the Purchase Agreement.

## **APPROVED AND AGREED TO:**

[Signature]  
Buyer

Buyer

1/8/16

Date

## **ACCEPTED AND AGREED TO:**

Brokerage: KB Home Sales - Nevada Inc.

By: [Signature]  
Salesperson

Seller: KB Home Las Vegas, Inc.

By:

Authorized Agent

Date



**ADDENDUM TO PURCHASE AGREEMENT  
EXISTING HOME**

BUYER(S): Jerrin Chiu  
COMMUNITY: TEVARE - 415 / 28 LOT/BLOCK: 43 / 1  
PROPERTY ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138  
DATE: 1/8/2016

This Addendum to Purchase Agreement ("Addendum") is attached to and made a part of that certain Purchase Agreement (the "Agreement") between the Buyer(s) described above and the Seller described below, covering the real property as described above (the "Property"). If any provision of this Addendum conflicts with any provision of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

(Buyer(s) must initial ONE of the following)

nlc  
(Initials)

Buyer hereby represents to Seller that Buyer does not currently own a home and will not close on the purchase of another home prior to the closing on the Property to be purchased from Seller. In the event Buyer has selected this paragraph as being applicable and Seller subsequently discovers that Buyer does currently own a home, or prior to closing on the Property acquires a home, Seller, in Seller's sole discretion, shall be entitled to treat Buyer as being in default under the Agreement which shall entitle Seller, in Seller's sole discretion, to immediately terminate the Agreement and retain all deposits held under the Agreement as liquidated damages pursuant to the terms of the Agreement and thereafter all further rights, duties and obligations under the Agreement shall be null and void and of no further force and effect.

-OR-

JC  
(Initials)

Buyer is the owner of an "Existing Home" located at: 2101 Jade Creek Street, Unit 206, Las Vegas, NV 89117. At the time of execution of this Addendum, Buyer shall make a Deposit equal to 10% of the Purchase Price. Seller shall not commence construction of the home on the Property until Buyer has obtained unconditional Loan approval, as required under Section 3.3 of the Agreement. Notwithstanding the foregoing, Buyer shall be required to visit the Studio and select its options, as required under the Agreement. **Nothing herein shall be construed as providing that the purchase of the Property is contingent upon Buyer's sale of the Existing Home.**

All other terms and conditions of the Purchase Agreement remain unchanged. This Addendum shall not be binding on Seller until accepted and signed by Seller below.

ACCEPTED AND AGREED TO:

[Signature]  
Buyer

1/8/16  
Date

ACCEPTED AND AGREED TO:

SELLER: KB Home Las Vegas, Inc.

Buyer

Date

Authorized Agent

Date



THIRD PARTY HOME INSPECTION CONTRACTORS

This addendum, when duly executed by both parties, will constitute a part of the Purchase Agreement dated

1/8/2016 between Jerrin Chiu  
as "Buyer" and KB Home Las Vegas, Inc. as "Seller," covering Lot/Block 43 / 1  
of Tract/Phase TEVARE - 415 / 28.

Occasionally, homebuyers choose to hire at their own cost, a third party home inspection contractor ("Home Inspection Contractor") to inspect the home that they are purchasing. Seller neither encourages nor discourages the use of Home Inspection Contractors by homebuyers. In the event that Buyer chooses to hire a Home Inspection Contractor to inspect the home Buyer is purchasing and the inspection occurs prior to or after the close of escrow, Buyer agrees to protect, defend, indemnify and hold Seller harmless from and against any and all liens against the lot and home that Buyer is purchasing that may arise out of the home inspection. Buyer also agrees that as a condition precedent to the Home Inspection Contractor entering onto the lot on which the home is located or any area within the tract or phase in which the home is located, including but not limited to adjacent streets, Buyer shall provide to Seller the following documents:

1. A photocopy of the Home Inspection Contractor's license/certification from the State of Nevada;
2. Certificates of insurance evidencing the Home Inspection Contractor's coverage under (i) an automobile insurance policy and a comprehensive general liability insurance policy, each with policy limits of at least Five Hundred Thousand Dollars (\$500,000) and with a deductible/self-insured retention of not more than Twenty-five Thousand Dollars (\$25,000), (ii) worker's compensation insurance as required by law, and (iii) errors and omissions insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000), all issued by insurance companies acceptable to Seller in its absolute discretion.
3. An endorsement to the Home Inspection Contractor's general liability insurance policy naming KB Home Las Vegas, Inc. and its parent corporation, KB HOME, as additional insureds as to the comprehensive general liability coverage. The endorsement shall indicate that the Home Inspection Contractor's insurance shall be primary coverage and Seller's insurance shall be excess and non-contributory with regard to claims in connection with the Home Inspection Contractor's activities in, on or about the home and the lot, tract or phase in which the home being inspected is located and shall provide that thirty (30) days prior notice shall be given Seller in the event of the cancellation or reduction in Home Inspection Contractor's coverage.
4. A written covenant executed by the Home Inspection Contractor which acknowledges the provisions herein and which provides as follows:

"In consideration of KB Home Las Vegas, Inc. ("Seller") allowing access to Seller's construction project for the purposes of conducting a home inspection on behalf of a Seller homebuyer, the undersigned Home Inspection Contractor agrees to protect, indemnify, defend, and hold harmless Seller, its officers, directors, shareholders, employees, agents, subcontractors, consultants and affiliated entities or persons, including but not limited to KB HOME (collectively, Seller) from and against any and all claims, demands, liabilities, damages, costs or expenses, including attorneys' fees and court costs, incurred by or made against Seller and caused by or resulting from any act or omission of Home Inspection Contractor in connection with Home Inspection Contractor's inspection of the home located at 477 CABRAL PEAK STREET, Las Vegas, NV 89138. This indemnity shall not extend to any claims, demands, or liabilities arising out of the sole negligence or willful misconduct by Seller. In addition, the undersigned Home Inspection Contractor hereby releases, waives and forever discharges Seller of and from any and all claims, damages, injuries, debts, liens, liabilities, demands, obligations, costs, expenses, actions and causes of action, of every nature, character and description which Home Inspection Contractor may incur during the course of any activities in, on or about the home being inspected or the lot, tract or phase in which the home is located, including without limitation, any accident, casualty and bodily injury, unless caused by the willful misconduct of Seller."

5. Any inspection shall occur at least three (3) business days prior to the scheduled walk-through date for Buyer's home and Buyer shall give Seller at least three (3) business days advance written notice of the date and time of any inspection addressed as follows:

Attn: Escrow Coordinator / Escrow Dept.  
KB HOME  
5795 Badura Avenue, Suite 180  
Las Vegas, NV 89118

In addition, Seller's representatives shall be entitled to accompany the Home Inspection Contractor throughout entirety of the home inspection.

If, for any reason, a home inspection is authorized and performed after the walk-through date, any items questioned by the Home Inspection Contractor will be noted by Seller's representative on a Customer Service Request form. Seller's Customer Service department will address the noted items after close of escrow has occurred. Buyer understands and agrees that a home inspection occurring after the walk-through date shall not delay the close of escrow for any reason.

All other terms and conditions of the Purchase Agreement remain unchanged.

BUYER:

Buyer

Buyer

Date

SELLER:

KB Home Las Vegas, Inc.

Authorized Agent

Date



# ADDENDUM TO PURCHASE AGREEMENT

## SELECTED OPTIONS

BUYER(S): Jerrin Chiu  
 TRACT/PHASE: TEVARE - 415 / 28 LOT/BLOCK: 43 / 1  
 ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138

This Addendum to the Purchase Agreement ("Addendum") is attached to and made a part of the certain Purchase Agreement and Escrow Instructions ("Agreement") between Buyer(s) and Seller, covering the real property as described above. If any portion of this Addendum conflicts with any portion of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

The following options are included in the purchase of the referenced property. Buyer acknowledges that if FHA or VA financing is obtained, Buyer might not be allowed to include these options in the loan amount.

OPTION SELECTIONS	UNIT PRICE	QTY	TOTAL
Covered Balcony - Per Plan *	Included	1	Included
Covered Patio - Per Plan *	Included	1	Included
Den and Powder Room to Bedroom with Bath *	2,840.00	1	2,840.00
Water Heater - 50 Gallon *	135.00	1	135.00

Total Price Selected Options: \$2,975.00

\* DENOTES OPTIONS SELECTED AT SALES OFFICE.

  
 Buyer

SELLER: KB Home Las Vegas, Inc.

Buyer

By: \_\_\_\_\_  
 Authorized Agent

11/8/16  
 Date

\_\_\_\_\_  
 Date

# ADDENDUM TO PURCHASE AGREEMENT

## AVAILABLE OPTIONS WITH CUTOFF CODE "A"

Buyer(s): Jerrin Chiu

Tract/Phase: TEVARE - 415 / 28

Lot/Block: 43 / 1

Address: 477 CABRAL PEAK STREET, Las Vegas, NV 89138

This Addendum to the Purchase Agreement ("Addendum") is attached to and made a part of the certain Purchase Agreement and Escrow Instructions ("Agreement") dated between Buyer(s) and Seller, covering the real property as described above. If any portion of this Addendum conflicts with any portion of the Agreement, the provisions of this Addendum shall prevail. All terms used in this Addendum shall have the same meaning as in the Agreement.

Please note that the following options are available for selection **ONLY** at the Sales Office, at the time of contract. By signing below, Buyer acknowledges that some or all of the options listed may be unavailable for selection depending on the stage of construction of the above-referenced property.

Option Selections	Unit Price	Buyer Initial on Selected Options
-------------------	------------	-----------------------------------------

Covered Balcony - Per Plan

Included SC

Model: Mirador

Covered Patio - Per Plan

Included SC

Model: Loggia

Den and Powder Room to Bedroom with Bath

\$2,840.00 SC

Model: Bedroom 5 with Bath 4

Loft to Bedroom 4

\$2,000.00 n/a

Tankless Hot Water Heater - #1 - Rinnai

\$1,390.00 n/a

Model: Model: TBD

Water Heater - 40 Gallon

Included n/a

Water Heater - 50 Gallon

\$135.00 SC

Buyer [Signature]

SELLER: KB Home Las Vegas, Inc.

Buyer

By:

Authorized Agent

Date

Date



**GENERAL CONDITIONS OF ESCROW**

TO: <u>FIRST AMERICAN TITLE COMPANY</u>	DATE: <u>1/8/2016</u>	TOTAL SALES PRICE: <u>\$404,765.00</u>
		<input type="checkbox"/> CASH <input checked="" type="checkbox"/> CONV
		<input type="checkbox"/> FHA <input type="checkbox"/> VA

The Purchase Agreement (also known as the "Agreement") and all addenda/disclosures entered into on 1/8/2016 between KB Home Las Vegas, Inc. as SELLER and Jerrin Chiu as BUYER(S) shall serve as the Escrow Instructions to this transaction, and these General Conditions of Escrow shall become an additional addendum to the Agreement, to serve as additional Escrow Instructions, for the purchase of property which is described as follows:

LOT 43\_\_ IN BLOCK 1 OF TEVARE - 415 / 28\_\_ as shown by map thereof on file in Book \_\_\_\_ of Plats, Page \_\_\_\_ in the office of the County Recorder of Clark County, Nevada.

(See Exhibit "A," attached hereto and made a part hereof by this reference, for the complete legal description.)

More commonly known as 477 CABRAL PEAK STREET, Las Vegas, NV 89138.

Escrow Agent will obtain a grant, bargain and sale deed conveying said property to the above-named Buyer(s) to be used only when Buyer(s) has/have deposited with First American Title Company (also known as Escrow/Title Company) the deed of trust and note shown as item 3 below, together with all other forms and information required by lender and/or FHA and/or Veterans Administration and any funds required from Buyer(s) for completion of this transaction.

Seller and Buyer(s) authorize Escrow Agent to deliver Seller's instrument of conveyance to the above-named party upon payment to Escrow/Title Company for Seller's account the full consideration and upon condition that Escrow/Title Company issues the usual form of CLTA Standard Owner's policy with liability limited to the total sales price, and ALTA Lender's policy for any lenders with the liability limited to the amount of the first deed of trust.

**SUBJECT ONLY TO:**

- (1) Taxes for the current tax year, INCLUDING PERSONAL PROPERTY TAXES, IF ANY, except as otherwise specifically required in the Agreement.
- (2) RESTRICTIONS, CONDITIONS, RESERVATIONS, RIGHTS, RIGHTS OF WAY, AND EASEMENTS NOW OF RECORD, if any, affecting the use and occupancy of said property as the same may now appear of record.
- (3) Deed of trust executed by the above-named Buyer(s), securing payment of a note in the amount of the first deed of trust in favor of Home Community Mortgage.

**AND RESERVING:**

All water rights, permits and certificates of Grantor of whatever kind or nature for ground water and surface water, and any and all other decrees, orders or judgments affecting, adjudicating, or decreeing water rights, to the end that this deed shall not confer, grant, or transfer to Grantee any water rights whatsoever, or any claim to water or water rights.

And further all mineral, oil, gas, petroleum, other hydrocarbon substances, and all geothermal energy sources in, under, or which may be produced from the within-described land, which lie below a plane parallel to and 500 feet below the surface of the within-described land, for the purpose of prospecting, exploration, development, production, or extraction of said substances by means or mines, well, or derricks, or other equipment, provided, however, that the owner of said substances shall have no right to enter upon the surface of the within-described land, nor to use said land above said plane parallel to and 500 feet below the surface of such land.

Said deed of trust and note to be in the forms and terms required by the lender and/or the administration named above.

**ESCROW/TITLE COMPANY HAS NO RESPONSIBILITY FOR INVESTIGATING OR GUARANTEEING THE STATUS OF ANY GARBAGE FEE, POWER, WATER, TELEPHONE, GAS, AND/OR OTHER UTILITY OF USE BILL, EXCEPT AS OTHERWISE SPECIFICALLY REQUIRED.**

**PRORATIONS:** Property taxes, Homeowner's Association fees, Landscape Maintenance Association Fees, Special Improvement District (SID) fees, and any existing encumbrances that shall be assumed by Buyer(s) shall be prorated and computed on the basis of a thirty-day month. The term "close of escrow" shall be deemed to mean the date upon which all necessary documents are filed for record with the appropriate county recorder's office. Escrow Agent is directed to mail the respective policy(ies) of title insurance to the holder of any new encumbrance called and to the Buyer(s).

Co-op commission, if applicable, shall be payable to the following real estate broker/firm(s): Nevada Real Estate Corp. and Escrow Agent is directed to disburse same to the extent that the proceeds of this escrow available therefore become disburseable from Seller's account.

Escrow/Title Company assumes no liability for, and is hereby relieved of any liability in connection with any PERSONAL PROPERTY which may be a part of this escrow.

Escrow Agent is directed to file the necessary Deeds, Trust Deeds, and other instruments and pay any encumbrance which a title search reveals against the subject property, except as set forth. Escrow/Title Company is authorized and directed to pay said encumbrances as directed by the lienholder thereof, acting solely upon the written direction of such lienholder, and it is expressly understood and agreed that Escrow/Title Company assumes no liability for the accuracy of any such statement or direction.



Escrow Agent is further directed to insert the names of the Grantees in the necessary conveyance and/or encumbering documents prior to recordation of same, based upon the written direction tendered by Grantee or in compliance with instructions set forth by the beneficiary under any new loan documents. Escrow Agent is expressly authorized to charge to the account of the party obligated to pay same, any charge or expense incurred in connection with this transaction or the terms thereof. Escrow Agent is further directed and authorized to reimburse itself for any charges which it may incur during this escrow by charging such amount to the party obligated to pay same. All disbursements made under this transaction shall be made in the form of a check by Escrow/Title Company.

Any deposits made by Buyer(s) into this escrow shall be in the form of certified funds or cashier's check (no personal checks or out-of-state cashier's checks will be accepted). Any check presented for deposit into this escrow by either party shall be subject to clearance thereof and Escrow Agent shall not be obligated to act upon nor disburse against any such funds until notified by the bank upon which check is drawn that said check has cleared its account.

In the event a legal proceeding is brought by any party(ies) to this escrow to which the Escrow Holder is named as a party and which results in a judgment in favor of the Escrow Holder and/or against party or principal of any party hereunder, the principal or principal's agent(s) agree to pay said Escrow Holder all costs, expenses, and reasonable attorney fees which it pays or incurs in said proceeding, the amount thereof to be fixed and judgment to be rendered by the trier of fact in said proceeding.

Time is of the essence of this agreement and requires that the Buyer(s) execute these instructions within the time requirements specified in the Agreement. If said closing date falls on a Saturday, Sunday or holiday, the time limit set out is extended through the next business day and provided further that Escrow Holder is authorized to take any administrative steps necessary to implement the closing of this escrow subsequent to said closing date unless otherwise instructed in writing by Buyer(s) and Seller.

Pursuant to Section 4.2 of the Agreement, Buyer(s) may be responsible for rent from the date of occupancy (upon approval from Seller) or a holding fee three (3) days after a valid notice of completion of construction is recorded, and will pay said rent/holding fee in accordance with the information to be furnished by Seller's local sales office. Escrow Agent shall be notified in writing of such information prior to the close of escrow for the purpose of computing charges against Buyer(s) account.

If escrow is not closed as scheduled, or if this agreement is in any way breached, then on instruction from Buyer(s) and/or Seller escrow shall be cancelled. In such an event, the provisions of Paragraphs 8 and/or 9 of the Agreement shall be applicable and neither party shall have any further obligation, right, or liability whatsoever. The Escrow Holder is hereby released and held completely harmless from Seller and Buyer(s) from any and all liability and/or responsibility in connection with the cancellation of this escrow. In the event of a cancellation of this escrow, adjustment if any, of funds paid outside of this escrow is to be made outside of this escrow.

It is expressly understood and agreed that the Escrow Agent, without any obligation to exercise such right, retains the right to resign its duties as Escrow Agent under this transaction, at any time and at its sole discretion and/or to refrain from taking any act in furtherance of the subject transaction at the sole discretion of Escrow Agent if deemed advisable. NO liability shall accrue to said Escrow Agent for any such act or forbearance.

With regard to FHA/VA loans, it is expressly agreed that notwithstanding any other provisions of this agreement, the Buyer(s) shall not incur any penalty by forfeiture of Deposit or be obligated to complete the purchase of the property if the purchase price of the property exceeds the appraised value of the property for mortgage insurance by FHA or the reasonable value established by VA. Buyer(s) shall, however, have the privilege and option of proceeding with the consummation of this purchase without regard to the amount of the FHA appraisal or VA reasonable value.

With regard to VA loans only: If Buyer(s) is/are unable to obtain GI financing or if construction of the house is not completed within one (1) year from the date of the Agreement, or if the house as constructed or changes or substitutions made to the house are not in substantial conformity with plans, specifications, and change orders on file with the Veterans Administration, then Buyer(s) may cancel the purchase and have any Deposit refunded less any credit report and loan charges incurred (however, these charges shall not exceed \$100.00).

These General Conditions of Escrow in all parts apply to, inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, and whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

These General Conditions of Escrow may be executed in any number of counterparts, each of which shall be considered an original and be effective as such, and all of which, when aggregated, shall constitute one fully executed original.

Buyer(s) and Seller shall notify Escrow Agent in writing of any change in address during the course of this escrow and authorize Escrow Agent, unless Escrow Agent is in receipt of written indication to the contrary, to mail any notices filed by either party to or against the other, to the address set forth.

Seller is hereby made aware that there is a law which became effective January 1, 1987, which requires all escrow holders to complete a modified 1099 form, based upon specific information between Seller and the Escrow/Title Company. You are authorized and instructed to provide this information to the Internal Revenue Service after the close of escrow in the manner prescribed by law, or it is understood that this transaction shall not close with Escrow/Title Company.

To the extent that the terms and conditions of said Agreement, and any modification thereto, shall conflict with these General Conditions of Escrow, the obligations of Escrow/Title Company shall be governed exclusively by these General Conditions of Escrow and Escrow Instructions contained herein. Anything to the contrary herein notwithstanding, Escrow Agent is hereby unconditionally relieved from any liability or responsibility whatsoever involving compliance with or adherence to "Consumer Credit Protection Act (Truth In Lending)" or similar law.

Buyer(s) authorize(s) Escrow Agent to furnish Seller with a copy of Buyer's closing statement. Seller and Buyer(s) authorize(s) Escrow Agent to furnish copies of closing statement and escrow instructions to the lender involved.

In the event a post-closing or post-disbursement adjustment is necessary by an entity involved with this escrow transaction, the undersigned authorizes Escrow/Title Company, if immediate action be necessary, advance funds on their behalf to effect an accurate closing statement. The undersigned, upon notification, and the opportunity to investigate such advances, agrees to fully cooperate and pay to Escrow/Title Company any and all funds so advanced on their behalf, providing that said adjustments are not due to errors on the part of Escrow/Title Company.

COMMUNITY / PROJECT: Tevere / 415

LOT / 43 / 1  
BLOCK:



BUYER(S)

The Buyer(s) and Seller to this escrow have entered into agreements which do not concern the Escrow Agent; however, they desire to memorialize their agreements within the records of the Escrow Agent. In this connection and with the understanding that the Escrow Agent has no control over these agreements and further that the Escrow Agent assumes no liability and/or responsibility in connection with them.

Buyer(s) will receive a copy of the preliminary title report after the title company receives their copy of the accepted Purchase Agreement from Seller.

The Federal Gramm-Rudman Hollings bill will require a reduction of expenditures in most federal government agencies. In an effort to meet the budgetary limitation of Gramm-Rudman Hollings, the Federal Housing Administration and/or Veterans Administration may run out of funds with which to insure loans. Should FHA or VA reach its legal limit on insuring authority, and the limit is not increased within two (2) weeks after reaching its limit, Seller may cancel the Agreement. Buyer(s) shall have the right to submit a conventional financing offer to purchase within five (5) days after being cancelled. That offer will be considered by Seller prior to acceptance of any other offer.

Buyer(s) acknowledge(s) that Seller has no control over FHA/VA policies and action. Buyer(s) holds Seller harmless from any problems or liability in obtaining an FHA/VA guaranteed loan.

BUYER TAKE NOTICE:

SUPPLEMENTAL TAX BILLS

BUYER(S) IS/ARE BEING MADE AWARE THAT DUE TO NEVADA LEGISLATION, (NRS 361.260), THERE IS A POSSIBILITY THAT A SUPPLEMENTAL TAX BILLING MAY BE ISSUED AFTER THE CLOSE OF ESCROW. THIS BILLING WOULD PLACE REAL PROPERTY WHOSE EXISTENCE IS ASCERTAINED AFTER JULY 1, IN EACH ASSESSMENT YEAR ON THE UNSECURED TAX ROLLS. IT IS POSSIBLE THAT YOU MAY BE ISSUED A TAX BILL FOR THE VALUE OF CONSTRUCTION WORK PERFORMED AFTER THE END OF THE NORMAL ASSESSMENT PERIOD. IN THE EVENT THAT SUCH A BILL IS DUE AND PAYABLE AT THE CLOSE OF ESCROW, THE ESCROW HOLDER IS DIRECTED TO PRO RATE BASED ON A THIRTY (30) DAY MONTH AND THE LATEST TAX FIGURES AVAILABLE, AT CLOSING. IF A SUPPLEMENTAL TAX BILL IS NOT ISSUED UNTIL AFTER THE CLOSE OF ESCROW, NO PRO-RATION SHALL BE MADE AND PAYMENT OF THE ENTIRE BILLING SHALL BE THE SOLE RESPONSIBILITY OF THE BUYER(S).

I/We have read the foregoing General Conditions of Escrow and Escrow Instructions and am/are buying the property described on the terms and conditions set forth, and will within the time limit either hand Escrow Agent or cause to be handed Escrow Agent, the consideration as specified in the Agreement. I/We agree to pay the following escrow charges unless otherwise stated in the Agreement, and/or not allowed by VA/FHA regulations: ALTA Premium, one half (1/2) of the Real Property Transfer Tax amount, Loan Fee (as required by Lender), Escrow Fee, Contract Coordination Fee, Recording Fee, HOA Transfer Fee, Appraisal Fee ordered by lender, and Incidental Expenses as may be incurred with any new loan(s).

SELLER

Seller agrees to pay the following escrow charges: CLTA/PLP Policy of Title Insurance, Recording Fee, Reconveyance Fee, one half (1/2) of the Real Property Transfer Tax amount, any fees as specified in the Agreement, and Incidental Expenses necessary to convey insurable title as described, provided, however, Seller shall have no obligation to pay any amount in excess of what Seller would have paid through Seller's preferred title company.

Seller has furnished to Escrow Holder a true and complete copy of a bond payable to the State of Nevada in an amount satisfactory to the Nevada Division of Real Estate in accordance with Nevada Revised Statutes Section 116.411. The bond is on file with the State of Nevada. In consideration thereof, Seller has elected to exercise its option to have Buyer's Deposit paid directly to Seller (which is KB Home Las Vegas, Inc., for all communities, General Account #CCCCPP0090.2361) prior to the Close of Escrow. THIS SHALL NOT AFFECT BUYER'S RIGHT TO THE RETURN OF ITS ENTIRE DEPOSIT (LESS AUTHORIZED DISBURSEMENTS, IF APPLICABLE) IN THE EVENT THAT BUYER IS ENTITLED TO SUCH RETURN OF ITS DEPOSIT IN ACCORDANCE WITH THE AGREEMENT. Buyer and Seller agree that Seller, and not Escrow Holder or Broker, shall be solely responsible to return to Buyer the Deposit or portion thereof held by Seller in the event required under the Agreement and Buyer hereby releases Escrow Holder and Broker from any and all responsibility and liability in connection therewith.

Buyer

SELLER: KB Home Las Vegas, Inc.

Buyer

Authorized Agent

Date

Date

COMMUNITY / PROJECT: Tevare / 415

LOT / 43 / 1  
BLOCK:



**REGIONAL GAMING DISTRICT OVERLAYS MAP  
LAS VEGAS VALLEY**

**DISCLOSURE AND WAIVER OF 24-HOUR NOTICE PERIOD**

BUYER(S): Jerrin Chiu

COMMUNITY: Tevare

LOT / BLOCK: 43 / 1

In 1997, the Nevada State Legislature amended Nevada Revised Statutes 113.080 requiring, in Clark County, the disclosure of the location of the gaming enterprise district nearest to the residence being purchased by the Buyer. Additionally, Seller must provide a copy of the most recent gaming enterprise district map available from the city, town or county in which the residence is located. Seller may not sign a Purchase Agreement until at least twenty-four (24) hours after such disclosure.

Buyer is advised that:

- Attached hereto is a copy of a Regional Gaming District Overlays Map ("Map") dated 11/2015 that is based upon the most recent gaming enterprise district maps that have been made available for public inspection by Clark County and the Cities of Las Vegas, Henderson, and North Las Vegas.
- The Salesperson for the community in which Buyer is purchasing will mark the attached Map with a highlighter to indicate where the community is located. Based on a review of the Map as so marked, Buyer can make a personal determination of which gaming enterprise district is located nearest to the above-referenced property.
- Gaming enterprise districts are subject to change and not under Seller's control.
- To obtain more current information, Buyer may contact:

City of Las Vegas  
Department of Planning & Development  
731 S. Fourth Street  
Las Vegas, NV 89101  
(702) 299-6301

Clark County  
Comprehensive Planning Department  
500 S. Grand Central Parkway  
Las Vegas, NV 89155-1744  
(702) 455-4314

City of Henderson  
Planning Department  
240 Water Street  
Henderson, NV 89015  
(702) 565-2474

City of North Las Vegas  
2266 Civic Center Drive  
North Las Vegas, NV 89036  
(702) 633-1515

Buyer hereby ☒ waives ☐ does not waive the requirement of Nevada state law that Seller provide Buyer with the above at least 24 hours before the time an authorized agent of Seller signs acceptance of Buyer's Purchase Agreement for the above-referenced property.

**BUYER UNDERSTANDS THE PROXIMITY OF THE GAMING ENTRPRISE DISTRICT TO THE PROPERTY BEING PURCHASED, HAS REVIEWED THE HIGHLIGHTED AREA OF THE ATTACHED MAP, AND ACKNOWLEDGES RECEIPT OF THIS DISCLOSURE AND WAIVER BY SIGNING BELOW.**

  
Buyer

11/6/16  
Date

Buyer

Date

# GAMING ENTERPRISE DISTRICTS and LOCATIONS APPROVED for NON-RESTRICTED GAMING

Las Vegas Valley  
Clark County, Nevada

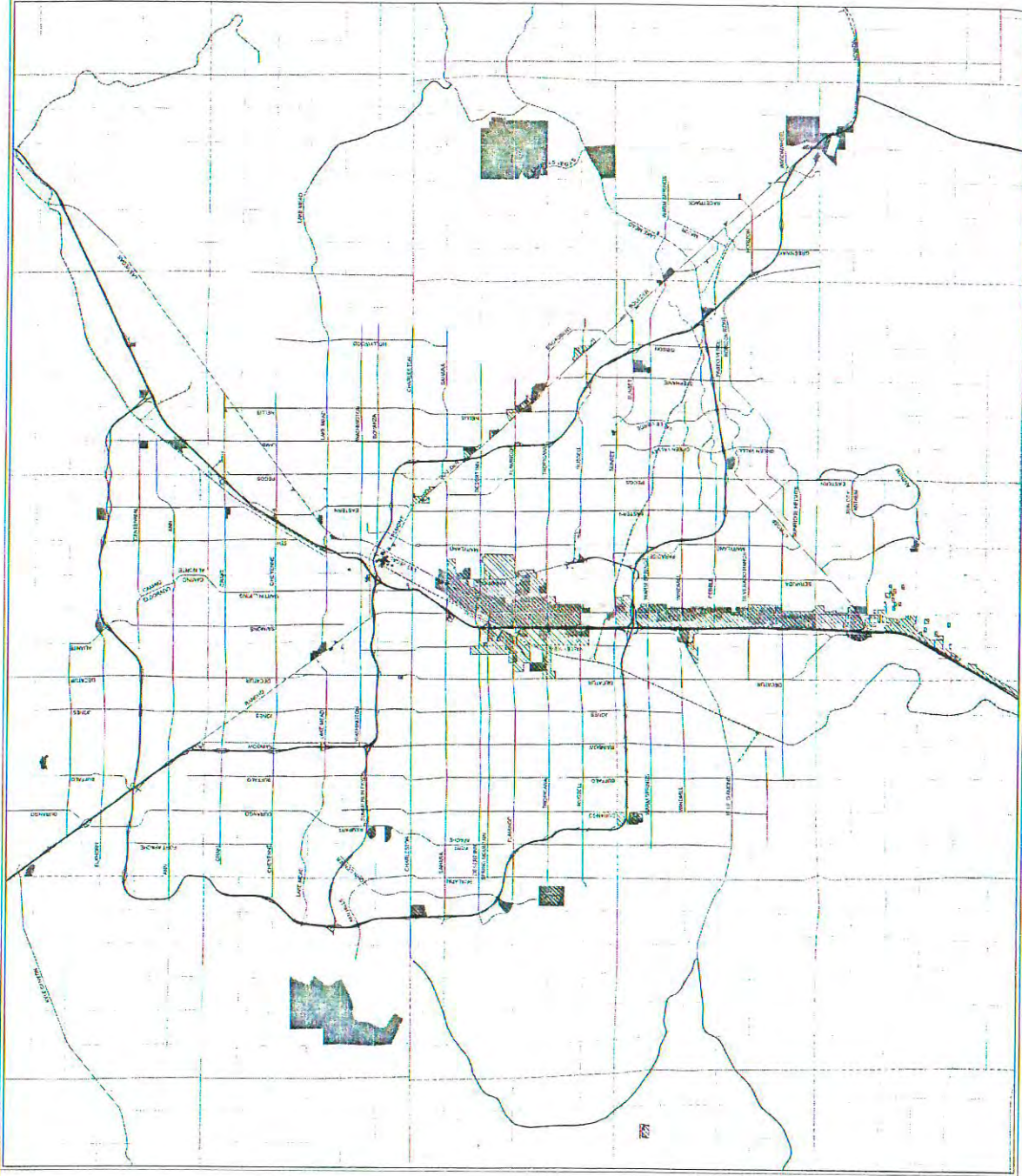


- Existing Non-Restricted Gaming Locations (CLV)
- Gaming Enterprise Districts
- Las Vegas Blvd Corridor
- Master Planned for Resort Hotels
- Block Boundaries
- Section Boundaries
- Freeways
- Major Streets
- Railroads



Map Created: November 2015

This information is for display purposes only.  
No liability is assumed as to the accuracy of the data delineated herein.





TRACT / PHASE: TEVARE - 415 / 28

LOT / BLOCK: 43 / 1

PROPERTY ADDRESS: 477 CABRAL PEAK STREET

Las Vegas

NV

89138

SALESPERSON: Jana McNeff

DATE: 1/8/2016

The following constitutes the entire agreement (the "Agreement") by and between KB Home Las Vegas, Inc. ("Seller") and the "Broker" listed below regarding a potential referral sales commission described in Paragraph 1 below with respect to the Buyer(s) and the Property described above. No other representations or acknowledgements shall be binding upon either party unless agreed to in writing by both parties. The parties agree as follows:

1. Seller shall pay to Broker a commission equal to three percent (3%) of the total net sales price of the above-referenced home, including: (A) base price, (B) elevation premium, (C) lot premium, (D) decor items, options and upgrades selected by Buyer at the KB HOME Sales Office and at the KB HOME Studio or previously installed by Seller, and excluding (E) the value of any incentive provided by Seller, (the "Commission") at the close of escrow provided (i) a contract is signed by Buyer and accepted by Seller within thirty (30) days after the date of this Agreement, and (ii) such close of escrow occurs within three hundred sixty-five (365) days after the date of this Agreement.

No commission shall be paid if a contract is signed more than thirty (30) days after the date of this Agreement unless Broker has re-registered the Buyer, and the contract is signed within thirty (30) days of such re-registration. This Agreement serves as escrow instructions to govern payment of the Commission to Broker only. Seller does not pay commissions to any entities or individuals other than Broker.

2. It is an absolute condition for the payment of any Commission that Broker accompanies and registers Buyer at the Community at the time of Buyer's first visit as a prospective purchaser to the Community. Broker shall not be entitled to any Commission if Buyer or any relative of Buyer or any other person designated by Buyer has visited the Community without Broker prior to the date of this Agreement.

3. The registration of the Broker shall be established only for the particular Buyer for the Property but shall be established only by: (a) complete execution and acceptance of this Agreement and (b) Buyer's completion of Seller's Broker/Client Registration form at the Community acknowledging the portion of the form which evidences that Broker referred Buyer to the Property. Upon request, a copy of the Agreement will be given to Broker. Any attempt by Broker to effectuate a broker relationship with Seller without Broker's actual presence at Buyer's first visit shall be null and void.

4. Buyers of Seller's homes are NOT required to use Home Community Mortgage, LLC ("Home Community Mortgage") for their financing as a condition of purchase. Buyer may obtain financing from any qualified lending institution. Broker has been made aware of this and acknowledges its obligation to inform Buyer thereof. Buyer and Buyer's Broker authorize Seller's agent or an agent on behalf of Home Community Mortgage to contact Buyer directly to discuss any aspect of Buyer's purchase of the home, including the selection of options and upgrades and Buyer's financing of its purchase, including the use of Home Community Mortgage as its lender.

5. Broker understands and agrees that any fees Buyer has agreed to pay to Broker are Buyer's entire responsibility and any issue arising out of the payment of such fees to Broker by Buyer shall not delay close of escrow between Buyer and Seller.

6. If Broker wishes the Commission to be reduced and a portion to be paid to Buyer, Seller will require Buyer to execute Seller's Commission Credit Disclosure.

7. Broker represents that it is licensed as a real estate broker or salesperson in the state in which the Property is located. To the extent required by law, Broker must provide an executed form of disclosure of its agency relationship with Buyer (executed by Broker and Buyer) indicating that Broker is the agent of Buyer exclusively prior to Buyer's execution of a sales contract. Broker represents and warrants that its license number as set forth below accurately represents its current, active license number.

8. Seller's on-site agent shall be primarily responsible for coordinating loan processing; however, Broker acknowledges that, if requested by Seller, Broker shall be obligated to assist Seller in obtaining documentation or other information from Buyer with respect to its loan approval, loan closing or the title or escrow documentation for the closing of the transaction. Broker's failure to cooperate as required in the preceding sentence shall cause Broker to forfeit its Commission.

9. In the event that Buyer elects to purchase a property from Seller other than a property in this Community, Seller shall have no obligation to pay Broker a commission therewith unless a separate Agreement is established between Seller and Broker in writing, using the form hereof and Broker meets the obligations set forth therein.

10. Broker agrees to indemnify and hold harmless Seller, Seller's parent, subsidiary and affiliate companies and Seller's employees, officers and directors (collectively, the "Affiliates") from and against any and all claims, charges, costs, fees, obligations, damages, liabilities, expenses and attorneys' fees incurred by Seller or the Affiliates by virtue of Broker's actions or errors with respect to or in connection with this Agreement or the potential transaction between Seller and Buyer referred herein (the "Sale Transaction").

11. Broker has no independent authority to bind Buyer or Seller. Only Seller's Purchase Agreement will be used. Broker may not advertise any of Seller's homes in any printed form.

12. If a real estate salesperson or broker other than Broker attempts to register as Buyer's broker within thirty (30) days after the date hereof, Seller shall only be obligated to pay a single Commission to the Broker which first registered Buyer at the Community in which Buyer purchased a home from Seller (assuming a sale contract is signed within such thirty (30) day period and all other criteria of this Agreement have been met).

13. This Agreement is only in effect for the Buyer described above and may be rescinded and terminated in Buyer's sole discretion upon written notice to Seller and Broker.

14. Broker is not authorized to and shall not make any warranties, representations, or covenants regarding the above-referenced home or on behalf of Seller.

15. In accordance with NRS 645.635, Broker hereby acknowledges and agrees that Seller may contact and communicate directly with Buyer in connection with Buyer's interest in Seller's communities and its purchase of a property from Seller. Seller shall have no obligation to notify Broker of any communication with Buyer. For the purposes of this Agreement, "Buyer" shall mean the Buyer(s) shown on the executed Purchase Agreement or as Prospective Buyer(s) prior to the execution of the Purchase Agreement.

This Agreement shall not be effective unless it has been executed by an authorized officer of Seller. On-site sales representatives are not authorized representatives of Seller for such purposes.

#### ALL CHECKS WILL BE ISSUED AS DIRECTED ONLY TO THE BROKER LISTED BELOW.

**BROKERAGE:** Please Print or Type

Broker's Agent (Licensee)	Wayne Wu	Company Name	Nevada Real Estate Corp
Broker Name	Judith Sullivan	Broker License #	21094
		Broker Tax I.D. #	88-0340457
Broker Address	8360 W. Sahara Avenue, Suite 210		
City	Las Vegas	State	NV
		Zip	89117
Telephone	(702) 319-7288	Cell Phone:	(702) 338-1822
		Fax:	(702) 368-6883
		E-Mail:	waynew5988@aol.com

Agreed to by:

KB Home Las Vegas, Inc. - Authorized Signature

REFERRAL AGENT OR BROKER - Authorized Signature

Broker's representation of Buyer and Broker's rights under this Referral Broker Commission Agreement are acknowledged by Buyer(s) as of the same date of Broker's signature above. Buyer acknowledges that Broker is not authorized to make any warranties, representations, or covenants regarding the above-referenced home or on behalf of Seller.

Buyer's Signature \_\_\_\_\_ Date 1/6/16

Jerrin Chiu  
Buyer's Printed Name

Buyer's Signature

Date

Buyer's Printed Name



BUYER(S): Jerrin Chiu  
COMMUNITY: Tevare LOT/BLOCK: 43 / 1  
LENDER: Home Community Mortgage  
LENDER'S COMPLETE MAILING ADDRESS: 8345 W. Sunset, #100, Las Vegas, 89113  
LOAN OFFICER: Mosi Gatling  
TELEPHONE NUMBER: (702) 439-1174 FAX NUMBER: 702.549.2587 EMAIL: mosi.gatling@hcmloans.com

**Lender Fees, Processing Requirements, Closing Procedures:**

We, the above-referenced Buyer(s), have elected to use the lender referenced above at no costs or fees to Seller. Buyer understands that Buyer's

**DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE**

*This form does not constitute a contract for services nor an agreement to pay compensation.*

**In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:**

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

LICENSEE: The licensee in the real estate transaction is <u>Jana McNeff</u>	
whose license number is <u>BS.0144239</u> . The Licensee is acting for [client's name(s)]	
KB Home Las Vegas, Inc.	who is/are the <input checked="" type="checkbox"/> Seller/Landlord; <input type="checkbox"/> Buyer/Tenant.
BROKER: The broker is <u>Sherry E. Scanlan</u> ("Broker"), whose company is <u>KB Home Sales - Nevada Inc.</u>	

**Licensee's Duties Owed to All Parties:**

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
  - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
  - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

**Licensee's Duties Owed to the Client:**

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest;

**Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.** Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

**Licensee Acting for Both Parties:** You understand that the licensee N/A may or X may not, in the future act  
(Client Init) (Client Init)

for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time
				1/8/16	11:40am
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time





**AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE STATEMENT  
NOTICE**

To: BUYER(S): Jerrin Chiu  
 TRACT/PHASE: TEVARE - 415 / 28 LOT/BLOCK: 43 / 1  
 PROPERTY ADDRESS: 477 CABRAL PEAK STREET, Las Vegas, NV 89138  
 DATE: 1/8/2016

From: KB Home Las Vegas, Inc.

This is to give you notice that KB Home Las Vegas, Inc. and KB Home Sales - Nevada Inc. have a business relationship with one another and with KB HOME Insurance Agency Inc. (which companies are collectively referred to herein as the "Affiliated Companies"), and Home Community Mortgage, LLC ("Home Community Mortgage"). Specifically, KB HOME, directly or indirectly, owns 100% of the Affiliated Companies, and 49.9% of Home Community Mortgage. Because of these relationships, referrals to Home Community Mortgage for mortgage services and KB HOME Insurance Agency Inc. for insurance products may provide KB Home Las Vegas, Inc. and KB HOME a financial or other benefit.

Set forth below are the estimated charges or range of charges by Home Community Mortgage and KB HOME Insurance Agency Inc. for the following settlement services. You are **NOT** required to use any particular company as a condition for the purchase of the subject property. **THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.**

Home Community Mortgage provides mortgage lending and related services. The company's estimated charges or range of charges are as follows:

**Conventional Loans**

Loan Origination Fee	0-1% of loan amount
Appraisal Fee	\$400-\$505 (for SFR-varies by state)
Credit Report Fee	\$20
Tax Service	\$85
Flood Certification	\$10
Lender Fees	\$375 - Underwriting \$375 - Processing

**FHA, VA and USDA Loans**

Loan Origination Fee	0-1% of loan amount
Appraisal Fee	\$400-\$625 (for SFR-varies by state)
Credit Report Fee	\$20
Tax Service	\$85-(N/A on FHA & VA loans)
Flood Certification	\$10
Lender Fees	\$375 - Underwriting \$375 - Processing

KB HOME Insurance Agency Inc. provides hazard insurance and related products. The company's estimated charges or range of charges are as follows:

Premiums vary according to product(s) and coverage(s) purchased and also vary depending on the price and location of the home and numerous other factors. By way of example, the annual premium for a homeowner's fire and extended coverage policy in the amount of \$242,000, with a \$1,000 deductible and \$169,500 contents coverage, new construction, will range from \$257 to \$315. On request, a representative of KB HOME Insurance Agency Inc. will provide further information and/or a quote regarding specific insurance products and premiums for the home you are considering purchasing.

You may be referred to First American Title Insurance Company and its subsidiaries and affiliates, Fidelity National Title, or another title insurance company for title insurance and escrow services. You are **NOT** required to use any of these referred companies as a condition for the purchase of the subject property.

**The estimate of charges or range of charges listed above for Home Community Mortgage and KB HOME Insurance Agency Inc. are current as of the date hereof, but are subject to change.**

**ACKNOWLEDGMENT**

I/We have read this disclosure form, and understand that KB Home Las Vegas, Inc. is referring me/us to purchase the above-described settlement services from Home Community Mortgage and KB HOME Insurance Agency Inc., and that they, and/or their parent companies, including KB HOME may receive a financial or other benefit as the result of these referrals.

You are not required to purchase products or services from any person or entity suggested or recommended by any of the Affiliated Companies or the lender. However, the lender hereby reserves the right to approve the entity selected by the borrower, which approval may not be unreasonably withheld.

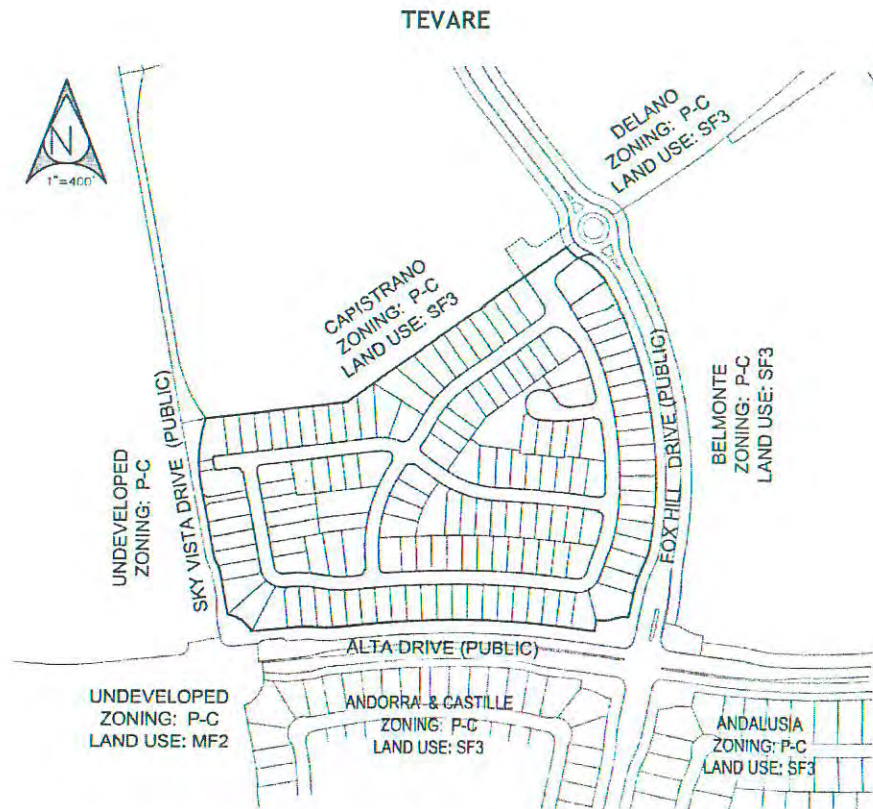
  
 Buyer

1/8/15  
 Date

\_\_\_\_\_  
 Buyer

\_\_\_\_\_  
 Date





#### TENTATIVE LAND USE AND ZONING DISCLOSURE MAP

In accordance with Senate Bill 61 affecting Chapter 113 of the Nevada Revised Statutes, prior to signing a "Sales Agreement," the Seller is required to inform you of the current zoning designations of adjoining parcels of land to your new home. This zoning disclosure must be updated not less than once every six months if the information is available from the local government.

Before the initial purchaser of a residence signs a sales agreement or opens escrow, whichever occurs earlier, the Seller shall, by separate written document, disclose to the initial purchaser the zoning classifications and the designations in the master plan regarding land use adopted pursuant to Chapter 278 of the NRS, and the general land uses described therein, for the adjoining parcels of land. Zoning classifications describe land uses currently permitted on a parcel of land. Designations in the master plan regarding land use describe the land uses that the governing city or county proposes for a parcel of land. Zoning classifications and designations in the master plan regarding land use are established and defined by local ordinances. If the zoning classification for a parcel of land is inconsistent with the designation in the master plan regarding land use for the parcel, the possibility exists that the zoning classification may be changed to be consistent with the designation in the master plan regarding land use for the parcel. Additionally, the local ordinances that establish and define the various zoning classifications and designations in the master plan regarding land use are also subject to change.

The master plan is for the general, comprehensive and long-term development of land in the area and that the designations in the master plan regarding land use provide the most probable indication of future development which may occur on the surrounding properties. The master plan and zoning ordinances and regulations are subject to change.

The above plat is intended to give Buyer a general idea of what is proposed for development in the area surrounding Buyer's new home. It is based on information available as of January, 2016, and represents only one concept of possible development. This information is tentative and may be changed at any time. Seller makes no representation that development will follow the above plat and assumes no responsibility for errors or omissions in the information provided. Some of the property shown on this plat is not owned by Seller and, therefore, Seller has no control over its development. As to property which Seller owns, Seller reserves the right to make changes in the proposed land use, street pattern, type, style, price of buildings to be constructed, or to sell the property to others. For more current information, Seller suggests Buyer contact the County Planning and Zoning Department at (702) 455-4314.

ZONING DESIGNATION		LAND USE	
P-C	Planned Community	MF2	Multi Family, Max 21 dwelling units/acre
		SF3	Single Family, Max 10 dwelling units/acre

Please sign below to acknowledge you have received a copy of the Zoning Disclosure surrounding your new home.

SELLER: KB HOME LAS VEGAS, INC.

COMMUNITY: TEVARE (853/415)

LOT/BLOCK: 42/1

Buyer

Buyer

Date

1/8/16



RECEIPT FOR DOCUMENTS PERTAINING TO SALE  
INCLUDING NEVADA REVISED STATUTES (NRS) DOCUMENTS

TEVARE

BUYER(S):

Chiu

PROJECT:

415

LOT/BLOCK:

43/1

Buyer is to initial in the blank in front of the document applicable to each sale. If a document is not applicable, "N/A" is to be inserted. NONE of the blanks are to be left empty.

1. SC Public Offering Statement

2. Tevare Homeowners Association's documents, which include the following:

- SC CC&Rs
- SC Amended and Restated Supplemental Declaration of Annexation and of CC&Rs
- SC Articles of Incorporation
- SC Association Bylaws
- SC Budget
- SC Subsidy Agreement

3. Summerlin West Master Homeowners Association's documents, which include the following:

- SC Article of Incorporation
- SC Audit 2012
- SC Balance Sheet, January 2014
- SC Bylaws
- SC Supplemental CC&Rs
- SC CC&Rs
- SC Fees and Charges Statement
- SC Legal Disclosure
- SC Operating Budget
- SC Policies
- SC Summerlin Homebuyer's Notice

4. Summerlin Council documents, which include the following:

- SC Article of Incorporation
- SC Budget
- SC Bylaws

5. SC City of Las Vegas Special Improvement District Nos. 808 and 810 Information Form

6. SC Copies of Nevada Revised Statutes 11.202 to 11.206, and NRS 40.600 to 40.695, as amended by Assembly Bill No. 125 (also enclosed)

7. SC Nevada Real Estate Division Residential Disclosure Guide

8. Warranty Documents, which include the following:

- SC KB HOME New Home Limited Warranty (with signed Agreement and Acceptance form)
- SC KB HOME New Home Limited Warranty Performance Standards

9. SC KB HOME Homeowner's Manual

THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF ALL OF THE DOCUMENTS MARKED ABOVE IN PARAGRAPHS 1 THROUGH 9 BY MEANS OF ☒ ELECTRONIC USB DRIVE, OR ☐ PAPER DOCUMENTS. IF THE FIRST BOX IS CHECKED, BUYER ACKNOWLEDGES THAT HE/SHE HAS THE MEANS TO ACCESS AND READ THESE DOCUMENTS.

10. SC Soils Report – Buyer acknowledges that a copy of the soils report(s) for the community in which the property is located is available for review in the sales office by Buyer and, if Buyer so requests, Seller shall provide to Buyer a copy of the soils report(s).

Buyer's Initials: SC

Buyer is aware that, pursuant to NRS Chapter 113, Buyer may, not later than 20 days after Buyer's receipt of all applicable soils reports, rescind its Purchase Agreement for the Property.

Please indicate your choice by checking the applicable box:

☐ Buyer hereby declines a copy of the soils report(s) to review and waives the right to rescind the Purchase Agreement as provided for by NRS Chapter 113.

☒ Buyer hereby requests a copy of the soils report(s) to review and does not waive the right to rescind the Purchase Agreement as provided for by NRS Chapter 113.

The undersigned hereby acknowledges receiving the documents marked above pertaining to the purchase of the above-referenced property:

SELLER STRONGLY RECOMMENDS THAT BUYER READ ALL OF THE ABOVE DOCUMENTS AS SOON AFTER PURCHASING AS POSSIBLE.

APPROVED AND AGREED TO:

[Signature]

1/8/16  
Date

Buyer

Date



CONSTRUCTION SITE VISIT / BUYER'S ASSUMPTION OF RISK  
DISCLOSURE

BUYER(S) Jerrin Chiu

TRACT / PHASE: TEVARE - 415 / 28

LOT / BLOCK: 43 / 1

Buyers are certainly welcome to visit the Community or their prospective home site after contracting for a home and before moving in. Indeed, Buyers are urged to familiarize themselves with the Community and surrounding neighborhood before contracting to purchase their home in order to assess potential impacts of noise, traffic, available commercial and recreational amenities and the buyers' personal sensitivities to such concerns.

During visits to the Community, Buyer must be aware that Buyer's lot is located within a construction area of the Community and that such construction sites are potentially dangerous. Seller will permit Buyer to enter his/her lot and the construction area surrounding the lot provided that Buyer is fully aware of and accepts the risks of such entry.

**BUYER ACKNOWLEDGES BEING INFORMED BY SELLER THAT:**

1. Seller discourages Buyer from entering upon the lot and home being purchased while construction is in progress (the "Construction Site"), particularly when workers are present;
2. Construction Sites, including homes under construction, may be hazardous and dangerous places to visit;
3. Certain hazards and dangers of Construction Sites, including homes under construction, are not obvious or readily apparent; and
4. Visitors to Construction Sites, including homes under construction, may suffer personal injury, property damage, and/or special, indirect and/or consequential damages.

**IN VIEW OF THE FOREGOING, BUYER AGREES WITH SELLER AS FOLLOWS:**

- A. Seller strongly recommends that Buyer be accompanied by a Salesperson or another representative on any and all visits to the home, and Seller further requests that such visits be limited to non-construction hours but during Sales Office hours.
- B. Buyer acknowledges that Seller has warned Buyer that such entry is DANGEROUS and POTENTIALLY HAZARDOUS. There are numerous risks of injury to person and property associated with visiting a home or the construction site during construction because of conditions including, without limitation, open trenches, construction traffic, potential falling debris, exposed nails and electrical wiring, incomplete construction and certain other potential hazards. Buyer will neither invite nor allow anyone else to accompany Buyer onto the Construction Site.
- C. Buyer agrees to use due care, including without limitation, the wearing of hard hats and protective footwear.
- D. If Buyer enters upon the Construction Site, then, without exception:
  - 1) Buyer agrees that during any site visit he/she shall proceed at his/her own risk, and releases and waives any claims against Seller and all of its affiliates, parent and subsidiary companies, officers, directors, employees, attorneys, assigns and any and all other persons or entities that could be potentially liable to Buyer as a result of any injury that may occur during Purchaser's visit to the lot or to any portion of the Community. Buyer assumes all risks of injury and damage to person and/or property, and all risks of special, indirect and/or consequential damages; and
  - 2) Buyer, on behalf of him/herself and/or Buyer's minor child(ren), if any:
    - a. Voluntarily and knowingly dismisses with prejudice, forever releases and discharges, and agrees to indemnify, defend, and hold harmless Seller and Broker together with their respective representatives, employees, directors, officers, agents, insurers, attorneys, predecessors, successors, assigns, both past and present, and all firms, persons, associations, venturers, co-venturers, partners, co-partners, contractors, engineers, subcontractors, subsidiaries, parents, affiliates or corporations connected therewith, and each of them (collectively "Seller"), from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorney's fees, actions, and causes of action of every nature, character, and description, whether legal, equitable, statutory, or contractual, that Buyer and/or Buyer's minor child(ren), if any, have held, now hold, or may hold in the future, whether known or unknown, against Seller, directly or indirectly arising out of any entry upon the Construction Site and/or activities engaged in during any entry upon the Construction Site;
    - b. Agrees to forever refrain and forebear from commencing, instituting or participating in, either as named or unnamed party, any action, lawsuit or other proceedings against Seller, whether brought by Buyer or another on behalf of Buyer and/or Buyer's minor child(ren), if any, based on or arising out of any entry upon the Construction Site and/or activities engaged in during any entry upon the Construction Site;
    - c. Acknowledges that a general release may not ordinarily extend to claims which the person giving the release does not know or suspect to exist in his/her favor at the time of executing the release, which, if known by him or her, must have materially affected his/her settlement with Seller, and nonetheless elects to and does assume all risk for claims heretofore or hereafter arising, known or unknown, out of the herein-stated matters, and waives the provisions of this principle of law; and
    - d. Agrees that this Disclosure shall be binding upon the heirs, executors, representatives, predecessors, successors and assigns of Buyer and/or Buyer's minor child(ren), if any, and all those subrogated to the rights of Buyer and/or Buyer's minor child(ren), if any.

APPROVED AND AGREED TO:

  
Buyer

Buyer

1/8/16  
Date



## **EXHIBIT “F”**

# ADDENDUM TO PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

## SALES SUMMARY

SELLER:	KB Home Las Vegas, Inc.		
BUYER(S):	Chiu, Jerrin		
TRACT/PHASE:	Tevare	LOT/BLOCK:	43/1

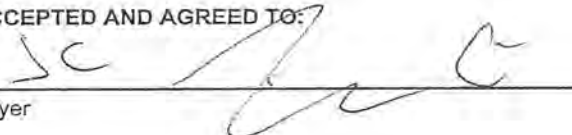
This Addendum to Purchase Agreement and Escrow Instructions (this "Addendum") is attached to and made part of that certain Purchase Agreement and Escrow Instructions between Buyer(s) and Seller, dated January 08, 2016, (the "Purchase Agreement"). Unless otherwise specified, all initially capitalized terms used in this Addendum shall have the meanings set forth in the Purchase Agreement. The Purchase Agreement is hereby amended as follows:

Base purchase price of property		\$376,790.00
Lot Premium	\$25,000.00	
Options	\$44,105.00	
Window Treatments	\$0.00	
Flooring	\$13,949.00	
Total to be paid to Seller		\$459,844.00
Earnest Money Deposit	\$10,297.00	
Option Deposit(s)	\$7,295.00	

Changes are being made due to Buyer adding options and / or flooring to total sales price.

Except as expressly modified herein, all other terms and conditions of the Purchase Agreement along with all sales supporting documents previously signed remain unchanged. This Addendum, together with the Purchase Agreement and previously executed sales supporting documents constitute the entire Agreement between the parties and Buyer and Seller acknowledge that no statements, representations or promises made by Buyer, Seller or by the Salesperson shall be binding unless in writing by both Buyer and Seller. In the event of a conflict between the provisions of this Addendum and the Purchase Agreement, this Addendum shall control.

ACCEPTED AND AGREED TO:



Buyer

Buyer

5/27/16

Date

APPROVED AND AGREED TO:

KB Home Las Vegas, Inc.

Seller



Authorized Agent

3/16/2016

Date

Prepared By: Johnson, LaToya

Date Prepared: 03/16/16 15:51:24

KB HOME  
KB Home Las Vegas Inc.(853)  
Sales Summary

Contract Date	01/08/2016	Project No.	00853 415
Community Name	Tevare	Bldg Type/#	/
Buyer Names	Chiu, Jerin	Lot/Tract	43/1
Property Address	477 CABRAL PEAK STREET	Plan/Elevation	JN/C
	Las Vegas , NV 89138		
Lender	Chase Bank	Mortgage Type	OSL

Sales Price Breakdown:

Gross Sales Price		Gross	Adjustments	Accounting Net
		Ties to HUD		(internal use only)
Base Price	(.4012)	\$376,790.00	\$0.00	\$376,790.00
Lot Premium	(.4014)	\$25,000.00	\$0.00	\$25,000.00
Flooring Upgrades	(.4050)	\$13,949.00		\$13,949.00
Window Treatments	(.4061)	\$0.00		\$0.00
Option Upgrades - Sales Office	(.4070-50001)	\$2,975.00		\$2,975.00
Option Upgrades - KB Home Studio	(.4070-50002)	\$41,130.00		\$41,130.00
Total Gross Sales Price		\$459,844.00	\$0.00	\$459,844.00

Allowances

Sales Allowances - Base Price	(.4090)	\$0.00		\$0.00
Sales Allowances - Flooring Upgrades	(.4092)	\$0.00		\$0.00
Sales Allowances - Option Upgrades	(.4094)	\$0.00		\$0.00
Total Allowances		\$0.00		\$0.00
Gross Sales Price		\$459,844.00	\$0.00	\$459,844.00
		(Total on HUD)		(internal use only)

Seller Closing Costs	(.5129)	\$0.00
Mortgage Discounts	(.5126)	\$0.00
NRCC	(.5123)	\$0.00
Referral Fee	(.5123-1099)	\$0.00

Comments OSL - BROKER - NO INCENTIVES:: PRICE PARTICIPATION TO HOWARD HUGHES \$18,807.58  
TRANSFER TAX SPLIT

Hold Back	Program	Amount	\$0.00			
Pool Participation Program	Pool Company	Participation Fee	\$0.00			
Mortgage Commitment	Program	Amount	\$0.00			
Buyer Deposits	Earnest	\$10,297.00	Upgrades	\$7,295.00	Total Deposits	\$17,592.00
			*POC	\$0.00		

Broker Commission

Broker Name	WAYNE WU	Realty Company	Nevada Real Estate Corp.
Percentage	3.00 %	Bonus	\$0.00

Gross Broker Commission Earned	<u>\$13,795.32</u>	
Gross Receipts Tax	<u>\$0.00</u>	0.00 %
Less Amount Prepaid	<u>\$0.00</u>	
Broker Commission To Be Paid At Closing	<u>\$13,795.32</u>	
KB Sales Commission Basis	<u>\$459,844.00</u>	

Notes

\*POC amount is NOT to be credited @COE.

Prepared By: Johnson, LaToya

SSR Reason: CLOSE 03/16/16 15:51:24

## **EXHIBIT “G”**



Betty Chan <aaroffer@gmail.com>

## Summerlin KB home purchase

Betty Chan <aaroffer@gmail.com>

Wed, Jan 27, 2016 at 9:26 AM

To: Jerrin Chiu <Jchiuey@gmail.com>

Cc: slmpo43@gmail.com

Bcc: jmcneff@kbhome.com, cmcnair@kbhome.com

Dear Jerrin,

I still want to give you one last chance to fix your wrongdoings before I take you to court. Do not think I am bluffing, your Dad has always said he likes my honesty.

I want you to take a step back and think about what you have been doing. .

To say I will not respond to your phone calls and emails are jokes of the century. Two years ago, if I could answer every one of your Dad's 35 phone calls a day, and I still have proof for that, do you think the jury will believe you cannot find me or I do not respond after spending so much time to find you a house and before you put a deposit down? If you said after you put your deposit down, then I disappear will be more convincing

I talked to your Dad on the day he left, he asked me if I could kick back 1% because other agent did, I told him I never kicked back because I think I make my clients money more than 1%, it was a proven record in your case.

However I do not want him to be unhappy as he had been regularly checking on me when I was very sick, so I agreed to do a 1/2 % and if I did the loan, then I will agree to give 3/4%, and he said OK. So there is nothing like what you accused that I did not communicate. So your agent created that allegation will not work. I still have your Dad's messages and log on my phone, I followed up with you twice following the showings. Actually it was you that did not respond. I texted you again after and we did talk. All on records. So there was no loss of contact since I show you the house on 30th Dec. I will safekeep all this evidence for the Court.

I bet you the other Realtor did not tell you the consequence before you signed the contract. He put you in a very messy situation just to make the commission, so he made you an unethical person, Further he taught you how to lie with all those untrue accusation so now he makes you even worse, a LIAR. What does he has to lose, you become the target of the lawsuit, and he just stands on the side folding his arms possibly enjoying his dream of his commission come true.

Can you see who that agent really is?! or is that you who really are?

If you lose in the lawsuit, and I promise you that you will. It was straight forward and simple, KB home only pays to the agent that first brought in the client and that is me. Your unhappiness or your unsatisfaction of your agent has no effects on their policy. Dont forget if you lost the case, you will have to pay my attorney fees too.

Once lawsuit starts then it will become a public record. Everyone knows that you are an unethical person and a liar and ask for kickback, I honestly do not believe there will not be even a slightly effect on your professional image or career. So who or what will you protect, your \$3000 or more kickback, or your agent commission or your reputation? NONE of them!

If that was still your decision to move forward, I will not feel bad to play along, what do I have to lose? .

Afterall buying a house should be happy and not miserable and you do not want to carry that lawsuit nightmare for the rest of your time living in that house.

This is not yet the end of it and I do take this personally because I really do not want to take you to court. I do not believe it is your decision to use another Realtor. I do not believe you are a person that you will lie to make up story so that you can get a kickback That is why I write this email one last time. This is my last piece of advice to make you money by saving you unnecessary attorney fees, time and reputation. I never have pointed you to a wrong direction. So think and choose wisely before it is too late!

I still encourage you to talk to KB and let them handle rather than you all by yourself!! If not, the next thing you hear from me will be Summary of Complaint. You break my heart to have to take you to court!

5/1/16

3 Appx 000535

## **EXHIBIT “H”**



PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NEVADA 89145  
702.385.2500  
FAX 702.385.2086  
HUTCHLEGAL.COM

JEFFREY R. HALL  
PARTNER  
JHALL@HUTCHLEGAL.COM  
FILE NO. 6495-001

March 24, 2016

First American Title  
Karen Patton  
8311 W. Sunset Road, #150  
Las Vegas, NV 89113  
[kapatton@firstam.com](mailto:kapatton@firstam.com)

**Re: ESCROW NO. 112-249-8656**

This firm represents Betty Chan with respect to the payment of a commission from the sale of the property located at 477 Cabral Peak Street, Las Vegas, Nevada 89138. Ms. Chan was the procuring cause of the sale of the home to Jerrin Chiu. She showed the property to Mr. Chiu on December 31, 2015. Mr. Chiu signed a broker registration identifying Ms. Chan as his agent on the same day. Subsequently, Mr. Chiu used a different broker, Wayne Wu, to close the transaction despite Ms. Chan showing Mr. Chiu the property. Ms. Chan disputes any commission payment to Mr. Wu since she was the procuring cause of the sale on the buyer's side of the transaction.

As you are aware, the broker who is the procuring cause of the sale is entitled to the commission for the sale. *See Schneider v. Biglieri*, 94 Nev. 426, 427, 581 P.2d 8, 9 (1978); *Bartsas Realty, Inc. v. Leverton*, 82 Nev. 6, 409 P.2d 627 (1966). The broker's presence at the sale is not required for that broker to earn his or her commission. *See Horton v. Colbron*, 60 Wyo. 263, 150 P.2d 315, 319 (1944). Ms. Chan became the procuring cause of the sale when she showed the property to Mr. Chiu as Mr. Chiu's broker.

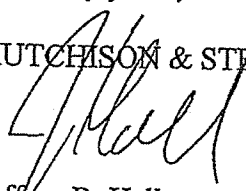
By this correspondence, you have been made aware of Ms. Chan's claim to the buyer's commission from the sale of at 477 Cabral Peak Street, Las Vegas, Nevada 89138 to Mr. Chiu. In the event that buyer's commission's paid to anyone other than Ms. Chan as a result of this transaction, we will pursue the recovery of that commission from the payee. Ms. Chan reserves all rights against any party that pays or receives a buyer's commission for this transaction to anyone other than her.

First American Title  
Karen Patton  
Page 2

Please contact me if you have any questions regarding this matter.

Sincerely yours,

HUTCHISON & STEFFEN

  
Jeffrey R. Hall  
For the Firm

cc: Wayne Wu  
Anthony C. Gordon  
Jerrin Chiu  
Betty Chan



## **EXHIBIT “I”**

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

---

(no subject)

---

7025951268@mms.att.net <7025951268@mms.att.net>

Fri, Feb 5, 2016 at 6:01 PM

To: aaroffer@gmail.com

Honestly from day one i met you my focus is not on the commission, i felt insulted and humiliated, another agent dared challenge me and he really do not know who i am. I have been really sad more than i am angry. Last night i read many court cases. Even though my card was disappeared, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen i do have few hundred thousand in hand that i can use. If they are willing to go along with me to spend equal amount of money, then i will be very happy to play their game. I got my direction last nite, so i felt peaceful now. All i need KB to understand I dont hate KB for this, and i need them to work with me on my plan. Jana, i dont blame you either and take care of yourself.

9-8  
1-9  
1/1

## **EXHIBIT “J”**

**From:** [Laura Myers](#)  
**To:** [Roman Harper](#)  
**Subject:** FW: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)  
**Date:** Wednesday, July 19, 2017 12:57:40 PM

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Laura Myers  
Paralegal to  
Michael A. Olsen, Esq.



10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
Email: [laura@goodsellolsen.com](mailto:laura@goodsellolsen.com)

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**From:** Jeffrey Hall [mailto:[JHall@hutchlegal.com](mailto:JHall@hutchlegal.com)]  
**Sent:** Tuesday, June 28, 2016 4:14 PM  
**To:** Mike Olsen <[Mike@goodsellolsen.com](mailto:Mike@goodsellolsen.com)>; Laura Myers <[Laura@goodsellolsen.com](mailto:Laura@goodsellolsen.com)>  
**Cc:** Patton, Karen L. <[KaPatton@firstam.com](mailto:KaPatton@firstam.com)>  
**Subject:** RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Olsen, I no longer represent Betty Chan in this matter. You may contact her directly regarding this matter at the following email address.

Betty Chan [702aar@gmail.com](mailto:702aar@gmail.com)

---

**From:** Mike Olsen [<mailto:Mike@goodsellolsen.com>]  
**Sent:** Wednesday, June 22, 2016 10:02 AM  
**To:** Jeffrey Hall <[JHall@hutchlegal.com](mailto:JHall@hutchlegal.com)>; Laura Myers <[Laura@goodsellolsen.com](mailto:Laura@goodsellolsen.com)>  
**Subject:** RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Hall:

I have to say I am more than a little disappointed that you would represent to the title company that your client has a document proving that she was the agent of record on the above referenced transaction when, in fact, you have never seen such a document. Since Mr. Wu was the agent that procured the actual sale of the property we are in the process of pursuing the commission rightfully due to him. In the event your client finds the alleged missing document, feel free to send it to us.

Thanks

Michael A. Olsen, Esq.



10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
Email: [mike@goodsellolsen.com](mailto:mike@goodsellolsen.com)

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**This message and any file(s) or attachment(s) transmitted herewith are confidential, intended for the named recipient only, and may contain information that is a trade secret, proprietary, protected by attorney work product doctrine, subject to attorney-client privilege, or is otherwise protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted herewith are based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message. Thank you. Goodsell & Olsen – Attorneys at law**

---

**From:** Jeffrey Hall [<mailto:JHall@hutchlegal.com>]  
**Sent:** Tuesday, June 21, 2016 6:03 PM  
**To:** Laura Myers  
**Cc:** Mike Olsen  
**Subject:** RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

I asked my client for the document referred to. She's been out of town and advised that she'd need a week to get back and go through her files.

---

**From:** Laura Myers [<mailto:Laura@goodsellolsen.com>]  
**Sent:** Tuesday, June 21, 2016 5:07 PM  
**To:** Jeffrey Hall <[JHall@hutchlegal.com](mailto:JHall@hutchlegal.com)>  
**Cc:** Mike Olsen <[Mike@goodsellolsen.com](mailto:Mike@goodsellolsen.com)>  
**Subject:** RE: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Hall,

I am following up on our request below. Please advise. Thanks.

Laura Myers  
Paralegal to  
Michael A. Olsen, Esq.

**GOODSELL & OLSEN**  
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
Email: [laura@goodsellolsen.com](mailto:laura@goodsellolsen.com)

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**From:** Laura Myers  
**Sent:** Friday, June 17, 2016 9:25 AM  
**To:** 'JHall@hutchlegal.com' <[JHall@hutchlegal.com](mailto:JHall@hutchlegal.com)>  
**Cc:** Mike Olsen <[Mike@goodsellolsen.com](mailto:Mike@goodsellolsen.com)>  
**Subject:** Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Mr. Hall,

Our firm has been retained by Wayne Wu in connection with the above referenced matter and we have reviewed your March 24, 2016 correspondence to First American Title. Would you mind providing us with the broker registration signed by Jerrin Chiu that you reference in your correspondence? Thanks.

Laura Myers  
Paralegal to  
Michael A. Olsen, Esq.

**GOODSELL & OLSEN**  
ATTORNEYS AT LAW

10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
Email: [laura@goodsellolsen.com](mailto:laura@goodsellolsen.com)

Jeffrey Hall  
Partner

|  
HUTCHISON & STEFFEN, LLC  
(702) 385-2500  
[hutchlegal.com](http://hutchlegal.com)

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Jeffrey Hall  
Partner



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## **EXHIBIT “K”**



**From:** [Laura Myers](#)  
**To:** [Roman Harper](#)  
**Subject:** FW: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)  
**Date:** Wednesday, July 19, 2017 12:58:25 PM

---

Laura Myers  
Paralegal to  
Michael A. Olsen, Esq.



10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
Email: [laura@goodsellolsen.com](mailto:laura@goodsellolsen.com)

**From:** Betty Chan [mailto:702aar@gmail.com]  
**Sent:** Wednesday, June 29, 2016 12:21 PM  
**To:** Laura Myers <[Laura@goodsellolsen.com](mailto:Laura@goodsellolsen.com)>  
**Subject:** Re: Betty Chan/Wayne Wu (Escrow No. 112-249-8656)

Dear Laura,

Thank you for your notice.

I have retained Attorney Avece Higbee of Marquis Aurbach Coffing to represent me in this litigation. She is currently out of town and will be back end of week.

She will be in contact with your firm once she settles down and get familiar with this litigation.

Thank you

Betty Chan, CCIM, CPM, CRS  
Broker  
Asian American Realty & Property Management

On Wed, Jun 29, 2016 at 9:41 AM, Laura Myers <[Laura@goodsellolsen.com](mailto:Laura@goodsellolsen.com)> wrote:

Ms. Chan,

Our firm has been retained by Wayne Wu in connection with the above referenced matter

and we have reviewed the March 24, 2016 correspondence that Jeffrey Hall, Esq. sent on your behalf to First American Title.

Mr. Hall has advised us that he no longer represents you in this matter and that we may contact you directly. Would you mind providing us with the broker registration signed by Jerrin Chiu that is referenced in Mr. Hall's correspondence? Thanks.

Laura Myers  
Paralegal to  
Michael A. Olsen, Esq.

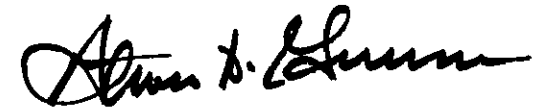


10155 W. Twain Ave., Suite 100  
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Tel: [\(702\) 869-6261](tel:(702)869-6261)  
Fax: [\(702\) 869-8243](tel:(702)869-8243)  
Email: [laura@goodsellolsen.com](mailto:laura@goodsellolsen.com)

--

Betty Chan CCIM, CPM, CRS  
Broker  
Asian American Realty & Property Management  
Office 702 222 0078  
Fax 702 222 1772  
"The Happiest Realtor in Las Vegas"

## **EXHIBIT “L”**



CLERK OF THE COURT

**Marquis Aurbach Coffing**  
Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
ahigbee@maclaw.com  
Attorneys for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES – NEVADA INC., DOES I  
through X, and ROES I through X,

Defendants.

Case No.: **A- 16- 744109- C**  
Dept. No.: **XI I**

**COMPLAINT**  
**EXEMPT FROM ARBITRATION:**  
**REQUESTS INJUNCTIVE RELIEF**

**COMPLAINT**

Plaintiffs, Betty Chan and Asian American Realty and Property Management (“Plaintiffs”) by and through the law firm of Marquis Aurbach Coffing, hereby allege and complain against Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu (“Defendants”) as follows:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff Betty Chan is a resident of the State of Nevada is and was doing business as a licensed real estate broker for her company Asian American Realty & Property Management.

2. Defendant Wayne Wu is a resident of the State of Nevada, is and was doing business in the County of Clark as a real estate agent with Nevada Real Estate Corp.

3. Defendant Judith Sullivan is a resident of the state of Nevada and is the licensed real estate broker for Nevada Real Estate Corp.



7. The transactions which are the subject matter of the instant Complaint occurred in Clark County, Nevada, and therefore, jurisdiction and venue are appropriate with this Court.

15. On or about November 11, 2015, Defendant Chiu emailed Plaintiff Chan regarding his intention to purchase a house and listed out the criteria.

1           16.     On or about November 28, 2015, Defendant Chiu emailed Plaintiff Chan  
2 concerning the location of a particular house he wanted to see.

3           17.     On or about November 29, 2015, Plaintiff Chan responded concerning the  
4 viewing of the particular house.

5           18.     On or about December 29, 2015, Plaintiff Chan prepared for the showing of  
6 homes to the Chiu family by pulling listings around Boca Park area.

7           19.     Five resale homes were targeted to fit Defendant Chiu's criteria and Plaintiff  
8 Chan contacted the listing agents for the resales to set appointments.

9           20.     Plaintiff Chan included the model homes in both a Toll Brothers development and  
10 a KB Home development previously viewed by Plaintiff Chan.

11           21.     Plaintiff Chan checked the status of the listings, printed the information and  
12 arranged a route for the efficient showing of the properties.

13           22.     On or about December 30, 2015, Plaintiff Chan picked up the Chiu family and  
14 showed the resale homes, the Toll Brother models and the KB Homes models.

15           23.     KB Homes offered to compensate brokers for bringing buyers to KB Home  
16 Developments at Buyer's first visit.

17           24.     At the front office of KB Homes, Plaintiff Chan spoke to Cheryl and picked up a  
18 price sheet.

19           25.     Plaintiff Chan then showed the model homes to the Chiu family and Defendant  
20 Chiu liked the first and second model homes.

21           26.     Back at the KB Homes model home office, Plaintiff Chan requested a floor plan  
22 and explained the buying process for a new home including the standards, elevations, prices,  
23 location of the site, etc. to the Chiu family.

24           27.     Plaintiff Chan located a buyer registration card and Defendant Chiu filled in the  
25 buyer portion and Plaintiff Chan filled in the realtor portion.

26           28.     No KB Homes representative was to be found so Plaintiff Chan left the  
27 registration card on the table in the KB Home front office to hurry to get the Chiu family to the  
28 next appointment.

1           29.     Plaintiff Chan emailed Dr. Kwang Chiu the four resale listings that were viewed.

2           30.     On or about December 31, 2015, Dr. Kwang Chiu called Plaintiff Chan and asked  
3 if she could “kick back 1% of the commission” like the other agent offered him.

4           31.     On or about January 5, 2016, Plaintiff Chan followed up with Defendant Chiu  
5 about the KB Home properties.

6           32.     Defendant Chiu did not respond.

7           33.     On or about January 15, 2016, Defendant Chiu admitted that he was using another  
8 agent.

9           34.     On or about January 22, 2016, Plaintiff Chan went to the KB Homes office and  
10 learned that Defendant Chiu had indeed signed a contract on the property shown by Plaintiff  
11 Chan with another agent on January 8, 2016.

12           35.     On or about January 30, 2016, Plaintiff Chan went to the KB Homes office to  
13 address the commission; both KB Homes representatives, Cheryl and Jana, stated that Defendant  
14 Chiu told them Plaintiff Chan introduced him to KB Homes but that he determined to use  
15 another agent.

16           36.     On or about February 1, 2016, KB Homes Sales Manager, Lara McLaughlin,  
17 contacted Plaintiff Chan on two occasions indicating she was looking into the commission  
18 dispute.

19           37.     Plaintiff Chan made efforts to resolve the dispute concerning her involvement in  
20 the transaction and the entitlement to the commission to no avail.

21           38.     On or about May 27, 2016, Defendant Chiu closed on the purchase of a home in  
22 the KB Home community known as 477 Cabral Peak, Las Vegas, Nevada (“Property”).

23           39.     Upon information and belief, before paying a commission to an agent for the sale  
24 of a KB home, KB Homes requires that that agent sign a registration upon the first visit with the  
25 buyer to the property.

26           40.     Upon information and belief, Defendant Wayne Wu signed a registration card at  
27 KB Homes knowing that Defendant Jerrin Chiu had first visited the Property with Plaintiff Chan.

28

43. Plaintiffs were not paid any commission for the sale of the Property.

### FIRST CAUSE OF ACTION

**(Declaratory Relief)**

44. Plaintiffs repeat and reallege the forgoing paragraphs as though fully stated herein.

45. A genuine controversy exists in this matter.

46. Plaintiffs and Defendants Wu, Sullivan and Nevada Real Estate Corp. claim adverse interests in the commission for the sale of the Property.

47. Defendant Chiu sought the assistance of Defendant Wu due to Wu's 1% commission kickback effectively circumventing Plaintiff Chan from the transaction and from the commission.

48. KB Homes offered the payment of a commission to brokers that brought buyers to KB Home Developments to Buyers first visit.

49. Plaintiff Chan brought Defendant Chiu to the KB Homes Development and showed him the model homes to decide which floor plan to purchase.

50. Defendant Chiu utilized another agent, Defendant Wayne Wu to write a contract for the purchase of the Property located in the same KB Homes Development.

51. Plaintiff Chan was the procuring cause of the sale of the Property but did not receive the commission.

52. Plaintiffs request a declaration from the Court that Plaintiffs are entitled to the commission on the sale of the Property.

53. Plaintiffs request a declaration from the court that Defendants Wu, Sullivan and Nevada Real Estate Corp. are not entitled to the commission on the sale of the Property.





**THIRD CAUSE OF ACTION****(Unjust Enrichment)**

67. Plaintiffs repeat, reallege, and incorporate each and every paragraph contained above as though fully set forth herein.

68. Plaintiff Chan was the procuring cause for the purchase of the Property by Defendant Chiu.

69. Defendant Wu interfered with the change of events set in motion by Plaintiff Chan by offering to kickback 1% of the commission to Defendant Chiu.

70. Defendant Chiu circumvented Plaintiff Chan's ability to complete the transaction when Defendant Chiu agreed to use Defendant Wu.

71. Upon information and belief, Defendant Wu and Defendant Chiu made misrepresentations to KB Homes concerning the initial showing of the Property.

72. Plaintiff Chan did not receive a commission despite being the procuring cause of the sale of the Property to Defendant Chiu.

73. Defendant Wu's receipt of any commission would be unjust.

74. Plaintiff Chan is entitled to the payment of the commission.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For damages in excess of \$10,000, plus interest.
2. For prejudgment and post judgment interest;
3. For a declaration that KB Homes breached the contract;
4. For a declaration that Plaintiffs are entitled to the commission on the sale of the Property;

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///

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1  
2 5. For a declaration that Defendants Wu, Sullivan and Nevada Real Estate Corp. are  
3 not entitled to the commission on the sale of the Property;

4 6. For attorney's fees and costs; and

5 7. For any and other such relief as the Court deems just and proper.

6 Dated this 20<sup>th</sup> day of September, 2016.

MARQUIS AURBACH COFFING

By 

Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Plaintiff

**Marquis Aurbach Coffing**  
 Avece M. Higbee, Esq.  
 Nevada Bar No. 3739  
 10001 Park Run Drive  
 Las Vegas, Nevada 89145  
 Telephone: (702) 382-0711  
 Facsimile: (702) 382-5816  
 ahigbee@maclaw.com  
 Attorneys for Plaintiff

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

BETTY CHAN and ASIAN AMERICAN  
 REALTY & PROPERTY MANAGEMENT,

Plaintiff,

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
 REAL ESTATE CORP., JERRIN CHIU, KB  
 HOME SALES – NEVADA INC., DOES I  
 through X, and ROES I through X,

Defendants.

Case No.:  
 Dept. No.:

**INITIAL APPEARANCE FEE DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

Betty Chan ..... \$270.00

Asian American Realty & Property Management ..... \$30.00

**TOTAL REMITTED ..... \$300.00**

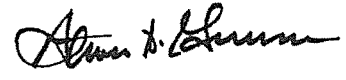
Dated this 26<sup>th</sup> day of September, 2016.

MARQUIS AURBACH COFFING

By 

Avece M. Higbee, Esq.  
 Nevada Bar No. 3739  
 10001 Park Run Drive  
 Las Vegas, Nevada 89145  
 Attorney for Plaintiff

## **EXHIBIT “M”**



CLERK OF THE COURT

**Marquis Aurbach Coffing**  
Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
Facsimile: (702) 382-5816  
ahigbee@maclaw.com  
Attorneys for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

Case No.: A-16-744109-C  
Dept. No.: XII

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES – NEVADA INC., DOES I  
through X, and ROES I through X,

Defendants.

**AMENDED COMPLAINT**  
**EXEMPT FROM ARBITRATION:**  
**REQUESTS DECLARATORY RELIEF**

**COMPLAINT**

Plaintiffs, Betty Chan and Asian American Realty and Property Management (“Plaintiffs”) by and through the law firm of Marquis Aurbach Coffing, hereby allege and complain against Defendants Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu (“Defendants”) as follows:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff Betty Chan is a resident of the State of Nevada is and was doing business as a licensed real estate broker for her company Asian American Realty & Property Management.

2. Defendant Wayne Wu is a resident of the State of Nevada, is and was doing business in the County of Clark as a real estate agent with Nevada Real Estate Corp.

3. Defendant Judith Sullivan is a resident of the state of Nevada and is the licensed real estate broker for Nevada Real Estate Corp.



4. Defendant Jerrin Chiu is a resident in the State of Nevada and does business in Clark County as a licensed Optometrist.

5. Defendant KB Home Sales – Nevada Inc. (“KB Homes”), is and was at all times mentioned herein, conducting business in Clark County, Nevada.

6. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, are unknown to Plaintiff at this time, and therefore Plaintiff sues said Defendants by fictitious names and will ask leave of the Court to amend this Complaint to show the true names and capacities of Defendants when the same are ascertained.

7. The transactions which are the subject matter of the instant Complaint occurred in Clark County, Nevada, and therefore, jurisdiction and venue are appropriate with this Court.

#### **GENERAL ALLEGATIONS**

8. Plaintiff Chan worked as the real estate agent for Defendant Jerrin Chiu on the purchase of his first home in 2013.

9. In 2014, Defendant Jerrin Chiu again requested the assistance of Plaintiff Chan in purchasing a second home.

10. In 2014, Plaintiff Chan showed some homes to Defendant Chiu but he did not find anything he wanted to purchase.

11. In March 2015, Plaintiff Chan showed houses again and Defendant Jerrin Chiu made an offer on a home in Desert Shores; Defendant Jerrin Chiu determined again not to purchase the home.

12. On or about October 2, 2015, Dr. Kwang Chiu contacted Plaintiff Chan to make an appointment for him and his son, Jerrin Chiu, to see homes in December 2015.

13. Plaintiff Chan agreed to represent Defendant Chiu as the buyer.

14. Plaintiff Chan requested updated financial information for Defendant Chiu’s loan pre-approval.

15. On or about November 11, 2015, Defendant Chiu emailed Plaintiff Chan regarding his intention to purchase a house and listed out the criteria.

1           16.    On or about November 28, 2015, Defendant Chiu emailed Plaintiff Chan  
2   concerning the location of a particular house he wanted to see.

3           17.    On or about November 29, 2015, Plaintiff Chan responded concerning the  
4   viewing of the particular house.

5           18.    On or about December 29, 2015, Plaintiff Chan prepared for the showing of  
6   homes to the Chiu family by pulling listings around Boca Park area.

7           19.    Five resale homes were targeted to fit Defendant Chiu's criteria and Plaintiff  
8   Chan contacted the listing agents for the resales to set appointments.

9           20.    Plaintiff Chan included the model homes in both a Toll Brothers development and  
10   a KB Home development previously viewed by Plaintiff Chan.

11          21.    Plaintiff Chan checked the status of the listings, printed the information and  
12   arranged a route for the efficient showing of the properties.

13          22.    On or about December 30, 2015, Plaintiff Chan picked up the Chiu family and  
14   showed the resale homes, the Toll Brother models and the KB Homes models.

15          23.    KB Homes offered to compensate brokers for bringing buyers to KB Home  
16   Developments at Buyer's first visit.

17          24.    At the front office of KB Homes, Plaintiff Chan spoke to Cheryl and picked up a  
18   price sheet.

19          25.    Plaintiff Chan then showed the model homes to the Chiu family and Defendant  
20   Chiu liked the first and second model homes.

21          26.    Back at the KB Homes model home office, Plaintiff Chan requested a floor plan  
22   and explained the buying process for a new home including the standards, elevations, prices,  
23   location of the site, etc. to the Chiu family.

24          27.    Plaintiff Chan located a buyer registration card and Defendant Chiu filled in the  
25   buyer portion and Plaintiff Chan filled in the realtor portion.

26          28.    No KB Homes representative was to be found so Plaintiff Chan left the  
27   registration card on the table in the KB Home front office to hurry to get the Chiu family to the  
28   next appointment.

1 29. Plaintiff Chan emailed Dr. Kwang Chiu the four resale listings that were viewed.

2 30. On or about December 31, 2015, Dr. Kwang Chiu called Plaintiff Chan and asked  
3 if she could "kick back 1% of the commission" like the other agent offered him.

4 31. On or about January 5, 2016, Plaintiff Chan followed up with Defendant Chiu  
5 about the KB Home properties.

6 32. Defendant Chiu did not respond.

7 33. On or about January 15, 2016, Defendant Chiu admitted that he was using another  
8 agent.

9 34. On or about January 22, 2016, Plaintiff Chan went to the KB Homes office and  
10 learned that Defendant Chiu had indeed signed a contract on the property shown by Plaintiff  
11 Chan with another agent on January 8, 2016.

12 35. On or about January 30, 2016, Plaintiff Chan went to the KB Homes office to  
13 address the commission; both KB Homes representatives, Cheryl and Jana, stated that Defendant  
14 Chiu told them Plaintiff Chan introduced him to KB Homes but that he determined to use  
15 another agent.

16 36. On or about February 1, 2016, KB Homes Sales Manager, Lara McLaughlin,  
17 contacted Plaintiff Chan on two occasions indicating she was looking into the commission  
18 dispute.

19 37. Plaintiff Chan made efforts to resolve the dispute concerning her involvement in  
20 the transaction and the entitlement to the commission to no avail.

21 38. On or about May 27, 2016, Defendant Chiu closed on the purchase of a home in  
22 the KB Home community known as 477 Cabral Peak, Las Vegas, Nevada ("Property").

23 39. Upon information and belief, before paying a commission to an agent for the sale  
24 of a KB home, KB Homes requires that that agent sign a registration upon the first visit with the  
25 buyer to the property.

26 40. Upon information and belief, Defendant Wayne Wu signed a registration card at  
27 KB Homes knowing that Defendant Jerrin Chiu had first visited the Property with Plaintiff Chan.

28

1 41. Defendant Wayne Wu and Defendant Judith Sullivan on behalf of Defendant  
2 Nevada Real Estate Corp claim to be entitled to the commission on the purchase and sale of the  
3 Property.

4 42. Upon information and belief, the commission is held with First American Title  
5 Company.

6 43. Plaintiffs were not paid any commission for the sale of the Property.

7 **FIRST CAUSE OF ACTION**

8 **(Declaratory Relief)**

9 44. Plaintiffs repeat and reallege the forgoing paragraphs as though fully stated  
10 herein.

11 45. A genuine controversy exists in this matter.

12 46. Plaintiffs and Defendants Wu, Sullivan and Nevada Real Estate Corp. claim  
13 adverse interests in the commission for the sale of the Property.

14 47. Defendant Chiu sought the assistance of Defendant Wu due to Wu's 1%  
15 commission kickback effectively circumventing Plaintiff Chan from the transaction and from the  
16 commission.

17 48. KB Homes offered the payment of a commission to brokers that brought buyers to  
18 KB Home Developments to Buyers first visit.

19 49. Plaintiff Chan brought Defendant Chiu to the KB Homes Development and  
20 showed him the model homes to decide which floor plan to purchase.

21 50. Defendant Chiu utilized another agent, Defendant Wayne Wu to write a contract  
22 for the purchase of the Property located in the same KB Homes Development.

23 51. Plaintiff Chan was the procuring cause of the sale of the Property but did not  
24 receive the commission.

25 52. Plaintiffs request a declaration from the Court that Plaintiffs are entitled to the  
26 commission on the sale of the Property.

27 53. Plaintiffs request a declaration from the court that Defendants Wu, Sullivan and  
28 Nevada Real Estate Corp. are not entitled to the commission on the sale of the Property.

1 54. Plaintiffs request a declaration from the court that Defendant KB Homes breached  
2 its obligation to pay the commission to Plaintiffs.

3 55. Plaintiffs request a declaration from the court that the commission be released  
4 from the title company to Plaintiffs and any shortfall be paid by Defendants.

5 56. As a result of Defendants' actions, Plaintiffs have been forced to retain the  
6 services of an attorney to prosecute the instant action and therefore is entitled to reasonable  
7 attorneys fees and costs.

8 **SECOND CAUSE OF ACTION**

9 **(Breach of Contract)**

10 57. Plaintiff Chan repeats, realleges, and incorporates each and every paragraph  
11 contained above as though fully set forth herein.

12 58. KB Homes offered to compensate brokers for selling KB Homes to their buyers  
13 upon their first visit.

14 59. Plaintiff Chan brought Defendant Chiu to the KB Homes community and showed  
15 the model homes to Defendant Chiu to decide which floor plan to purchase.

16 60. Plaintiff Chan and Defendant Chiu filled out a registration card providing their  
17 information to KB Homes.

18 61. Plaintiff Chan was the procuring cause of the sale of the Property to Defendant  
19 Chiu.

20 62. Defendant purchased the Property which is located in the same KB Homes  
21 community.

22 63. KB Homes failed to pay Plaintiffs the commission for the sale of the Property.

23 64. KB Homes breached its obligation to pay a commission to Plaintiffs.

24 65. As a result of KB Homes' action, Plaintiff Chan has been damaged in excess of  
25 \$10,000.

26 66. It has been necessary for Plaintiff Chan to retain the services of an attorney and to  
27 incur attorney's fees and costs to prosecute this action, and therefore, Plaintiff is entitled to  
28 reimbursement for those attorney's fees and costs incurred herein.



**THIRD CAUSE OF ACTION****(Unjust Enrichment)**

67. Plaintiffs repeat, reallege, and incorporate each and every paragraph contained above as though fully set forth herein.

68. Plaintiff Chan was the procuring cause for the purchase of the Property by Defendant Chiu.

69. Defendant Wu interfered with the change of events set in motion by Plaintiff Chan by offering to kickback 1% of the commission to Defendant Chiu.

70. Defendant Chiu circumvented Plaintiff Chan's ability to complete the transaction when Defendant Chiu agreed to use Defendant Wu.

71. Upon information and belief, Defendant Wu and Defendant Chiu made misrepresentations to KB Homes concerning the initial showing of the Property.

72. Plaintiff Chan did not receive a commission despite being the procuring cause of the sale of the Property to Defendant Chiu.

73. Defendant Wu's receipt of any commission would be unjust.

74. Plaintiff Chan is entitled to the payment of the commission.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For damages in excess of \$10,000, plus interest.

2. For prejudgment and post judgment interest;

3. For a declaration that KB Homes breached the contract;

4. For a declaration that Plaintiffs are entitled to the commission on the sale of the Property;

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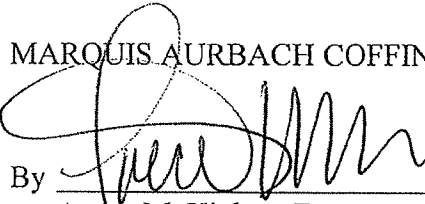
5. For a declaration that Defendants Wu, Sullivan and Nevada Real Estate Corp. are not entitled to the commission on the sale of the Property;

6. For attorney's fees and costs; and

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

Dated this 15<sup>th</sup> day of November, 2016.

MARQUIS AURBACH COFFING

By 

Avece M. Higbee, Esq.  
Nevada Bar No. 3739  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for Plaintiff

## **EXHIBIT “N”**

## DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

*This form does not constitute a contract for services nor an agreement to pay compensation.*

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is <u>Betty Chan</u> whose license number is <u>25444</u> . The licensee is acting for (select a name(s)) <u>Jerrin Chiu</u> who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant.	
Broker: The broker is <u>Betty Chan</u> , whose company is <u>Asian American Realty &amp; Property Management</u> .	

### Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
  - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
  - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

### Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of this duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

**Duties Owed By a Broker who assigns different licensees affiliated with the brokerage to separate parties.**

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

**Licensee Acting for Both Parties:** You understand that the licensee (Client init) may, or (Client init) may not, in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.			
Seller/Landlord _____ Date _____ Time _____	Buyer/Tenant <u>Jerrin Chiu</u> Date <u>01/24/2018</u> Time _____		
Seller/Landlord _____ Date _____ Time _____	Buyer/Tenant _____ Date _____ Time _____		

Approved Nevada Real Estate Division  
Replaces all previous versions

Page 1 of 1

525

Revised 10/25/07

Asian American Realty 1681 Spring Mountain Rd Las Vegas, NV 89102  
Phone: (702) 222-0078 Fax: (702) 222-1772 Betty Chan

Produced with ZipForm® by zipLogic 19070 Fifean Mile Road, Fraser, Michigan 48026 www.ziplogic.com

Jerrin Chiu

## DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

*This form does not constitute a contract for services nor an agreement to pay compensation.*

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

<b>Licensee:</b> The licensee in the real estate transaction is <u>Betty Chan</u>	
whose license number is <u>25444</u>	The licensee is acting for (client's name(s)) <u>Jerrin Chiu</u>
who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant.	
<b>Broker:</b> The broker is <u>Betty Chan</u> , whose	
company is <u>Asian American Realty</u>	

### Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
  - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
  - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

### Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

### Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

**Licensee Acting for Both Parties:** You understand that the licensee (Client Init) may or X may not, in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time
Seller/Landlord	Date	Time	Buyer/Tenant	Date	Time

Approved Nevada Real Estate Division  
Replaces all previous versions

Page 1 of 1.

This form presented by Betty Chan | Asian American Realty | 702-222-0078 | aar@asianamericanrealty.com

525  
Revised 10/25/07  
**Instant  
Forms**

7-2  
1-69  
3 Appx 000570



## **EXHIBIT “O”**



Betty Chan <702aar@gmail.com>

---

### 3 properties we saw today

---

**BETTY CHAN** <emailnotification@interealty.net>  
Reply-To: BETTY CHAN <702aar@gmail.com>  
To: BETTY CHAN <702aar@gmail.com>

Wed, Dec 30, 2015 at 7:54 PM

**This email was sent to:** Jerin Chiu <jchiuey@gmail.com>

**Listings:** 1594880, 1594035, 1592526

**Click here to view these listings if you are the email sender.**

**NOTE:** The above link is specifically for the email sender and helps prevent alteration of Client Gateway settings or listing hit counts. Links contained in the email message below are intended for the email recipient and track each time they are accessed. For your convenience, the link above will display the listings in your default Full View report, regardless of which report(s) you emailed. Also, you will receive only a single copy of this email even if you sent the listings to multiple clients, each of whom will receive a distinctly separate email.

Hi Jerry

Here are the 3 properties that you are interested.

Please let me know if you have any questions.

[04-SFR Brochure \(Medium\) View](#)

[Mobile-Friendly View](#)

Betty Chan, CCIM, CPM, CRS  
Broker  
Asian American Realty & Property Management  
4651 Spring Mountain Road, LV, NV 89102  
phone 702-222-0078  
fax 702-222-1772  
email 702aar@gmail.com  
"The Happiest Realtor in Las Vegas"  
fax 702-222-1772

5-61

## **EXHIBIT “P”**



Betty Chan <aaroffer@gmail.com>

---

## Summerlin KB home purchase

---

Betty Chan <aaroffer@gmail.com>

Mon, Jan 25, 2016 at 8:08 AM

To: Jemin Chiu <Jchiuey@gmail.com>

Cc: simp043@gmail.com, jmcneff@kbhome.com

Hello Jemin,

Further to our conversation last week, I simply could not believe you dare do such an unethical thing to me. A professional doctor is expected to hold a higher standard of ethic and professionalism. You did go back and buy at Tevere KB home that I show you and you signed the registration on site on December 30 2015, but using another Realtor that you do not even know to write up the contract, simply because you want his kickback of 1% based on your Dad's disrespect of your life. Guess what, now this has become such a big mess for you! It could have been a happy celebration for the hard work that you have achieved, now it is going to turn into a big mess for your reputation and possibly a court case for both you and the Realtor. Just think about the attorney fees, will 1% kickabck be enough to cover??

Think about this for a second, when I first met you, I consider you as part of my team being my daughter's co-worker. I admired you to be very independent of yourself and I would like to help young people like you to build up your wealth and your credit. A year ago, Instead of going along with your intended purchase of the condo on Charleston area for 80K which stay about the same price today, I offered you my expertise to make a different choice and using my skill to negotiate a better than the list price to get you this townhouse that you live in. Today the value of your townhouse at least has gone up 20K in only a little over one year. I also saved you at least 3000 on the loan fees. In other words, using me as your Realtor, I already helped you build up at least 23K equity plus the possible future appreciation of this KB home. Can you imagine what you have lost over a \$3000 kickback from a Realtor who has nothing to prove but discounting himself!

The rule of our real estate industry to determine who should get paid is based on procuring clause, The builders make it very clear that they only pay to the Realtor who first brought in the client. I know for a fact that I am the first and only one that brought you to that KB home. So even though you have another Realtor write up the contract, he would not get paid plus you would make him a lot of troubles on his license, and stupid Realtor, didn't he realize that? You really need such a Realtor who could risk himself to only make few thousands more? Can you imagine what else he will not do to you?!

You have the right to ask him to sell you any houses except those that I first show you. Honestly why you even bother to make an appointment with me since few months ago to look at houses on that day, not only that, you already gave me all the financial to start a loan to do this purchase since 2 months ago. Dont forget you and I have been looking for your next house few times since last year. You use my expertise but use someone else to write up the contract just to benefit yourself, that is the definition of unethical and immoral.

I have changed my life perspective since I have received a kidney from a generous and gracious donor. I would like to settle thing rather than making things complicated for myself because I can better use my time to help people rather than struggling over some nonsense on people who will never understand how fortunate that they have been taken care of.

I am offering you a chance to clear this up with KB homes so that I can get the commission that I worked for. So, please call KB home today to do the right thing.

I did a good job for your past purchase and sure I know how to do an equal if not a better job for myself.

If I did not hear from you, then I have no choice but to initiate whatever action deemed appropriate to protect myself from being treated so ridiculously unfair. Whatever that outcome would be, you really do not need to have any trace of " unethical behavior" on your resume for the rest of your career.

Betty Chan, CCIM, CPM, CRS  
Broker  
Asian American Realty & Property Management  
Office 702-222-0078  
P0053

3 Appx 000574

## **EXHIBIT “Q”**



Greater Las Vegas Association of REALTORS®  
1750 E. Sahara AV., Las Vegas, NV 89104  
(702) 784-5052

REQUEST AND AGREEMENT TO ARBITRATE (MEMBER)  
**PAGES 2, 3, 4 AND 5 MUST BE COMPLETED, SIGNED AND SUBMITTED  
WITH A SUMMARY AND SUPPORTING DOCUMENTS  
OR YOUR COMPLAINT WILL BE RETURNED TO YOU.**

DATE: 11/9/2016

CASE NUMBER: 1620/A (assigned by GLVAR@staff)

1. The undersigned, by becoming and remaining a member of the Greater Las Vegas Association of REALTORS®, (or participate in its MLS), has previously consented to arbitration through the Association under its Rules and regulations.
2. Each person named below is a member in good standing of the Association or was a member at the time the dispute arose.
3. A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons and/or firms you wish to name as respondents to this arbitration):\*

**PLEASE NAME RESPONDENTS:**

Judith Sullivan, Principal Broker of Nevada Real Estate Corp. Company  
Wayne Wu, Agent of Nevada Real Estate Corp. Company

(Note: Arbitration is generally conducted between REALTORS® (principals) or between firms comprised of REALTOR® principals.)

4. There is due, unpaid, and owing to me (or I retain) from the above named person(s) the sum of \$ 13,795.32. My claim is predicated upon the statement attached, marked Exhibit "1", and supporting documents which are incorporated by reference into this application. DO NOT STAPLE your packet - turn in original complaint form and copies of supporting documents.  
disputed funds are held by First American Title: Escrow No. 112-24908656

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

5. I request and consent to arbitration through the Association in accordance with the *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, I agree to pay that party costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

11/9/16  
gk  
1-1

6. I have enclosed my check in the sum of \$500.00 for the arbitration filing deposit of commissions of \$501.00 and above. I have enclosed my check in the sum of \$100.00 for the arbitration filing deposit of commissions \$500.00 and below which I understand is refundable to the prevailing party or if arbitration does not take place.

7. I understand that I may be represented by counsel and that I must provide written notice no less than (15) fifteen days before the hearing of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party (ies) require representation.

All parties appearing at a hearing may be called as a witness without advance notice.

Notice of witnesses and legal and/or REALTOR® Counsel must be submitted at least 15 days prior to the hearing date. Each party shall arrange for his witnesses to be present at the time and place designates for the hearing. The following REALTOR® non-principal (or REALTOR-ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:

8. I declare this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been in the exercise of reasonable diligence, whichever is later.

9. If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

10. Are the circumstances giving rise to this arbitration request the subject of civil litigation? ☒ Yes ☐ No

11. Important note related to arbitration conducted pursuant to Standards of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standards of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

12. Address of the property in the transaction given rise to this arbitration request  
477 Cabral Peak Street, Las Vegas, NV89138

13. The sale/lease closed on: May 27 2016

Agreements to arbitrate are irrevocable except as otherwise provided under state law.

By submission of this complaint and / or response, I consent to receive communications sent from the Greater Las Vegas Association of REALTORS® via U.S. Mail, e-mail telephone or facsimile at the numbers and locations noted by you on this form. This permission includes all future U.S. mailing address, e-mail, telephone, which I might supply to the Greater Las Vegas Association of REALTORS®. Permission continues until / unless specifically revoked, in writing, to the Greater Las Vegas Association of REALTORS®.

Signature (Broker): Betty Chan  
Broker's Name (print): Betty Chan  
Company: Asian American Realty & Property Management  
Address: 4651 Spring Mountain Road, Las Vegas, NV 89102

Signature (Agent): Betty Chan  
Agent's Name (print): Betty Chan  
Company: Asian American Realty & Property Management  
Address: 4651 Spring Mountain Road, Las Vegas, NV 89102

Telephone: (702 ) 222-0078

Telephone: (702 ) 222-0078

NOTE: This Association offers voluntary mediation, binding only if parties reach a written, signed settlement.

Rev 2/5/16 JK

Greater Las Vegas Association of REALTORS®  
1750 E. Sahara AV., Las Vegas, NV 89104  
Phone Number (702) 784-5052

**DESIGNATION OF LEGAL COUNSEL  
(ARBITRATION)**

DATE: 11/9/2016

CASE NUMBER: \_\_\_\_\_

COMPLAINANT(S):

RESPONDENT(S):

Betty Chan

v.

Judith Sullivan

Wayne Wu

☐ I do not wish to designate counsel at this time

**OR**

☐ I, Betty Chan, do hereby designate the following LEGAL counsel\* for representation in all aspects of these proceedings:

Attorney Name: Avece M Higbee

Firm Name: Marquis Aurbach Coffing

Address: 10001 Park Run Drive, Las Vegas, NV 89145

Phone: ( 702 ) 942-2194

The Greater Las Vegas Association of REALTORS® is requested to send copies of any and all notices and other documents pertaining to this case to the above attorney and the undersigned does hereby designate the attorney as his/her agent and spokesman in these proceedings.

Date: 11/9/2016

Betty Chan  
Signature of Broker

Betty Chan

Name (please print)

Asian American Realty & Propety Management  
Company

\*REALTOR® counsel (a fellow REALTOR® who may offer guidance or advice) may be used in ethics hearings only, not in arbitration hearings.

Exhibit 12

Greater Las Vegas Association of REALTORS®  
 1750 E. Sahara Ave., Las Vegas, NV 89104  
 702-784-5052

Case# \_\_\_\_\_

### Notice of Right to Challenge Hearing Panel Members

Notice is given herewith to parties in the matter of:

Betty Chan

vs. Judith Sullivan/Wayne Wu

an arbitration proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualification of any of the individuals listed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or copy of same with a letter the Professional Standards explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 27 Qualification for Tribunal, challenges must be filed with the Board within fifteen (15) days from the date the list of names is mailed.

See names crossed out below

Challenge: ☒ Yes ☐ No

Challenge: ☐ Yes ☐ No

Challenge: ☐ Yes ☐ No

~~Roger Stein~~  
~~Jean Kaptz~~  
 Nancy Anderson  
~~Tod Barton~~  
 Honey Borla  
~~Kathryn Bovard~~  
~~Damon Caldwell~~  
~~Teresa Chapman~~  
 Elaine Christensen  
~~Lisa Cobb~~  
~~Rosilyn Cobb~~  
 Walt Coffey  
 Peggy Cook  
 Chuck Doty  
 Ross Fabrizio  
 Mina Farah  
~~Deirdre Felgar~~  
~~Richard Foster~~  
~~Britney Gaitan~~  
~~Lonnie Garvin~~  
~~Jede Gavish~~

Danny Gennette  
~~Ernest Gonzales~~  
~~Vince Haakett~~  
~~Tina Helberg~~  
~~Jennie Helder~~  
~~Barbara Holland~~  
~~Eric Humes~~  
 Jean Sharon Jones  
 Melissa Jones  
 Keith Kelley  
 Myrna Kingham  
 Donald Lainer  
~~Patrick Leibovici~~  
~~Charles Martin~~  
~~Patrick Martino~~  
 Ashley McCormick  
 JC Melvin  
 Eric Mendoza  
 Todd Miller  
 Michele Mittenmiller  
~~Eafie Moore~~

Jackie Porter  
 Douglas Proudfit  
~~Ben Ramirez~~  
~~Di Redman Wolfgram~~  
~~Michael Reiss~~  
~~Linda Rheinberger~~  
 Bradford Roberts  
 Louise Rozich  
 Donna A. Ruthe  
 Sandra Salsbury  
 Ronnie Schwartz  
~~Carol Sovers~~  
~~Tim Shaw~~  
 Peggy Simon  
 Susan Sippel  
~~Nora Slagle~~  
~~Linda Stegall~~  
~~Jona Sterlacci~~  
 Robert Sweeney  
 David Tina Sr.  
 Melissa Towbin

Linda Turman  
 Tom Uribe  
 Susann Weisse  
 Erin Young  
 BOD-Appeal Purposes  
 Jillian Batchelor  
~~Scott Beaudry~~  
~~Vandana Bhalla~~  
 Chris Bishop  
~~Tom Blanchard~~  
 Janet Carpenter  
~~Soozi Jones Walker~~  
 Kolleen Kelley  
~~Omar Lopez~~  
 Keith Lynam  
~~Aldo Martinez~~  
 Georgia Purpura  
 Torres Ramey  
 Brandon Roberts  
 Krystal Sherry  
 Mark Sivek  
 David Tina Jr.

*Request 10 years or more experience*

OR

I have no challenges:

(Print Name)

(Signature)

I have no challenges:



## **EXHIBIT “R”**



April 27, 2018

Nevada Real Estate Corp.  
Mr. Wayne Wu (Agent) and  
Judith Sullivan (Broker)  
3512 Wynn Road  
Las Vegas, NV 89103

**VIA EMAIL and CERTIFIED MAIL**

**RE: Arbitration Case #16201A**

Dear Mr. Wayne Wu,

Enclosed is a amended letter referencing the actual Award of Arbitrators decision for the above-referenced case. Please reference the "Award of Arbitrators" that actually states that \$3,448.83 to be paid by Respondent to Complainant, and the remaining \$10,346.49 be paid to Respondent from the title company.

**The award must be paid no later than 5:00 p.m. on May 7, 2018,** either directly to the Respondent or to the Greater Las Vegas Association of REALTORS®. The funds will be deposited in a GLVAR escrow account and are held by GLVAR pending the outcome of a procedural review and/or legal challenge. A request for procedural review must be filed within twenty (20) days of the award. Alternatively, a notice of legal challenge must be received within that same twenty (20) day period.

**The appeal period runs until 5:00 p.m. on May 17, 2018.** If no appeal is received by that date at the offices of the Greater Las Vegas Association of REALTORS®, 6360 S Rainbow Blvd., Las Vegas, NV 89118, a letter will be sent to all named parties and the file will be closed.

Please note our new location at 6360 S. Rainbow Boulevard, Las Vegas, NV 89118. If you should have any questions, please feel free to contact me.



**GREATER LAS VEGAS ASSOCIATION OF REALTORS®**

*The Voice for Real Estate in Southern Nevada*

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702) 784-5000 • FAX (702) 784-5060



**www.LasVegasRealtor.com**



Thank you for participating in the Arbitration process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ingrid Trillo", is written over the word "Sincerely,".

Ingrid Trillo, Director  
GLVAR Professional Standards

Enclosures:

- A12 Award of Arbitrators
- A13 (Appeal) Request for Procedural Review (Arbitration)
- A7 Notice of Right to Challenge Tribunal Members  
Designation of Counsel

Cc: Todd Kennedy, Esq., Black & Lobello  
Michael Olsen, Esq., GoodsellOlsen  
Judith Sullivan, Esq., Nevada Real Estate Corp  
Betty Chan-Broker, Asian American Realty

**GREATER LAS VEGAS ASSOCIATION OF REALTORS®**  
*The Voice for Real Estate in Southern Nevada*

1750 E. Sahara Avenue • Las Vegas, Nevada • 89104 • (702) 784-5000 • FAX: (702) 784-5083



[www.LasVegasRealtor.com](http://www.LasVegasRealtor.com)

# Form #A-12

**Greater Las Vegas Association of REALTORS®**  
**1750 E Sahara Ave**  
**Las Vegas, NV 89109**  
**702-784-5000**

**Case #16201A**

## Award of Arbitrators

The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable dispute between

Betty Chan, Asian American Realty and Wayne Wu and Judith Sullivan, Nevada Real Estate Corp

Complainant

Respondent

certify that on April 17th, 2018, we heard the evidence of the parties and having heard all the evidence and arguments

of the parties, a majority of the panel finds there is due and owing \$3,448.83 to be paid by Respondent to


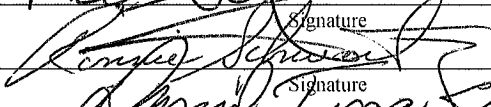
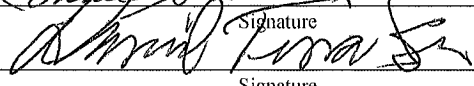
Complainant and the remaining \$10,346.49 be paid to Respondent from title company.  
 The non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors.

The deposits of the parties shall be used to cover the costs of arbitration or shall go into the general operating funds of the Association of REALTORS®. In the event the award of the arbitrators is in an amount other than that requested by any of the parties, the disposition of the deposits shall be directed by the arbitrators.

Requests for procedural review of the arbitration hearing procedures must be filed in writing with the President within twenty (20) days after the award has been transmitted to the parties\* and must be accompanied by a deposit of \$ 250.00. \*\*The request for procedural review must cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. If no procedural review is filed within twenty (20) days following transmittal of the award and the non-prevailing party does not notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated during that time, the award will be paid from the escrow or trust account. If a procedural review request is timely filed and the award is confirmed by the directors following the procedural review, the award will be paid from the escrow or trust unless the non-prevailing party advises the association in writing within fifteen (15) days from the transmittal of the directors' confirmation that a suit challenging the validity of the award has been filed. If the directors invalidate the award, the funds shall be returned to the individual who made the deposit.

Dated: April 17th, 2018

Arbitrators:

<u>Keith Lynam (Chair)</u>		Chairperson
Type/Print	Signature	
<u>Ronnie Schwartz</u>		Panel Member
Type/Print	Signature	
<u>David Tina Sr.</u>		Panel Member
Type/Print	Signature	
_____	_____	Panel Member
Type/Print	Signature	
_____	_____	Panel Member
Type/Print	Signature	

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause is considered to be the initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed.

(Revised 05/15)

\*Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.

\*\*Appeal deposits Can Not exceed \$500.

3 Appx 000584

## **EXHIBIT “S”**



# **Asian American Realty & Property Management**

**4651 Spring Mountain Road #B1 Las Vegas NV 89102**

**Office (702) 222-0078 Fax (702) 993-6866 Email: [702aar@gmail.com](mailto:702aar@gmail.com)**

May 17 2018

Chris Bishop  
President, GLVAR  
Via email: [chris.bishop@cbvegas.com](mailto:chris.bishop@cbvegas.com)

Ingrid Trillo  
Director, Professional Standards  
GLVAR  
Via email: [itrillo@glvar.org](mailto:itrillo@glvar.org)

Copy sent via Certificate of Mailing on 5/17/2018 to  
GLVAR  
6360 S Rainbow Blvd  
Las Vegas NV 89118

Re: Arbitration #16201A –Betty Chan/Asian American Realty & Property Management  
Vs. Wayne Wu, Agent and Judith Sullivan/Nevada Real  
Estate Corp

I am responding to the amended letter for Notice of Award of Arbitrators from Ms. Trillo dated 5/4/2018. Please be advised that I am going to continue my pending litigation case No. A-16-744109-C in District Court to vacate the Arbitration hearing and Awards.

I will not engage a procedure review with GLVAR because:

1) Procedure deficiency

a) Ms. Trillo rejected my request for a new hearing and that I can only file a procedural review. She said only items relating to procedural deficiency can be discussed.

There was only one item being arbitrated, “who deserves to be the procuring cause for the commission” In my humble opinion, it should not be just discussing procedures. Every words, every document, every procedure are essential to the decision of the Arbitration.

If there were a procedural deficiency, there would be a domino effect that will affect the outcome of the whole hearing.

The panel members should be very familiar with the procedure or at least there should be a little gathering or rehearsal type to refresh every one position or procedure before the hearing.

At the start of the hearing, Chairman mentioned that all parties present to refer to a document explaining procedure for hearing. None of all 12 people in the room had a copy of the document. Counsel went out for 10 minutes and came back with nothing. However the arbitration went on.

I am not a frequent flyer for arbitration. Last one I attended was from 25 years ago. Do I need to understand how the procedure goes today, I am sure I needed that. It also show how sloppy and unprepared GLVAR was for the hearing. Will the panel members also adopt the same attitude that the whole hearing was just a business as usual?

May be that was not considered to be a big deal for some. It was still considered as a procedure deficiency. To me, this is a very big deal. All of us came here to show respect to the rules and regulations of GLVAR and took it seriously dressed up and spent time assembling all the documents hoping to get a fair and professional arbitration. It is supposed to be better than going to court as only Realtors ourselves know what we are talking about.

That started out to be a joke.

b) I saw one panel member's eyes automatically shut down for 30 seconds. Twice! How much focus that member could offer throughout the long and tedious hearing under the member's physical condition.

How about another member, the arbitration material seemed to be fresh from the envelope, did not seem even one page was ever turned. How much that member had treated the hearing as important as I had?

The Chairman obviously seemed to be new at this. He constantly referred to the notes and needed to be reminded by another member what was missing. Throughout the hearing he had focused more how to be a good chairman following the agenda rather than paying attention of what I said and he stopped me twice from speaking. No offence. I just reported how I felt about the arbitration.

The Counsel, whom I did not know who he was, spent half of his time texting and working on his iphone when none of us was allowed to have our phone on.

Another member for personal reasons had to leave early.

One member suddenly walked in and asked if the arbitration had finished.

OMG!

2) I was denied a due process and right to defend myself.

As I have mentioned above, Chairman had stopped me from speaking twice. Of course he should stop me if I was talking something irrelevant, but I was trying to challenge the respondents' accusation in their response to the Arbitration. He lied about how much effort he had contributed to help the buyer selecting between two lots. The truth was there were no 2 lots. It was only one lot available for purchase when the buyer put a deposit down on that only one lot less than 24 hours after my showing.

Chairman stopped me from speaking so I could not finish explaining why that was a significant evidence proving their lies. I also could not finish challenging the rest of their fake statements. The right to defend myself was deprived of because of Chairman's interruption.

That was why later in the end, Chairman came back with a question "which lot would I recommend" He should not ask that question if he understood or allowed me to continue my defense. There was only one lot available to purchase, Respondent brought up two lots just to confuse or cover up the truth that he did nothing to contribute the purchase. I believed Chairman's misunderstanding had played an important role to the panel's decision.

3) It was not just a clerical mistake!

Not to mention that the award letter was sent out erroneously, as Ms Trillo said it did not change the outcome; it was just a clerical mistake on the cover letter that she made. (In other words, no big deal?) There was no apology and no explanation that went with the letter.

I could not see how much respect and responsibility had been given to this arbitration hearing. Overall speaking, it was not done properly, respectfully and professionally. How could the panel arrive a fair and accurate conclusion based on all of the above?

Coupled with the above mentioned deficiencies, that was not just a clerical mistake. It was a significant error more than harmless, a new hearing should be granted but I was told no way.

#### Redacted Settlement Discussion

. Obviously I did not do this just for money. My attorney fees were already gone above and beyond the commission.

Being in Service for 28 years, I felt obligated

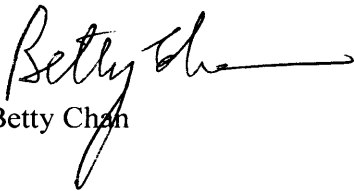
a) to myself- protect my integrity and professionalism in the industry and restore my self esteem. I was so insulted by the greedy buyer and the lying agent.

- b) to buyers- they have to respect the Realtors that they work with
- c) to fellow Realtors- offering a kickback to steal other Realtors business is totally stupid and unethical. To sign a registration lying about being the one showing the buyer at his first visit so as cheating Builder for commission, that is a new low for all Realtors.

I am totally disappointed GLVAR has not changed a bit since my first arbitration 25 years ago. For whatever happened in the arbitration hearing, I could not trust GLVAR would be capable of providing a professional hearing any more. As such, I resort to legal action to fight for my obligations. I want that to be a known public record.

Thank you

Respectfully submitted,



Handwritten signature of Betty Chan in black ink, featuring a stylized cursive script with a long horizontal flourish extending to the right.

Betty Chan

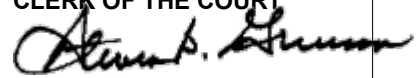
## **EXHIBIT “T”**

# Code of Ethics and Arbitration Manual

## 2018







**RPLY**

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiffs,

v.

WAYNE WU, JUDITH SULLIVAN,  
NEVADA REAL ESTATE CORP., JERRIN  
CHIU, KB HOME SALES-NEVADA, INC.,

Defendants.

And Related Counterclaims.

Case No.: A-16-744109-C

Dept.: XX

**REPLY IN SUPPORT OF MOTION TO  
VACATE OR MODIFY ARBITRATION  
AWARDS AND OPPOSITION/MOTION  
TO STRIKE IMPROPER  
COUNTERMOTION**

Date of Hearing: August 22, 2018

Time: 8:30 a.m.

**INTRODUCTORY COMMENT**

This matter was stayed, at Plaintiffs' (hereafter "Chan") request, for the licensed relator parties to participate in the Greater Las Vegas Association of Realtors binding arbitration process to determine procuring cause. The purpose of that arbitration was, clearly, to determine which of the two agents involved was the procuring cause of the underlying home sale under Nevada

1 law and entitled to the buyer's agent's commission being paid by KB Homes.<sup>1</sup> The arbitration  
2 took place and the GLVAR entered an award which not only failed in its entire purpose  
3 (determining the procuring cause) but entered an award that is a legal impossibility: awarding  
4 part of the commission to Wu and part to Chan.

5  
6 Chan properly and timely notified the GLVAR that she intended to pursue a challenge to  
7 the obviously defective award in Court.<sup>2</sup> Further, Chan timely exercised her right under Nevada  
8 law to pursue a petition to the Court to vacate or modify the award, providing points and  
9 authorities explaining why the award was defective and must be modified or vacated.

10 Defendants Wu, Sullivan and Nevada Real Estate Corp. ("Wu")<sup>3</sup> did not seek  
11 confirmation of the award pursuant to NRS Ch. 38. Instead, they have filed a rogue "counter-  
12 motion for summary judgment" which is not an appropriate countermotion under E.D.C.R. 2.20.  
13 If what Wu was actually seeking was court *confirmation* of the award, Wu should have so moved  
14 rather than clutter the docket with improper, unnecessary and procedurally deficient counter-  
15 motions. But even that would be unnecessary and wasteful in light of Chan's motion, because  
16 the end result of the matter before the court is limited to an order (1) modifying the award; (2)  
17 vacating the award or (3) confirming the award. NRS 38.241(4) (providing that if the court  
18  
19

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20 <sup>1</sup> The purpose and issue to be arbitrated was plainly stated even in the Motion to Stay filed Jan  
21 13, 2017.

22 <sup>2</sup> In a document filled with rhetoric and invective against Chan but lacking legal basis or  
23 authority, Defendants also seem to suggest that Chan failed to follow GLVAR procedure.  
24 Except that is wholly untrue. The GLVAR procedure provides that she can pursue a procedural  
25 review OR file a "legal challenge" in court. See Motion Exhibit 5 (Letter from GLVAR clearly  
26 stating that a party wishing to challenge the award may file an internal GLVAR "procedural  
27 review" or "alternatively" provide notice of seeking a legal challenge (under which the time  
28 frames provided by NRS Ch. 38 clearly apply)). Chan elected the latter. Exh. 7.

<sup>3</sup> Defendant Wayne Wu is the agent who usurped Chan's client, never disclosed he was not the  
first agent to show the KB homes to the buyer, Mr. Chiu, and wrongfully claims to be the  
procuring cause. Sullivan and Nevada Real Estate Corp. is the broker under whom he works.

denies a motion to vacate, it “shall confirm the award unless a motion to modify or correct the award is pending.”). As such, it is Wu, not Chan, that is filing unnecessary, improper and wasteful motions (in this instance, counter-motions) with this court.

### ARGUMENT

**A. Nevada Law Is Clear, When Two Brokers Claim A Commission, Entitlement Is Decided By Determining Procuring Cause And The Panel Exceeded Its Authority By Never Actually Deciding Procuring Cause and Then Splitting The Commission**

Wu suggests that the issue submitted to arbitration was not “procuring cause” but, rather, whatever the Panel wanted to decide. Nevada law is clear. A broker or agent is only entitled to a commission on a sale for which he or she establishes that he or she is the procuring cause. *Shell Oil Co. v. Ed Hoppe Realty, Inc.*, 91 Nev. 576, 580, 540 P.2d 107, 109 (1975); *Flamingo Realty, Inc. v. Midwest Development, Inc.*, 110 Nev 984, 989, 879 P.2d 69, 72 (1994); *Carrington v. Ryan*, 109 Nev. 797, 801-02, 858 P.2d 29, 32 (1993); *Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d 1153, 1157 (1987).

Wu argues that arbitrators may abandon and *not even decide* the very issue presented to them because the GLVAR (and/or its national association) has an “Arbitration Manual” that grants them unfettered authority to ignore controlling law. But the GLVAR does not have the power to override Nevada law. And it is patent from the GLVAR ethics rules that when there are two competing brokers<sup>4</sup>, the issue to be decided is procuring cause, which *by operation of Nevada law*, decides who is entitled to a commission and who is not.

Wu relies heavily on commentary in the Association of Realtor’s Arbitration Manual to suggest that the panel did not need to determine “procuring cause” and did not exceed its

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<sup>4</sup> See Motion Exhibit 1, at Standard of Practice 17-4 (providing that arbitration is to determine procuring cause when two competing brokers dispute entitlement).

1 authority by effectively ignoring that core determination and splitting the baby by ruling both  
2 were entitled to a portion of the commission.

3 Again, neither the GLVAR nor its national association have the power to dictate or  
4 change or ignore *the law*. The GLVAR is not the Nevada Legislature or a judge. They have no  
5 policy making power, nor any power to alter or change the law. Manifestly, if the Panel fails to  
6 meet its charge of determining *the* procuring cause and enters an award that cannot exist because  
7 there can only be one procuring cause, that Panel has exceeded its authority.<sup>5</sup>

8  
9 The Panel exceeded its power because in Nevada and elsewhere, procuring cause is an  
10 either/or proposition, not a sliding scale which allows for more than one procuring cause. There  
11 is no such thing as partial procuring cause. *See Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d  
12 1153, 1157 (1987) (“If a real estate broker has been a “procuring” or “inducing” cause of a sale,  
13 he or she is entitled to the agreed commission irrespective of who makes the actual sale or terms  
14 thereof.”); *Bartsas Realty, Inc. v. Leverton*, 82 Nev. 6, 9, 409 P.2d 627, 629 (1966) (“Faced with  
15 competing brokers, a court must decide which was the ‘procuring’ or ‘inducing’ cause of the  
16 sale.”); *Van C. Argiris & Co. v. FMC Corp.* 494 N.E.2d 723, 727 (Ill. App. 1986) (“The law is  
17 well settled in Illinois that only one commission will become due when a ready, willing and able  
18 purchaser has been found, and the commission will be due only to the broker who can show that  
19 he was the procuring cause.”); *Briden v. Osborne*, 184 S.W.2d 860, 863 (Tex. App. 1944)  
20 (“Whether there be but one broker involved, or more than one independent broker, the one who  
21 is the procuring cause of the sale is the one entitled to a commission.”); *Salamon v. Brooklyn Sav.*

22  
23  
24  
25 <sup>5</sup> Wu declares there is no clear and convincing evidence of exceeding authority. But the only  
26 evidence necessary is the showing of the dispute, what issue (procuring cause) was submitted for  
27 decision, and the legal impossibility of the award.

1 *Bank*, 44 N.Y.S.2d 420, 421 (N.Y. Sup. Ct. 1943) (allowing interpleaded of commission for  
2 determination between competing claimants: “[O]nly one could have been the procuring  
3 cause.”); *Lundburg v. Stinson*, 695 P.2d 328, 335 (Haw. App. 1985) (“When there are many  
4 brokers involved in a transaction, there can be only one ‘procuring cause ...’”).

5  
6 Wu’s only response to this compelling and uncontradicted *legal authority* is to quote  
7 extensively from the “Arbitration Manual.”<sup>6</sup> But this only proves Chan’s point. The Arbitration  
8 Manual excerpts cannot change the law and how it is to be applied. Wu’s citation to the  
9 Arbitration Manual suggesting a split award may be possible does not change or otherwise  
10 supplement the law regarding procuring cause. Indeed, the quoted excerpt clearly states a  
11 caveat to the speculation that such a result may be allowed: “except where prohibited by state  
12 law.” Wu has failed to cite to a single *legal* authority that would allow the determination of joint  
13 procuring causes and a split award in Nevada.<sup>7</sup> The Arbitration Manual is simply wrong legally  
14 (and to the extent it matters at all, it makes clear that an award cannot be contrary to law).  
15 Rather than supporting Wu, the quoted excerpt underscores that the Panel here did not follow the  
16

17  
18  
19 <sup>6</sup> Wu does cite to basic cases on procuring cause and declares that Chan must have abandoned  
20 the project and the panel must have decided Wu was the procuring and predominating cause.  
21 But Wu’s assumptions and factual argument is *apropos* of nothing. The Panel award splits the  
22 commission without explanation. Since Nevada law precludes entitlement to a commission  
23 without the claimant showing they were the procuring cause, Chan necessarily was the procuring  
24 cause and there was *no* interruption or abandonment finding by the Panel.

25 <sup>7</sup> Wu cites to several non-Nevada cases which apply a “predominating cause” standard. There  
26 does not appear to be any actual difference but to the extent there is, Nevada obviously applied  
27 *procuring cause*, and, as such, the cases are not persuasive authority since they are not applying  
28 the proper standard. Interestingly, *Carmichael v. Agur Realty Co., Inc.*, 574 So.2d 603, 609  
(Miss. 1991) notes that while a claimant to a commission must be a procuring cause “how much  
of a cause he must be is a function of contract.” Hence, even Wu’s cited cases demonstrate that,  
because Wu’s contract with KB and Chiu required him as a threshold matter to have  
accompanied Wu on his first visit as well as being the first agent to bring him there, he cannot be  
the procuring case under the clear contract applying to this case.

1 law (or even its own procedures) because it entered an award that cannot legally exist, thereby  
2 going beyond its authority.

3 **B. The Award Must Be Vacated or Modified Because The Award Is Not Supported By**  
4 **The Applicable Contract And The Panel Acted Arbitrarily And In Disregard For**  
5 **The Law**

6 Wu's primary response on this point is to argue (improperly) the facts of the case (from  
7 his perspective) and raise a straw-man argument that the decision was supported by "substantial  
8 evidence." Wu either mistakenly misunderstands Chan's point or is intentionally  
9 mischaracterizing it.

10 Chan has established that when two competing brokers claim a commission, entitlement  
11 is determined by deciding who is the procuring cause and that as a matter of law, there can be  
12 only one procuring cause. As part of this showing in the Motion, Chan also demonstrated that  
13 Wu cannot possibly be the procuring cause because *the very agreement that they executed with*  
14 *KB Homes* (that provides for a commission) makes it exceedingly clear as a matter of law that  
15 Wu cannot be the procuring cause because the contract expressly precludes payment of a  
16 commission *to him* if he was not the first agent/broker to bring Chiu to the development (which  
17 he indisputably was not because Chan was). See D0054 (paragraphs 2-3).

18 Thus, Chan's motion is not to re-argue the case or whatever factual determinations the  
19 Panel made in reaching its improper award. Rather, the award is defective because the Panel did  
20 not determine procuring cause (contrary to law) and entered an award that is a legal impossibility  
21 (contrary to law) and violates the very agreement that provides for a cooperating broker  
22 commission *at all*. Problematic here is that the Panel was made up of long-time and  
23 experienced brokers. It is obvious they knew what they were to decide and that there can only be  
24 one procuring cause. The GLVAR ethics rules also make it clear that the issue is procuring  
25  
26  
27  
28



1 cause. Indeed, the Arbitration Manual expressly says that there is only one procuring cause, but  
2 suggests there may be exceptions, but then limits that power to being only if allowed *by the law*.  
3 Simply put, the law does not allow to do what Panel did, the Panel knew as well, and the  
4 Arbitration Manual precludes this split award unless specifically authorized by state law, which  
5 it is not. That the Arbitration Manual recognizes that splitting a commission cannot be done if  
6 not allowed by law establishes all that is necessary to show arbitrary action by the Panel and  
7 manifest disregard for the law.  
8

9       Were that not enough, the Arbitration Manual further admits that GLVAR arbitrators are  
10 *encouraged* to violate the law (unless they are told expressly to follow it). Wu quotes another  
11 excerpt attempting to support the Panel's actions which encourages the Panel to make a decision  
12 "upon broad principles of justice and equity, and in doing so *may expressly or impliedly reject a*  
13 *claim that a party might successfully have asserted in a judicial action.*" Opp. At p 17 ll. 13-14  
14 (emphasis added). Hence, this particular organization, and the Panel, have expressly admitted to  
15 manifest disregard for the law as a matter of GLVAR policy by admitting they can and will (as  
16 here) enter awards as they see fit *regardless of what might be the compelled result under the law*.  
17 The Court should take this opportunity to make it exceedingly clear to the GLVAR and its  
18 arbitrators that they are not the law unto themselves, that they must follow Nevada law, and their  
19 internal operating manuals inviting arbitrary action and disregard for the law through improper  
20 result-driven adjudication in derogation of Nevada law is not acceptable.  
21

22       As noted, in attempting to argue the Panel did not act arbitrarily or contrary to the  
23 agreement, Wu extensively argues the facts (at least those he believes supports his claim to being  
24 the procuring cause). But Wu again misses the issue. Each side has conflicting views of the  
25 facts and who did what which resulted in Chiu purchasing the property in question and which  
26

properly was for the Panel to sort through and decide in reaching a procuring cause determination. Chan's primary issue with the Panel decision is primarily that the Panel acted contrary to law an in excess of its power by failing to actually do that and determine who was *the* procuring cause (instead entering an award that cannot legally stand).

Moreover, regardless of the facts about what Wu may have done to help select tile, carpet and other things *after* Chan introduced Chiu to the property *and* he sufficiently determined to buy to place a \$10,000 deposit down (the very next day), and regardless of the fact that it was a short time between his viewing with Chan that Chiu signed the final contract (while Chiu deceived Chan and delayed her to buy Wu time to "close the deal" Chan had started without interference) as well as the alleged but unsubstantiated claim that Chan somehow abandoned Chiu,<sup>8</sup> the Panel acted arbitrarily and contrary to the operative contract. The three-party cooperating broker agreement with KB Homes expressly and conclusively precludes Wu from receiving *any part* of a commission unless he was the first broker to bring Chiu to the property. It is undisputed that he was not.

Hence, it *does not matter* what Wu did, or did not do. *See Morrow v. Barger*, 103 Nev. 247, 253, 737 P.2d 1153, 1157 (1987) ("If a real estate broker has been a "procuring" or "inducing" cause of a sale, he or she is entitled to the agreed commission irrespective of who makes the actual sale or terms thereof."); *Clark County Educ. Ass'n v. Clark County School*

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<sup>8</sup> This was the flagship position of Wu. It is based upon Chiu's claim that he and/or his father were calling Chan but she was not responding. Of course, this alleged failure to respond—if it happened at all—lasted all of a couple of days (over the New Year holiday). There is no actual evidence of these calls beyond self-serving statements and Chan received only one message on January 3, 2016. Chan was not allowed to play the voicemail by the Panel but did tell the panel what was said: Mr. Chiu's father called her and, in a very calm voice (i.e., not someone upset because they could not reach her) that she must be on vacation and asked her to call him. *See* Supplemental Chan Declaration, attached as Reply Exhibit 8 at ¶2.

1 *Dist.* 122 Nev. 337, 131 P.3d 5 (2006). *See also Carrigan*, 109 Nev. at 799, 858 P.2d at 31  
2 (contract terms regarding commission entitlement prevail).<sup>9</sup> Here, Wu (and Chiu) contracted  
3 with the party paying the cooperating broker commission and created an overarching threshold  
4 requirement for Wu to be the procuring cause; since he was not the first to show Chiu the  
5 development, Wu *could not be entitled* to any part of the commission (Wu may seek some  
6 compensation from Chiu eventually, but he contractually waived any right to the KB Homes  
7 paid commission). The Panel manifestly disregarded this contract and the law by allowing him  
8 any portion of the commission at all. Moreover, this contractual provision renders Wu's factual  
9 arguments wholly *moot*; he failed to meet the one threshold requirement necessary for *him* to  
10 have any commission entitlement. While a separate point, this further shows why there is fraud  
11 here. Wu and his star witness, Chiu, contracted with KB establishing that Wu could only have a  
12 right to some or all of a commission if he were the first agent to bring Wu to the property and  
13 was with him the first time Wu visited the property. Wu and Chiu know this was not the case.  
14 That Wu is claiming entitlement to a commission at all is necessarily fraudulent in light of this  
15 clear limitation *he agreed to*.

16  
17  
18 **C. Although It Is Difficult To Follow Defendants' Point, Defendants Continue To**  
19 **Erroneously Charge Chan Of Violating Arbitration Obligations Or Procedure**

20 Throughout the Opposition, Wu continues to claim Chan has acted inappropriately in  
21 filing a lawsuit before proceeding to arbitration against Wu under GLVAR ethics requirements.  
22 Wu also charges Chan of doing something incorrectly by not pursuing "procedural review" with  
23 the GLVAR but, instead, pursuing her right under Nevada law to seek modification or vacation  
24 of the award judicially.  
25

26  
27 <sup>9</sup> Even Wu's cited cases hold that what qualifies for being the procuring cause can be limited by  
28

1           Attacking Chan and her procedural choices is not a new endeavor for Wu. Indeed, in  
2 response to Chan's Motion to Stay this proceeding so that the arbitration could be pursued, Wu  
3 made essentially the same incorrect arguments that Chan violated the GLVAR rules by filing  
4 suit or otherwise acted improperly procedurally and therefore, should be denied a right to be  
5 heard. *See Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss*  
6 *with Prejudice or in the Alternative for Summary Judgment*, filed Feb. 2, 2017.<sup>10</sup> The Court  
7 rejected Wu's procedural complaints and request for summary judgment and denied Wu's  
8 countermotion in an order entered March 30, 2017. Wu again raised similar arguments before  
9 the Panel, this time arguing Chan should be thrown out of court because she commenced a  
10 litigation and then sought arbitration, and because they argued, she did not timely seek  
11 arbitration. That motion also failed and was denied by the Panel.

12           Here, Wu repeats his often-made charges of procedurally incorrect conduct. But Wu is  
13 wrong, just as they have been the other times they have made this argument.<sup>11</sup> Chan acted  
14 procedurally correct. The GLVAR notice provides two avenues for challenging the award. First  
15 there is a limited "procedural review" which is an evaluation of procedure and due process. The  
16 other alternative is the "legal challenge" which necessarily is what is taking place before this  
17 Court. Chan gave timely notice to the GLVAR and timely filed her motion. There is no basis  
18 for whatever complaint Wu is attempting to make.<sup>12</sup>

19  
20  
21  
22 \_\_\_\_\_  
23 contract. *Carmichael v. Agur Realty Co., Inc.*, 574 So.2d 603, 609 (Miss. 1991).

24 <sup>10</sup> Like here, Wu again used a counter-motion improperly to seek summary judgment declaring himself  
25 the "procuring cause." *Id.*

26 <sup>11</sup> It is, of course, improper to repeatedly seek reconsideration.

27 <sup>12</sup> Indeed, Wu's criticisms are curious since Wu filed a *counterclaim* in this action (rather than moving to  
28 compel arbitration which would have been the procedurally correct route). If Wu is held to the same

As for Wu's often repeated lament of the bringing of a court action, there is nothing wrong with that as well. Chan had several parties she (through prior counsel) elected to sue. While there was, through GLVAR membership, an obligation to arbitrate with Wu, such obligation did not exist for Chui or KB Homes. Chan had every reason to commence a court action because there would be no arbitration involving them—or claims Chan had asserted that were not subject to arbitration--and it was important all parties were on notice of her claims.<sup>13</sup> To avoid argument of failing to bring all of her claim, or failing to name a necessary party, Chan also included Wu in the suit, but properly moved the Court to stay so arbitration could proceed. What Wu decries as abuse is simply procedurally wise lawyering. In any event, these issues have been raised previously and rejected. They unnecessary impose cost and time consumption, and confuse the issues actually before the Court and serve no purpose with respect to the actual issues to be decided other than to serve Wu's desire to cast dirt.

These issues do raise an important issue regarding the arbitration itself. As is evident, members of the GLVAR are required to adhere to their rules to be members. The standards and rules make it clear that a member who does not submit such disputes to mandatory binding arbitration would be subject to penalties by the organization. As such, Chan had no choice but to execute the request and agreement to arbitrate, which necessarily was extracted by the coercive requirements that a member must agree to arbitrate or suffer the consequences. NRS 597.995 renders void arbitration agreements lacking "specific authorization for the provision which

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standard he advocates against Chan, Wu should be determined to have acted improperly, multiplied proceedings, acted frivolously and should have judgment against them entered.

<sup>13</sup> KB Homes caused the commission to be held in escrow as a result until the dispute resolved. It has since been transferred to the GLVAR.

1 indicates that the person has affirmatively agreed to the provision.”<sup>14</sup> This evidences that the  
2 policy of Nevada is that an obligation to arbitrate should not be unwittingly made or coerced.  
3 Here, as is clear, the GLVAR arbitration was coerced through the threat of penalties and  
4 sanctions if Chan did not submit the claim to them for arbitration. While she signed a request  
5 and agreement to arbitrate, it was only because she believed there was no choice.  
6

7 **D. The “Counter-Motion” For Summary Judgment Is Procedurally Improper And**  
8 **Moot**

9 The sole points and authorities offered by Wu as part of the “counter-motion” (aside from  
10 the rhetoric and invective disparaging Chan) is comprised of exactly one paragraph, in which Wu  
11 says that summary judgment should be granted because of the arbitration award. No case  
12 authority is cited (beyond summary judgment standards).

13 This “counter-motion” is a non-sequitur and, at best, incorrectly characterized and  
14 premature. NRS Ch. 38 prescribes what is to happen after an arbitration concludes with an  
15 award. The prevailing party has the right to ask a court to “confirm” it. NRS 38.329. Only  
16 *after* an order confirming an award has been entered does the Court then have authorization to  
17 enter a judgment on the award. NRS 38.243. It is procedurally improper to move for entry of  
18 judgment prior to the determination of Chan’s motion since no award has yet to be confirmed.  
19 Even then, the Motion fails to identify what, exactly, would be subject to summary judgment.  
20 Chan asserted more than one claim, and the Motion to Stay makes it clear there were claims  
21 against non-arbitrating parties, and Wu for his contractual interference, which were not subject to  
22 arbitration and were reserved for later litigation after procuring cause was determined.  
23  
24

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25 <sup>14</sup> Nevada case law also shows hostility to forced arbitration where the obligation to arbitrate was  
26 not freely and knowingly consented to in advance. *See Burch v. Second Jud. Dist. Ct.*, 118 Nev.  
27 438 (2002) (adhesion arbitration provision found unenforceable).



Moreover, it is axiomatic that the Court should not be independently considering “summary judgment” on anything submitted to binding arbitration because the Court’s power is limited to accepting the decision, modifying it, or vacating it.<sup>15</sup>

Additionally, pursuant to E.D.C.R. 2.20, a “counter-motion” is only authorized as part of a response to a motion if it is related to the “same subject matter.” Here, the motion at hand is challenging the arbitration award and seeking that it be vacated or modified. NRS Ch. 38 makes it clear what the available “counter-motions” that would be the same subject matter, and a only a motion to confirm the award under NRS 38.239 would fit. Wu’s “motion for summary judgment” is a non-sequitur and, whatever is being sought, is not proper because one does not grant “summary judgment” on an arbitration award. It is either confirmed, modified or vacated. But as to confirmation, the countermotion is also moot and improper. If the Court grants Chan’s motion in any way, then there can be no confirmation of the award. But pursuant to NRS 38.241 and 38.242, there was no basis for a countermotion; those statutes already mandate confirmation of the award if Chan’s motion is denied.

Because what Wu is seeking to accomplish through this entirely superfluous countermotion is not entirely clear (unless the goal is to simply add complexity and use the “counter-motion” device improperly to obtain the “last word”), in an abundance of caution and to show that there are ample issues of material fact concerning procuring cause, as well as ample issues requiring discovery under NRCP 56(f) such that denying summary judgment is appropriate here, attached is the declaration submitted by Chan the first time Wu sought

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<sup>15</sup> Wu seems to be inviting the Court to enter judgment that *he* was *the* procuring cause and entitled to the entire commission. Wu cannot do this, of course. He failed to bring a timely motion to modify or vacate the award and, while there are ample grounds why Wu cannot be the

summary judgment on procuring cause as well as her supplemental declaration attached as Exhibit 8. To the extent it is needed, this amply demonstrates the existence of a question of material fact regarding the procuring cause (inherently a factual question) and the many subjects or which discovery would produce evidence material to the question of procuring cause. This would include depositions of KB Homes which would confirm the contractual limitation against Wu ever being considered a procuring cause and entitled to a commission paid by KB.<sup>16</sup> To the extent needed, Chan submits there are questions of fact precluding summary judgment and that alternatively, it should be denied pursuant to NRCP 56(f) so discovery may proceed for formal discovery to take place (the matter was stayed prior to commencement of discovery).<sup>17</sup>

**E. Defendants' Countermotion For Attorneys' Fees Is Unwarranted And Itself Frivolous**

Wu seeks an award of attorneys' fees pursuant to two grounds. First, Wu cites to E.D.C.R. 7.60(b) and alleges an entitlement to fees declaring Chan's motion "frivolous, unnecessary, or unwarranted" or "so multiplies the proceedings in a case as to increase costs unreasonably and vexatiously." It is astonishing that Wu would make such a motion in light of Defendants' own clearly improper counter-motion for summary judgment. NRS Ch. 38 *expressly authorizes* Chan's motion to vacate or modify the arbitration award post arbitration. It states the proper standards and cites supporting case authority for the arguments raised. Generally the standard would be lacking any legal or factual support whatsoever. It was done

---

procuring cause and the panel acted improperly in awarding him even part of the commission, he certainly has failed to establish that he rather than Chan is the procuring cause.

<sup>16</sup> See *Carrigan, supra* (procuring cause is a question of fact).

<sup>17</sup> The discovery would necessarily entail obtaining the evidence from KB Homes, Wu, Chiu and Chiu's father regarding the alleged "abandonment" dispute as Chan believes discovery would reveal this to be a fabrication.

1 timely, and while the Court will decide whether to grant it or not, is *far* from frivolous or  
2 vexatious.<sup>18</sup>

3 The second ground is based upon the agreement to arbitrate Chan was compelled to  
4 execute to commence the arbitration (which, as Wu likes to point out, was compulsory and  
5 potentially subjected Chan to penalties if she did not execute the agreement). Wu quotes the  
6 following provision in the agreement as entitling Wu to fees:

8 In the event I do not comply with the award and it is necessary for any party to  
9 obtain judicial confirmation and enforcement of the award against me, I agree to  
pay that party costs and reasonable attorney's fees incurred obtaining such  
confirmation and enforcement.

10 Opp./Counter-motion, at p. 25. First, of course, a contractual attorneys fees provision is a  
11 collateral matter and such requests are not properly made as a counter-motion under E.D.C.R.  
12 2.20. They are sought after entry of final judgment as a post-judgment matter. Second, Chan  
13 has not failed to comply with the award. Chan has properly challenged the award as allowed and  
14 expressly authorized by the GLVAR procedures and Nevada law. Third, Wu has not sought  
15 judicial confirmation (and any effort by him for "enforcement" necessarily must come after the  
16 Court rules on Chan's motion and then there is some failure to comply). While Chan has filed,  
17 as is her right, her Motion asking for the award to be modified and/or vacated, which if denied  
18 would result in an order confirming the award, that is a result of Chan taking action, not Wu  
19 moving to confirm.

20 As such, the provision simply is not applicable here under these circumstances by its very

21  
22  
23  
24 <sup>18</sup> It is sadly becoming somewhat common for parties to append unnecessary, improper or duplicative  
25 "counter-motions" to responses to motions to manufacture a basis to file the "last word" as a "reply" in  
26 support of their "counter-motion" but what really is a sur-reply to the underlying motion to deprive the  
moving party to their right to the last word. Of course, any reply submitted by Wu here would be  
untimely and should be stricken and not considered on that basis because it was due 5 days prior to the  
hearing.

1 terms.

2 Finally, while the fees counter-motion cites Brunzell, they have provided no actual  
3 evidence in support of the request for fees or under which the Court could evaluate the request.  
4 No affidavit has been submitted supporting the request. No time records have been submitted.  
5 The “counter-motion” is meritless to begin with, but must also be denied as a result of the failure  
6 to attach any evidence supporting fees.  
7

8 **KENNEDY & COUVILLIER**

9  
10 /s/ Todd E. Kennedy

11 \_\_\_\_\_  
12 Todd E. Kennedy, Esq.  
13 Nevada Bar No. 6014  
14 3271 E. Warm Springs Rd.  
15 Las Vegas, NV 89120  
16 Tel: (702) 605-3440  
17 Fax: (702) 625-6367  
18 [tkennedy@kclawnv.com](mailto:tkennedy@kclawnv.com)

19 *Attorneys for Plaintiffs*

20 **CERTIFICATE OF SERVICE**

21 I certify that I served the foregoing reply in support of Plaintiff’s motion to modify or  
22 vacate the arbitration award and opposition to the countermotions for summary judgment and  
23 fees on August 15, 2018, on all counsel of record in the action pursuant to the Court’s efile and  
24 serve service.  
25

26 /s/ Todd E. Kennedy

27 \_\_\_\_\_  
28 An employee of Kennedy & Couvillier

## EXHIBIT 8

## SUPPLEMENTAL DECLARATION OF BETTY CHAN

1  
2 1. I make this declaration in support of my motion to vacate or modify the GLVAR  
3 arbitration award and in opposition to the "counter-motion" for summary judgment and for fees  
4 filed by Defendants. I have personal knowledge of the facts stated here and am competent to  
5 testify.  
6

7 2. On January 3, 2016, I received a telephone message from Defendant Jerrin Chiu's  
8 father. His father was assisting him in looking for a new home, although Jerrin was my client.  
9 That one message is the only message either of them left for me since we were together  
10 December 30, 2015 for the home viewings. I was not allowed to play the message for the  
11 arbitration panel but I was allowed to state what the message was:  
12

13 "Hello betty, yeah, its Dr. Chiu. Today is Sunday, January 3rd, right now it's about 12  
14 noon. Uh ... I know you probably on vacation, when you get this message please give me a call.  
15 Ok, Thanks."

16 3. The message was not in any way indicated in tone or content any urgent need to  
17 speak to me. There was no expression of annoyance or exasperation as you would expect if he  
18 or Mr. Chiu were really calling me many times but were unable to reach me. I believe if  
19 allowed to conduct discovery in the litigation, the deposition of Mr. Chiu's father would  
20 demonstrate that the claim that I was unresponsive or abandoned them was simply not true,  
21 particularly when confronted with his voicemail message and the lack of any documents showing  
22 efforts to call me beyond the December 31, 2015 conversation about asking me for a commission  
23 kick-back and the January 3, 2016 message. This would show that the excuse offered by Chiu  
24 for going to Wu was false and support a finding that I was the procuring cause, not Mr. Wu.  
25

26 4. It is interesting that Mr. Chiu and Mr. Wu suggest that Mr. Wu was instrumental  
27  
28



1 in helping Mr. Chiu choose a lot. KB homes was not a party to the arbitration so I was not able  
2 to ask them questions or obtain documents. When we visited the development, it appeared in the  
3 sales office that there were only two lots available for "plan 2" (which Mr. Chiu bought). There  
4 were other lots available for other plans, but only those two for "plan 2." However (and I  
5 testified to this) I investigated later and asked the owner of the other lot (designated for "plan 2")  
6 that Mr. Chiu and Mr. Wu said they "decided against" in favor of the one supposedly Wu  
7 recommended. The owner informed me that he had signed the purchase contract for the lot in  
8 late December, 2015, so the only lot for "plan 2" that was actually ever available was the one  
9 Mr. Chiu purchased. So what Mr. Wu claims was his major contribution, selecting the lot, was  
10 nothing because the only other lot available for the "plan 2" Mr. Chiu wanted had already been  
11 sold. If allowed to do discovery, I believe KB records would show that there was no "lot"  
12 decision to be made. I also believe the deposition of Chiu and Wu, as well as getting their email  
13 and other records, would show that I was the procuring cause and this was all an effort to get a  
14 kickback and/or give a commission to a friend over me.  
15

16  
17 5. While they have claimed that Mr. Wu was helpful in the sale, it does not matter. I  
18 am aware, as is Mr. Wu, that KB Homes only pays a cooperating commission to the first agent to  
19 bring the client to the development (and it must be the client's first visit). This is clear by the  
20 contract Wu, Chiu and KB signed. Everybody agrees I brought Mr. Chiu to the development  
21 first. I am at a loss as to how Mr. Wu can claim a right to any commission when his contract  
22 with KB Homes states he cannot have one if he wasn't the first, or how Mr. Chiu could have  
23 signed that agreement knowing it was a lie because I was the first. Discovery, depositions and  
24 documents from KB Homes would show KB's policy was enforced and, had they truthfully  
25 disclosed to KB that Mr. Chiu visited the property with me before going again with Mr. Wu, KB  
26  
27

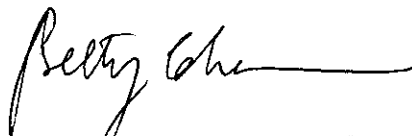
1 would only have paid a commission to me.

2 6. I cannot produce a registration card because KB has lost or mishandled it. But  
3 any agent who has ever worked with KB knows—including Mr. Wu—knows that KB pays only  
4 the first one and so I am the only one who could ever claim the commission. The commission  
5 card is simply KB's means of establishing of who was there first. Nobody, not even Mr. Chiu  
6 has ever disputed I was the first one. I need the ability to do discovery with KB as well to get all  
7 of their records and depose the person who was there the day I visited.  
8

9 7. I at no time abandoned efforts or was ineffective. Mr. Chiu never even  
10 considered buying a new house in that area until I convinced him to consider it. He deposited  
11 \$10,000 less than 24 hours after we were there. He signed a contract just a few days later. From  
12 my experience working with Mr. Chiu on other purchases, they like to do a lot of family  
13 discussion and thinking before making any decision and there was nothing about this time that  
14 suggested they were in any particular rush. I showed the houses and let him think. After the  
15 January 3, message from Jerrin's father, I did follow up with my client. He ignored me for  
16 many days and then lied to me by trying to conceal what he was doing with Wu and it is  
17 completely contrary to long established local ethical practice and standards in Southern Nevada  
18 for Wu to proceed without even *asking* about other agents and whether another agent had shown  
19 Mr. Chiu the KB development already. I, and every broker I know, know that it is a violation of  
20 Realtor standards of practice to intervene in another broker's transaction.  
21

22 I declare under the penalty of perjury that the foregoing is true and correct.  
23

24 Dated this 15<sup>th</sup> day of August 2018.

25   
26 Betty Chan

Marquis Aurbach Coffing  
Avece M. Higbee, Esq.  
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ahigbee@maclaw.com  
Attorneys for Plaintiff/  
Counterdefendant, Betty Chan  
and Asian American Realty &  
Property Management

## DISTRICT COURT

## CLARK COUNTY, NEVADA

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiff,

Case No.: A-16-744109-C  
Dept. No.: XII

vs.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES - NEVADA INC., DOES I  
through X, and ROES I through X,

Defendants.

WAYNE WU, JUDITH SULLIVAN, NEVADA  
REAL ESTATE CORP., JERRIN CHIU, KB  
HOME SALES - NEVADA INC.,

Counterclaimants,

vs.

BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Counterdefendant.

**DECLARATION OF BETTY CHAN IN SUPPORT OF REPLY TO OPPOSITION TO  
MOTION TO STAY PENDING ARBITRATION AND OPPOSITION TO  
COUNTERMOTION TO DISMISS WITH PREJUDICE OR IN THE ALTERNATIVE  
FOR SUMMARY JUDGMENT**

Betty Chan declares as follows:

1. This Declaration is made in support of Plaintiffs' Reply to Opposition to Motion to Stay Pending Arbitration and Plaintiffs' Opposition to Countermotion to Dismiss with Prejudice or in the Alternative for Summary Judgment.

2. I am the broker of record for Asian American Realty & Property Management.

1           3.     I worked as the real estate agent for Defendant Jerrin Chiu ("Defendant Chiu") on  
2 the purchase of his first home in 2013.

3           4.     In 2014, Defendant Chiu again requested my assistance in purchasing a second  
4 home.

5           5.     In 2014, I showed some homes to Defendant Chiu but he did not find anything he  
6 wanted to purchase.

7           6.     In March 2015, I showed houses again and Defendant Chiu made an offer on a  
8 home in Desert Shores; Defendant Chiu determined again not to purchase the home.

9           7.     On or about October 2, 2015, Dr. Kwang Chiu contacted me to make an  
10 appointment for him and his son, Defendant Chiu, to see homes in December 2015.

11          8.     I agreed to represent Defendant Chiu as the buyer.

12          9.     I requested updated financial information for Defendant Chiu's loan pre-approval.

13          10.    On or about November 11, 2015, Defendant Chiu emailed Me regarding his  
14 intention to purchase a house and listed out the criteria.

15          11.    On or about November 28, 2015, Defendant Chiu emailed Me concerning the  
16 location of a particular house he wanted to see.

17          12.    On or about November 29, 2015, I responded concerning the viewing of the  
18 particular house.

19          13.    On or about December 29, 2015, I prepared for the showing of homes to the Chiu  
20 family by pulling listings around Boca Park area.

21          14.    Five resale homes were targeted to fit Defendant Chiu's criteria and I contacted  
22 the listing agents for the resale homes to set appointments.

23          15.    I included the model homes in both a Toll Brothers development and a KB Home  
24 development that I had previously viewed.

25          16.    I checked the status of the listings, printed the information and arranged a route  
26 for the efficient showing of the properties.

27          17.    On or about December 30, 2015, I picked up the Chiu family and showed the  
28 resale homes, the Toll Brother models and the KB Homes models.

1 18. KB Homes offered to compensate brokers for bringing buyers to KB Home  
2 Developments at Buyer's first visit.

3 19. At the front office of KB Homes, I spoke to Cheryl and picked up a price sheet.

4 20. I then showed the model homes to the Chiu family and Defendant Chiu liked the  
5 first and second model homes.

6 21. Back at the KB Homes model home office, I requested a floor plan and explained  
7 the buying process for a new home including the standards, elevations, prices, location of the  
8 site, etc. to the Chiu family.

9 22. I located a buyer registration card and Defendant Chiu filled in the buyer portion  
10 and I filled in the realtor portion.

11 23. No KB Homes representative was to be found so I left the registration card on the  
12 table in the KB Home front office to hurry to get the Chiu family to the next appointment.

13 24. I emailed Dr. Kwang Chiu the four resale listings that were viewed.

14 25. On or about December 31, 2015, Dr. Kwang Chiu called me and asked if I could  
15 "kick back 1% of the commission" like the other agent offered him.

16 26. I said I can offer a reduction of ¼% and Dr. Kwang Chiu said he would call me  
17 back and tell me which property Defendant Chiu wanted to buy.

18 27. On or about January 5, 2016, I followed up with Defendant Chiu about the KB  
19 Home properties.

20 28. Defendant Chiu did not respond.

21 29. Contrary to Defendant Chiu's statements, he did not try to contact me several  
22 times.

23 30. On or about January 15, 2016, Defendant Chiu admitted that he was using another  
24 agent.

25 31. On or about January 22, 2016, I went to the KB Homes office and learned that  
26 Defendant Chiu had indeed signed a contract on the property I had shown him with another agent  
27 on January 8, 2016.  
28

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

Dated this 14<sup>th</sup> day of February, 2017.

Betty Chan



**REGISTER OF ACTIONS****CASE NO. A-16-744109-C****Betty Chan, Plaintiff(s) vs. Wayne Wu, Defendant(s)**§  
§  
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Case Type: **Other Contract**  
 Date Filed: **09/27/2016**  
 Location: **Department 20**  
 Cross-Reference Case Number: **A744109**  
 Supreme Court No.: **78666**  
**82208**

**P. TY INFORMATION**

<b>Counter Claimant</b>	<b>Chiu, Jerrin</b>	<b>Lead Attorneys</b> <b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Counter Claimant</b>	<b>Nevada Real Estate Corp</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Counter Claimant</b>	<b>Sullivan, Judith</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Counter Claimant</b>	<b>Wu, Wayne</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Counter Defendant</b>	<b>Chan, Betty</b>	<b>R Duane Frizell</b> <i>Retained</i> 702-657-6000(W)
<b>Defendant</b>	<b>Chiu, Jerrin</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Defendant</b>	<b>KB Home Sales-Nevada Inc</b>	<del><b>Janice M Michaels</b></del> <del><i>Retained</i></del> <del>702-251-4100(W)</del>
<b>Defendant</b>	<b>Nevada Real Estate Corp</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Defendant</b>	<b>Sullivan, Judith</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Defendant</b>	<b>Wu, Wayne</b>	<b>Michael A. Olsen</b> <i>Retained</i> 702-855-5658(W)
<b>Plaintiff</b>	<b>Asian American Realty &amp; Property Management</b>	<b>R Duane Frizell</b> <i>Retained</i> 702-657-6000(W)
<b>Plaintiff</b>	<b>Chan, Betty</b>	<b>R Duane Frizell</b> <i>Retained</i> 702-657-6000(W)

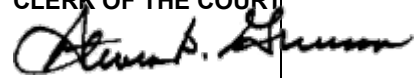
**EVENTS & ORDERS OF THE COURT**

08/22/2018 **All Pending Motions** (8:30 AM) (Judicial Officer Johnson, Eric)**Minutes**

08/22/2018 8:30 AM

- AS TO: PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO VACATE OR MODIFY ARBITRATION AND OPPOSITION/MOTION TO STRIKE IMPROPER COUNTERMOTION: Arguments by Mr. Kennedy and Mr. Olsen in support of their respective positions. Following, Court stated its FINDINGS and ORDERED, Motion DENIED. Mr. Olsen to prepare the Order. DEFENDANTS AND COUNTERCLAIMANTS WAYNE WU, JUDITH SULLIVAN, NEVADA REAL ESTATE CORP., AND JERRIN CHIU'S OPPOSITION TO MOTION TO VACATE OR MODIFY ARBITRATION AWARD AND COUNTERMOTION TO RECOGNIZE WU AS THE PROCURING CAUSE, FOR SUMMARY JUDGMENT AND FOR ATTORNEY FEES: Arguments by Mr. Olsen and Mr. Kennedy in support of their respective positions. Mr. Olsen to supplement the billing records. Following, COURT ORDERED, the following briefing schedule: Mr. Olsen to file supplement as to the Motion for Summary Judgment and attorney fees by 9/5; Mr. Kennedy to reply by 9/19 and matter CONTINUED for argument. PLAINTIFF'S MOTION TO VACATE OR MODIFY ARBITRATION AWARD: Arguments by Mr. Kennedy and Mr. Olsen in support of their respective positions. Following, Court stated its FINDINGS and ORDERED, Motion DENIED. Mr. Olsen to prepare the Order. Mr. Olsen stated in regards to his Motion for Summary Judgment, there is still a claim against KB Homes for Breach of Contract. Court directed counsel to talk about this issue. 10/10/18 8:30 AM DEFENDANTS AND COUNTERCLAIMANTS WAYNE WU, JUDITH SULLIVAN, NEVADA REAL ESTATE CORP., AND JERRIN CHIU'S OPPOSITION TO MOTION TO VACATE OR MODIFY ARBITRATION AWARD AND COUNTERMOTION TO RECOGNIZE WU AS THE PROCURING CAUSE, FOR SUMMARY JUDGMENT AND FOR ATTORNEY FEES

[Parties Present](#)[Return to Register of Actions](#)



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

BETTY CHAN,  
Plaintiff,

vs.

WAYNE WU,  
Defendant.

CASE NO. A-16-744109-C  
DEPT. XX

BEFORE THE HONORABLE ERIC JOHNSON,  
DISTRICT COURT JUDGE

**WEDNESDAY, AUGUST 22, 2018**

**RECORDER'S TRANSCRIPT OF HEARING  
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff: TODD E. KENNEDY, ESQ.

For the Defendant: MICHAEL A. OLSEN, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

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Las Vegas, Nevada, Wednesday, August 22, 2018

[Case called at 10:33 a.m.]

THE COURT: Betty Chan versus Wayne Wu, Case Number A744109. Counsel, please note your appearances for the record.

MR. KENNEDY: Good morning, Your Honor, Todd Kennedy on behalf of the Plaintiffs Betty Chan and Asian American Realty.

THE COURT: Counsel, why don't you go ahead since -- re-note yourself for the record.

MR. OLSEN: Michael Olsen on behalf of the Defendants Wayne Wu, Jerin Chiu, Judith Sullivan, and Nevada Real Estate.

THE COURT: Okay. We're here on Plaintiff Counterclaimants Wayne Wu's, et cetera, Opposition to Motion to Vacate -- oh, let's see. Plaintiffs' Reply in Support in Motion to Vacate or Modify Arbitration Award and Opposition to -- Motion to Strike Improper Countermotion. Defendant and Counterclaimants Wayne Wu, et cetera, Opposition to Motion to Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney's Fees.

Let me just -- let me -- since this was an arbitration done by -- oh, I can't remember the formal name, but essentially the realtors --

MR. OLSEN: Yeah, it's GLVAR, the Greater Las Vegas --

THE COURT: Yeah.

MR. OLSEN: -- Realtor's Association.

THE COURT: Realtor's Association. I'm looking, do we agree

1 that the standard review of this is arbitrary and capricious, unsupported  
2 by the agreement or amounts to manifest disregard for the law?

3 MR. KENNEDY: Yes, Your Honor.

4 MR. OLSEN: By clear and convincing evidence, yes.

5 MR. KENNEDY: We disagree with that, Your Honor.

6 THE COURT: You disagree with that, okay. All right.

7 MR. KENNEDY: Yeah, I haven't seen a case that applies that  
8 to each and every element of the statute or to the common law grounds,  
9 but, Your Honor, our position is it's clearly established under the order  
10 and the relevant information as clear and convincing in any event.

11 THE COURT: All right. well, I mean, if, you know, in terms of  
12 the issue of arbitrary and capricious, I guess -- I don't know, we can  
13 argue the procuring cause here, but I tried to do some research on my  
14 own yesterday that -- on this issue that there can only be one and that's  
15 where I haven't found anything too definitive on that and in fact, I did find  
16 a couple cases where they found an individuals was a procuring cause  
17 and then found that they could share in the commission.

18 They didn't make a specific ruling, you know, it was just sort of  
19 one of the things where they said we find so and so is -- was a procuring  
20 cause and -- that consequently could share in the ruling -- or share in the  
21 commission and those cases that I did -- the two or -- the couple that I  
22 did find, it wasn't really clear, you know, if they were saying procuring  
23 cause, you -- it makes it sharable or that under sort of the agreements  
24 that they were working with that they could share.

25 But, you know, certainly this started out with Betty Chan and

1 then sort of moved to Mr. Wu and you can make a pretty good argument  
2 that but for either one of them that there wouldn't have been a sale. So I  
3 sort of see where the arbiter came out with his decision that he did and,  
4 you know, absent, you know, some clear case law saying that there can  
5 only be just one procuring cause, that that trumps any other work in the  
6 case, it would seem that the arbitrator's decision was not arbitrary and  
7 capricious.

8 And so, with that sort of general thought in mind, I'll let you go.

9 MR. KENNEDY: Sure, Your Honor, and context is important  
10 here. Ms. Chan was hired by Mr. Chiu to show her -- show him homes  
11 in the area and she did that on -- in December of 2015. They went to a  
12 number of resale homes and she convinced him to go to this KB home  
13 sale.

14 And whatever she did -- and, Your Honor, I -- we're not here to  
15 argue the facts because that's what arbitration panels do, we're here to  
16 argue what the law allows. You know, whatever she did, the next day,  
17 Mr. Chiu put down \$10,000 of a deposit on that piece of property.

18 Now, over the next few days he then -- a handful of days later  
19 he signed a contract with KB Homes to actually purchase that lot. So,  
20 one thing, we have a very compressed timeframe here. You don't have  
21 months and months and months going on in between where there's  
22 some sort of cutoff between one procuring cause. And I'll get to the  
23 issue, the legal analysis, but I want to make sure we have some context  
24 here. And of course Mr. Wu and Mr. Chiu signed a contract with KB  
25 Homes.



1 Now, KB /Homes is a seller, KB Homes is the one paying the  
2 commission. They signed a contract, Your Honor, and that's why where  
3 we get to arbitrary, they -- the standard's really arbitrary and/or manifest  
4 disregard of the law.

5 They signed a contract. Mr. Chiu signed it, Mr. Wu signed it.  
6 It says we don't pay -- we will not pay broker commission unless you  
7 were the first broker to show our community to that client. That is -- in  
8 the record it's part of Exhibit 3, at Document D-0054, Paragraph 2. It's  
9 incredibly clear.

10 Mr. Chiu -- Mr. Wu himself agreed by contract with the party  
11 paying, I do not get -- I recognize that you will not -- and I'm not entitled  
12 to a commission if I didn't -- was not the first -- if I was not with Mr. Chiu  
13 when he first saw the community. It was undisputed he was not, Ms.  
14 Chan was.

15 So, first thing you have here is when we're talking about  
16 procuring cause and the legal issue is you have a -- and Nevada law's  
17 very clear, if you have a contract that talks about who and when  
18 someone's entitled to a commission, those control over the common law  
19 analysis of procuring cause. You have a contract that says Mr. Wu  
20 could never receive this commission. And that's where we get the  
21 problem with the split commission, Your Honor. They've obviously  
22 decided Ms. Chan had responsibility here.

23 And I believe the panel was acting like mediators as opposed  
24 to arbitrators and said well, this is -- yeah, we'll do this. In fact, if you  
25 look at their arbitration manual, they're encouraged to enter what they

1 think is a fair result, notwithstanding the law, which of course is  
2 effectively an admission they're going to manifestly disregard the law.

3 But the main point there, Your Honor, is Mr. Wu could not  
4 receive any of this commission, he signed a contract saying hey, I know  
5 I can't be considered the procuring cause here, that's really what it's --  
6 what it -- that's really what it means is one, we're not going to pay you  
7 any commission to you unless you are the person who was with Mr.  
8 Chiu the first time he was there, there's only one person left, it's Ms.  
9 Chan.

10 Now, in terms of the legal issue of okay, procuring cause, I do  
11 believe the law is -- is fairly clear. Nevada's never specifically taken this  
12 issue up, but if you look at the *Morrow* case, which it's pretty clear, which  
13 talks about -- and let me see -- let me make sure if I quote it correctly to  
14 Your Honor, the -- if a real estate broker has been the procuring or  
15 inducing cause of a sale, he or she is entitled to the agreed commission  
16 irrespective who makes the actual sale or terms there -- or terms  
17 thereof.

18 Again, Your Honor we obviously have to interpret a little bit,  
19 but that case makes it pretty clear, there can only be one and it doesn't  
20 matter, we -- what happens is you -- just because someone else finished  
21 the sale doesn't mean they are the procuring cause. And that case  
22 specifically provides, look, if you're the procuring cause, you're the  
23 procuring cause and that someone else stepped in and did stuff, doesn't  
24 make them also a procuring cause.

25 And of course, Your Honor, the only party --

1 THE COURT: But if -- I mean -- and I take -- but I sort of take  
2 it from this that the arbitration panel saying if Mr. Wu didn't step in, there  
3 wouldn't have been a sale and so that's why he's entitled to a substantial  
4 amount -- I mean, I'm not -- I mean, we can argue whether or not he --  
5 what, you know, amount he did, but I -- that's what I essentially read is  
6 they're saying is he's -- you know, but for him stepping in, there wouldn't  
7 be a sale and his stepping in is worth --

8 MR. KENNEDY: Well -- and, Your Honor --

9 THE COURT: 70 -- I guess 75 percent of the commission, so  
10 I mean -- or the sale. So, I -- you know, the -- I -- you know, in the  
11 case -- you know, when we're looking at these cases, I mean -- like I  
12 said, I haven't found anything that said, you know, someone who doesn't  
13 step -- who steps in later and makes a material contribution to the  
14 completion of the sale is not entitled to anything if they're not the first  
15 one to put the buyer and seller together.

16 MR. KENNEDY: Well, Your Honor, the -- I think the -- my  
17 response to that is that -- there is no case law I've been able to find,  
18 absent some contract allowing the splitting of commissions that allows  
19 for multiple procuring causes. I mean, if you look at the *Bartis Realty*  
20 case, these are Nevada cases.

21 THE COURT: And I'll agree with you. I mean, I couldn't find  
22 any case --

23 MR. KENNEDY: And --

24 THE COURT: -- that had multiple procuring causes. At the --

25 MR. KENNEDY: And he --

1 THE COURT: And at the same time I haven't found any case  
2 that said that being the procuring cause absolutely precludes anyone  
3 else from getting any proceeds from the --

4 MR. KENNEDY: I think, Your Honor, that's the --

5 THE COURT: A portion of the commission.

6 MR. KENNEDY: -- a necessary import of the case law. In  
7 Nevada, as well as elsewhere it says look, we -- when you have  
8 competing brokers saying I'm the procuring cause, I'm the person  
9 entitled to it, the Court uses procuring cause to determine which one  
10 gets it and which one does not.

11 There is no -- when there's no stat -- case law authority saying  
12 you can split, then you've got -- it's an either/or proposition and that's the  
13 way the cases come down. And of course here we have a contract that  
14 irregardless of what -- we don't know what those arbitrators were saying  
15 because they didn't enter any findings.

16 But what we do know is what they entered was an illegal  
17 impossibility. Even their own arbitration manual, and this was quoted in  
18 the Opposition, says hey, you know, there may be some occasion where  
19 you would split it, but only if allowed under that State's law and you  
20 should follow the law. The law here just simply does not allow for this  
21 splitting of a commission.

22 And then you add in that contract. The one thing they couldn't  
23 do, even if they thought he had some benefit -- he provided some benefit  
24 there is KB Homes is the party who is paying and agreed to pay the  
25 commission. They said we won't pay a commission. And Mr. Wu

1 signed an agreement committing to this, I'm not entitled to a commission  
2 unless I was the first -- I was with Mr. Chiu when he came here first and  
3 we all know that's not the case.

4           So that's what we're really stuck with, Your Honor, is we have  
5 a panel who made a decision which necessarily recognizes Chan as a  
6 procuring cause because they wouldn't have given her -- they couldn't  
7 have given her anything if she wasn't a procuring cause and awards her  
8 at least some of the commission.

9           But where it needs to be modified or vacated is it splits the  
10 commission in an illegal impossibility and gives it to someone who's  
11 contractually barred by the act -- the party actually paying the  
12 commission from receiving it. That is where you get to arbitrary conduct  
13 because they have not followed the controlling contract. The contract  
14 that provides for a commission, it all says we can't get one here, under  
15 these facts, as everyone agrees.

16           So they -- it has to be either modified or vacated because the  
17 only other person who had any procuring cause involved here, which  
18 they've already found because they've awarded her something, is Ms.  
19 Chan.

20           And that's really where we're at because it, again, is the  
21 contract. But also again, Your Honor the law -- and if you look at other  
22 jurisdictions, they're very clear, they've actually had the issue come in  
23 front of them. You only have one. You can have lots of real -- you can  
24 have lots of brokers, realtors involved, but when it comes down to  
25 deciding who gets the commission, it's got to be one.

1                   And those are the cases -- those are the only cases cited by  
2 any party to you.

3                   THE COURT: Okay. All right.

4                   MR. OLSEN: Your Honor, thank you. Your Honor, of course  
5 these arbitrators -- you had three -- a panel of three arbitrators,  
6 professional real estate agents. We conducted an arbitration over four  
7 hours where all of the facts and all of the evidence was vetted. The  
8 credibility of the witnesses was tested, which became quite an issue in  
9 this case I would say.

10                  They had an ability to take in all of the evidence, which the  
11 Court does not have that advantage, especially since be -- the Plaintiff  
12 has not attached a transcript of the proceeding for the Court to  
13 determine whether there's been a manifest disregard of the law or  
14 arbitrary and capricious ruling.

15                  Your Honor, throughout the course of that four hours, not one  
16 time have I ever heard this argument about the contract between KB and  
17 Wayne Wu. This is the first time I've heard it and therefore the Court  
18 must disregard it. It's a new argument being made after the arbitration.

19                  There's another three reasons that that argument doesn't fly.  
20 It's the first time it's been raised, number one.

21                  Number two, they're not in privity in that contract. Ms. Chan is  
22 not in privity of that contract. KB Homes is not here saying that Wayne  
23 Wu is not entitled to his commission. In addition, Your Honor, at the  
24 arbitration hearing, the evidence taken and the testimony given by Mr.  
25 Wu was he didn't know that Dr. Chiu had gone to the Tavares



1 Development with another agent.

2 By the way, Your Honor, when Ms. Chan took Dr. Chiu to the  
3 Tavares Development, Mr. Chiu testified that they never even looked at  
4 the lot and home combination that he ultimately purchased. She was  
5 pushing a different model and a different lot than what he ultimately  
6 decided to purchase.

7 He also testified that he was concerned about KB Homes,  
8 their quality. He was concerned about the location. He had all kinds of  
9 reservations, he was not ready to buy. Why did he go back the next  
10 day? Well, he made multiple calls to Ms. Chan, who wasn't returning the  
11 calls, and testified at the arbitration she turned her phone off so she  
12 could spend time with her daughter for the holidays, despite the fact that  
13 she'd been told that they only had four days at the end of the year to  
14 look at homes while Dr. Chiu's parents were in town, so time was of the  
15 essence.

16 She testified, I turned off my phone and -- so he -- they can't  
17 get ahold of her. He goes back to look at the development and they say  
18 hey, we're jacking the prices on all these lots, if you want to hold the  
19 price, you have to put a deposit down, it's fully refundable. That's the  
20 only reason he put any deposit down at all, he still hadn't made up his  
21 mind.

22 In fact, the day after that he puts a question out on a blog site  
23 asking about the quality of KB Homes. He's still concerned about that.  
24 So, Your Honor, that argument doesn't fly.

25 Let me go to the standard of review real quick because there

1 is a case directly on point and it is binding on this court. The case is  
2 *Health Plan of Nevada versus Rainbow Medical*. It's a 2004 case and  
3 it's on point because it's -- it deals --

4 THE COURT: What's the citation?

5 MR. OLSEN: -- with the exact same two issues; whether  
6 there's been an excess -- the arbitrators exceeded their power and  
7 whether there was a manifest disregard of the law.

8 Here's what the Supreme Court said: Nevada recognizes  
9 both common-law grounds and statutory grounds for examining an  
10 arbitration award. However, the scope of judicial review of an arbitration  
11 award is limited and is nothing like the scope of an appellate court's  
12 review of a trial court's decision. The party seeking to attack the validity  
13 of an arbitration award has the burden of proving, by clear and  
14 convincing evidence, the statutory or common-law ground relied upon  
15 for challenging the award.

16 They go on and very specifically address what is required to  
17 have an arbitration award set aside based on excessing authority.

18 It says: The courts presume that arbitration -- arbitrators are  
19 acting within the scope of their authority. Parties moving to vacate an  
20 award on the ground that an arbitrator exceeded his or her authority  
21 have the burden of demonstrating by clear and convincing evidence how  
22 the arbitrator exceeded that authority. Absent such a showing, courts  
23 will assume that the arbitrator acted within the scope of his or her  
24 authority and confirm the award.

25 Arbitrators -- this is very critical.

1 Arbitrators exceed their powers when they address issues or  
2 make awards outside the scope of the governing documents.

3 There's not even an allegation of that.

4 However, allegations an arbitrator misinterpreted the  
5 agreement or made factual or legal errors do not support vacating an  
6 award as being in excess of the arbitrator's powers. Arbitrators do not  
7 exceed their powers if their interpretation of an agreement, even if  
8 erroneous, is rationally grounded in the agreement. The question is  
9 whether the arbitrator had the authority under the agreement to decide  
10 an issue.

11 In other words, under the arbitration agreement, did they have  
12 authority to act?

13 Not whether the issue was correctly decided. Review under  
14 excess-of-authority grounds is limited and only granted in very unusual  
15 circumstances. An award should be enforced so long as the arbitrator is  
16 arguably construing or applying the contract. If there is a colorable  
17 justification for the outcome, the award should be confirmed.

18 Now, as to manifest disregard they also state: Manifest  
19 disregard of the law goes beyond whether the law was correctly  
20 interpreted, it encompasses a conscious disregard of applicable law.

21 What does that mean, Your Honor? Well, Your Honor, you  
22 just stated that you looked this over yesterday and I'm glad you did  
23 because I've looked at it extensively and I've read all the cases cited by  
24 Counsel. Nevada -- under Nevada law -- there are a handful --  
25 Counsel's correct on one thing, there are handful of states who had

1 taken the next step in procuring cause and they have said you can only  
2 have one.

3 And there -- a couple that said you can't split the commission.  
4 Nevada is not one of those states. In fact, I'm really glad that Counsel  
5 cited the *Morrow* case because the *Morrow* case not only refutes that  
6 you can only have one, the *Morrow* case brings up the concept of  
7 predominate cause. That opens the door to split commission.

8 The *Morrow* case, quoting: A finding of procuring cause  
9 requires that the broker demonstrate conduct that is more than mere  
10 trifling. In non-exclusive brokerage situations -- which is what we have  
11 here; in fact, there's no contract between Ms. Chan and Dr. Chiu --  
12 merely introducing the eventual purchaser is not enough.

13 To constitute the predominating cause of the sale, it is not  
14 enough that the broker contributes indirectly or incidentally to the sale by  
15 imparting information which tends to arouse interest. The broker must  
16 set in motion a chain of events which, without break in their continuity,  
17 cause the buyer and seller to come to terms.

18 Well, Your Honor, applying this standard, that's clearly Mr.  
19 Wu. Ms. Cahn merely showed him the development. Mr. Wu overcame  
20 all of the concerns about KB Homes' quality, he negotiated the contract,  
21 he put the lot and the home together with a view of the mountains. Ms.  
22 Chan wanted to emphasize a view of the strip, which Dr. Chiu was not  
23 interested in. He's the one that got the deal done and that's reflective in  
24 the arbitrator's award.

25 Now, very importantly, Your Honor, Counsel just made an

1 attempt to shift the burden to my client to show that there's no case law  
2 that allows splitting of commission. Well, it's not my client's burden.

3 Here's what the manual says. By the way, it's undisputed that  
4 Ms. Chan signed an arbitration agreement that said she agreed to  
5 arbitrate in accordance with the manual. That's significant because the  
6 manual says this: While awards are generally for the full amount in  
7 question -- no doubt -- (which may be required by state law).

8 Whoever wrote the manual is smart enough to know that in  
9 some states, yeah, it may be required that the commission goes to one  
10 or the other. Again, Nevada's not one of those states.

11 In exceptional cases, awards may be split between the parties  
12 (again, except where prohibited by state law).

13 It's their burden to show this court a case -- a Nevada law  
14 case that says you can't split commission. Or you can't have more than  
15 one procuring cause. And in all of their briefing and in all of my review of  
16 Nevada case law, I can't find that, Your Honor.

17 So, the arbitrators were merely acting under the agreed upon  
18 contract, under the manual -- they weren't thumbing their nose at the  
19 state or at the legislature, as Counsel suggests in his Reply. They're  
20 saying, except if there's a law that says we can't split commission, we  
21 can and that's what they did here.

22 So, Your Honor, with regard to that issue, procuring cause,  
23 there's a whole bunch of other arguments I could make about  
24 abandonment. There's a ton of case law out there that if you abandon  
25 the process, if you don't return phone calls when you know the client's

1 only going to be in town for four days, you can't turn around and claim  
2 the commission.

3 And I think Ms. Chan needs to be a little bit careful here what  
4 she's asking for because if this Court is inclined to find that procuring  
5 cause means that you can only one, then it should go to Mr. Wu  
6 because he's the one that did all the work. He's the one whose name is  
7 on the contract, he's the one that resolved all the concerns, he's the one  
8 that put the lot and the home together that gave Dr. Chiu the views he  
9 wanted, and he's the one that closed the deal.

10 All she did is spend one rushed day running around looking at  
11 multiple properties and introduce him to the Tavares Development.  
12 That's it.

13 So if there's one cause, if we're going to modify, then let's give  
14 it to Mr. Wu because he put all the hours in to get the deal closed.

15 THE COURT: All right. Thank you.

16 MR. KENNEDY: Well, Your Honor --

17 THE COURT: Short response.

18 MR. KENNEDY: We're certainly not here to argue the facts,  
19 although Counsel spent most of the time arguing about the facts,  
20 criticizing me for not attaching a transcript, but he then talked about a  
21 bunch of facts, of course which -- for which Counsel has no support.

22 If you'd like to know what really happened, Your Honor, I invite  
23 you to read Ms. Chan's declarations attached to our Reply, which belie  
24 everything -- nearly everything. That says -- what -- you know, it's -- you  
25 have disputed facts about who did what.

1           The reason I didn't attach the transcript, Your Honor, is  
2 because one, a transcript was not made, they did a recording. I would  
3 have -- my client would have to pay -- we're talking about a \$14,000  
4 case and --

5           THE COURT: I'm not --

6           MR. KENNEDY: -- it doesn't matter what the testimony is.

7           THE COURT: -- criticizing you for not tran -- a transcript.

8           MR. KENNEDY: Importantly, Your Honor -- you know, again,  
9 the contract -- you know, saying that Ms. Chan wasn't a party to the  
10 contract, it's because they conspired to exclude here. Mr. Chiu signed  
11 that agreement. Their star witness, in fact, represented by Counsel  
12 knew who the first person was to take him to that property and it was  
13 Ms. Chan.

14           He signed that contract and actively committed fraud against  
15 KB Homes because if he had said no, I had another person there, we  
16 know what KB Homes would say well, that broker's entitled to the  
17 commission. But Ms. Chan was never given the opportunity because  
18 they lied to her about what they were doing. That's also part of the  
19 record.

20           So -- and it's not whether she was a party to the contract.  
21 That contract, as the Nevada Supreme Court has said, applies to the  
22 determination of procuring cause. Mr. Wu contractually said, I am not  
23 the procuring cause, unless I was the first person to bring it there.  
24 That's part of the agreement. That's a contract KB Homes has said you  
25 don't get any commission.



1           That's where we end up with and that's why you have an  
2 arbitration decision splitting the baby, giving it to somebody who  
3 contractually cannot have it. And that's why you do get to this arbitrary  
4 standard and that's why you do get to the manifest disregard.

5           And I'd like to talk about that a little bit. It's interesting, you  
6 know, what -- you know, the -- I guess the concept is well, that which  
7 has been prohibited must be allowed. Well, Nevada case law talks about  
8 procuring cause and says you need to decide when you have two  
9 people saying I'm entitled to the commission, you decide which one's the  
10 procuring cause. I think that tells us what the standard is. There's going  
11 to be one.

12           I believe, Your Honor -- and unless this Court's going to now  
13 create new Nevada law, until the Supreme Court were to say no -- you  
14 know, it's not the law to say, well, it hasn't been expressly prohibited.  
15 The law says there's one procuring cause, that's why we do all these  
16 things.

17           So, unless there is some law that says there can be more than  
18 one, you should only -- they should only be deciding one. And that  
19 manual, I know Counsel thinks it helps him, but I think it helps me.  
20 When you have a provision that says, you know, well sometime -- you  
21 generally apply the full amount in question, which may be required by  
22 state law. And it constantly states follow the law, follow the law.

23           What we know is, there is no law that authorizes them to split  
24 it here. Their own manual told them to follow the law. But more  
25 importantly and where we get to manifest disregard, if we're going to use

1 that manual for anything, let's use it as them admitting that they engage  
2 in manifest disregard.

3 Arbitrary -- and this is another portion quoted by Counsel.

4 Arbitrators, unless specifically required to act in conformity  
5 with the rules of the law.

6 They always are. And their own provisions, their own manual  
7 says hey, follow the state law on the subject.

8 May base their decisions on broad principles of justice and  
9 equity and doing -- so expressly or impliedly reject a claim that party  
10 might successfully have asserted in a judicial action.

11 What does that tell us? That the court -- the association of  
12 realtors are telling their arbitrators, do what you want, even if that party  
13 would -- in court would have won. You can disregard that, you can  
14 disregard those arguments and do what you feel is fair.

15 Your Honor, even arbitrators are supposed to follow the law,  
16 not -- they're not mediators. It's not an equitable claim. They're  
17 supposed to follow the law. The law says that Mr. Wu certainly cannot  
18 have a part of this commission.

19 Thank you, Your Honor.

20 THE COURT: Okay. As I said, I actually even tried to look a  
21 little bit yesterday on my own in terms of this issue. And in terms of  
22 Nevada I don't find anything that says that there can only be one  
23 procuring cause. And what little I found seems to suggest that, you  
24 know, the procuring cause definitely entitles a person to receipt of a  
25 portion of the commission.

1           Maybe it entitles it all, but at this point all I see is that it entitles  
2 a portion of the commission.

3           Additionally, you know, and in looking at the arbitration  
4 decision, which doesn't give a lot of information in that regard, but I  
5 mean, it is -- you know, what -- you know -- these issues that are noted  
6 in terms of who was the first to show the -- I mean, is it sufficient to show  
7 the development or is it necessary to show the house and the lot in order  
8 to be technically considered the procuring cause?

9           You know, whether or not, you know, there was a fraud  
10 scheme to deprive Ms. Chan of her commission because of Mr. Wu's  
11 relationship to the buyer? I -- those are all issues that are fact intensive  
12 and get -- went before the arbitration board.

13           And I think that there's nothing in the law that precludes them  
14 in Nevada from dis -- to discerning that Mr. Wu, which is clearly what  
15 they decided was Mr. Wu was the primary force behind this. If you were  
16 to go with the idea of predominant cause over procuring cause, then Mr.  
17 Wu would arguably be entitled to the whole amount.

18           But I can't say that I find that the arbitrator's decision is  
19 arbitrary or capricious and I can't say it is in manifest disregard for the  
20 law and so I am going to deny the motion to Vacate or Modify the  
21 Arbitration Award.

22           Do you want to prepare an order?

23           MR. OLSEN: I will prepare an order, Your Honor.

24           Given that, can -- may I proceed on our counterclaim because  
25 we have asked for summary judgment and we've asked for attorney's

1 fees on our counter petition -- or counter motion?

2 And I can be very brief.

3 THE COURT: Go ahead and let me see what -- go ahead.

4 MR. OLSEN: Your Honor, let me just address attorney's fees  
5 very quickly. It is undisputed between the parties that as a requirement  
6 to join the GLVAR, you have to agree that all matters in dispute between  
7 brokers will be handled by binding arbitration in front of the GLVAR.

8 Counsel has argued well, she was coerced into that. No, she  
9 wasn't. She doesn't have to become a member of GLVAR, but in  
10 choosing to do so, she agreed to be bound by arbitration. And the  
11 manual is very clear.

12 It says: If the dispute is not resolved through mediation or if  
13 mediation is not required, realtors shall submit the dispute to arbitration  
14 in accordance with the policies of the board, rather than litigate the  
15 matter.

16 So, Your Honor, I'm asking for attorney's fees in sort of two  
17 different chunks. We have had to incur attorney's fees beyond the value  
18 of this commission because we have had to fight this battle on two  
19 fronts; one in District Court and another in the arbitration.

20 So, all the attorney's fees that we had to incur before we even  
21 got to arbitration should be paid back because she violated her  
22 contractual and ethical duty by filing litigation, without filing for arbitration  
23 with the Greater Las Vegas Realtor's Association.

24 In addition to that, in the actual contract itself it says: In the  
25 event I do not comply with the award and it is necessary for any party to

1 obtain judicial confirmation and enforcement of the award against me, I  
2 agree to pay that party costs and reasonable attorney's fees incurred in  
3 obtaining such confirmation and enforcement.

4 That's what we're doing here today.

5 THE COURT: Okay.

6 MR. OLSEN: That's what we're here for.

7 THE COURT: Are you prepared to respond today or -- I have  
8 been focusing more on the --

9 MR. KENNEDY: Your Honor, I can respond --

10 THE COURT: -- well what I felt was the primary --

11 MR. KENNEDY: -- today, it was in my Reply Brief.

12 THE COURT: I saw it was in your Reply Brief.

13 MR. KENNEDY: Yeah, and it's simple. These are not proper  
14 counter motions, number one, so they should be denied summarily.  
15 They are not related to the subject matter.

16 Number two, this would be the third or the fourth time that  
17 Counsel has tried to argue yeah, well you had to arb -- you had to  
18 arbitrate this. We did. We did, Your Honor.

19 It -- what -- it is not improper when you have multiple parties,  
20 some of which are not bound to arbitration, to bring a claim in court  
21 when you are trying to assert your claims. There's lots of reasons to do  
22 it, including the fact that -- and I wasn't the party that brought the claims.  
23 The party that brought the claims had moved the court to stay -- let's  
24 remember, it was Ms. Chan that brought the action and then asked the  
25 Court to stay so they could go arbitrate with those people who are

1 members of the GVLAR [sic].

2 And then they filed a response, they filed a Motion for  
3 Summary Judgment, one, trying to get the Court to say not procuring  
4 cause, but also saying hey, you violated these obligations.

5 It's funny, Counsel said well, Ms. Chan wasn't compelled to do  
6 this, she wasn't coerced into arbitrating, she chose to do it. And then  
7 say but oh -- but she had a contractual obligation to do this.

8 But it doesn't matter, Your Honor. She did what a prudent  
9 litigant would do, which is I have multiple claims against multiple parties.  
10 I don't want to be accused of leaving someone out. She brought her  
11 action, she moved to have it stayed so she could the arbitration and  
12 that's what happened here.

13 So that issue should -- it -- that issue -- not only has it been  
14 raised before Judge Leavitt, it was raised to the arbitration panel, it's  
15 now been raised to you. If anyone should be getting fees, it should be  
16 my client for having to third time address that argument. But we're not  
17 asking for that, Your Honor, because that's what lawyers do, we raise  
18 our arguments we make -- and you make a decision.

19 The second one, Your Honor, yes, there is a provision that  
20 says if someone doesn't comply. There's no evidence of non-  
21 compliance. That commission is sitting with the GVLAR [sic] because  
22 GVLAR [sic] said it had to be there.

23 Took some time to get it there because the escrow company  
24 said well, we need an instruction -- we finally -- we did do an instruction,  
25 my client looked -- we finally agreed to give them instruction, but we're

1 not a party to that escrow, we're simply claiming it. But we ultimately  
2 did. It got there. No one's failed to comply with it, we have a statutory  
3 right to come to Your Honor and raise our arguments as to why it should  
4 be done. That's not failing to comply. Due process allows me to do that  
5 and it shouldn't be awarded.

6 And the main -- the operative language of -- in that language,  
7 Your Honor, is if we don't comply, they have to come to court for  
8 confirmation. They have to come to court to enforce it. I'm the one that  
9 filed the motion, Your Honor. I'm the one that says I don't think this is  
10 right. I think we should have to go back and there should be changes to  
11 this.

12 Nobody has filed a Motion for Confirmation except what's  
13 styled as a Countermotion for Summary Judgment, which makes no  
14 sense. You don't move for summary judgment on an arbitration award,  
15 you move to confirm. They never did. I did.

16 The other thing is, it was a useless motion. By operation of  
17 statute, if I ask you to vacate an award or I ask you to modify an award  
18 and you deny that motion, the statute says well, that then is confirmation  
19 of the award. They didn't make that motion, they shouldn't be entitled to  
20 that. I had a statutory right to challenge it and I'm the one that did all  
21 that work. The -- by the very terms of that statute there is no basis for  
22 attorney's fees.

23 And, Your Honor, finally, the -- they aren't -- they talked about  
24 the standards for attorney's fees, but they didn't attach anything so this  
25 one needs to be denied for failure of proof. There simply is nothing in



1 there that they put in except talking about the standards for an award of  
2 attorney's fees, but they didn't attach any billing records or anything like  
3 that.

4 But there's no basis for attorney's fees here. Both those  
5 motions should be denied because your order denying our motion is  
6 going to end up confirming the award, but that is not something they  
7 were forced to bring and it doesn't fall within that provision that would  
8 entitle them to claim fees here.

9 MR. OLSEN: Your Honor, if I could just be -- very briefly.

10 THE COURT: Sure.

11 MR. OLSEN: They didn't file the Motion for Stay until we filed  
12 our Answer and Counterclaim against them alleging that they are in  
13 violation of the guidelines of GLVAR. And we had sent a threatening  
14 letter informing them that they had agreed to arbitrate rather than litigate,  
15 numb -- that's number one.

16 Number two, of course we wouldn't have to file a Motion to  
17 Confirm our Arbitration Award if she had released the funds to us. I  
18 mean, this provision in the contract only comes into play if the award is  
19 being challenged, as it is here today. And they've lost on that and  
20 contractually they're bound to pay our attorney's fees for having to be  
21 here today.

22 THE COURT: All right.

23 MR. KENNEDY: Your Honor, if I could have one moment, my  
24 client --

25 THE COURT: Sure.

1 MR. KENNEDY: -- indicates she needed to tell me something.

2 THE COURT: Sure.

3 If you want to step out in the anteroom, go ahead.

4 MR. KENNEDY: Oh, okay, thank you.

5 [Pause in proceedings]

6 MR. KENNEDY: Thank you, Your Honor, I apologize for that.

7 THE COURT: Oh, that's okay.

8 MR. KENNEDY: My client has asked whether or not she  
9 could address the Court and I said I simply can throw it up to the Judge  
10 and it's up to you.

11 THE COURT: Well, I mean, I -- we need to work through the  
12 attorneys.

13 MR. KENNEDY: I understand, Your Honor, I had to ask.

14 THE COURT: I appreciate that. No. I mean, if there's  
15 something that your client wants, you feel appropriate to pass on to me  
16 I'll be glad to hear it from you as the attorney in this case, but that's -- I  
17 don't feel it's appropriate otherwise.

18 All right. I -- as I said I'm denying the Motion to Vacate or  
19 Modify the Arbitrary Award. I'm -- that was where I had put most of my  
20 time in terms of focusing on this. Let me -- I'll take under advisement the  
21 Motion for Attorney's fees.

22 But did you submit -- I can't remember -- I don't remember  
23 seeing any billing records from you.

24 MR. OLSEN: I -- we haven't submitted the billing records yet,  
25 Your Honor. In the event there was an award, we would -- I mean, I

1 can -- I'll supplement and make it easy. I'll supplement and --

2 THE COURT: All right. I was going to say, I can't order  
3 reasonable attorney's fees when I don't know --

4 MR. KENNEDY: Well --

5 THE COURT: If I was to order them -- I'm not saying I am, but  
6 I'm saying I can't order them unless I --

7 MR. KENNEDY: Well, Your Honor, and --

8 THE COURT: -- know what they are.

9 MR. KENNEDY: And, again, we approached this because it  
10 was -- we felt it was an improper request not tied to the actual subject  
11 matter of the motion which was confirming, as well as improperly -- if  
12 they're going to submit anything else, I'd like an opportunity to respond  
13 to that.

14 THE COURT: That's fine.

15 MR. OLSEN: That's fine.

16 THE COURT: That's fine. You --

17 MR. OLSEN: We'll just submit --

18 THE COURT: All right, then what I'm --

19 MR. OLSEN: -- the invoices.

20 THE COURT: Rather than take under advisement, I'm going  
21 to continue the Motion for Attorney's Fees.

22 MR. OLSEN: Okay.

23 THE COURT: I'll give you a chance to -- how long do you  
24 need to get -- to file a supplement?

25 MR. OLSEN: I -- give us two weeks.

1 THE COURT: All right.

2 MR. OLSEN: It'll be sooner than that, but.

3 THE COURT: All right. I'll give you two weeks to file that and

4 how -- do you want two weeks to file a response?

5 MR. KENNEDY: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. OLSEN: Your Honor, with regard to our Motion for

8 Summary Judgment, I -- the only reason we raised it is because there's

9 only three causes of action and one of them is declaratory relief which

10 has been determined by the arbitration award.

11 The other is unjust enrichment, which has been determined by

12 the arbitration award.

13 And the third is a breach of contract claim against KB Homes.

14 KB isn't even here. They admit that they don't have the registration

15 card.

16 THE COURT: Is KB Homes a --

17 MR. OLSEN: KB Homes is a --

18 THE COURT: -- party?

19 MR. OLSEN: -- seller. Yeah. Yeah, they got sued as well,

20 Your Honor.

21 THE COURT: Oh, that's right.

22 MR. OLSEN: Unfortunately. Everybody got sued.

23 THE COURT: Oh, okay, they did get sued. I'm -- apolog -- all

24 right.

25 MR. OLSEN: Everybody got sued. So there's this breach of

1 contract claim hanging out there against KB Homes; based on what  
2 contract, I have no idea.

3 THE COURT: I'll bring -- I'll look at the -- why don't you talk  
4 with Counsel in terms of the Motion for Summary Judgment because  
5 that seems like at this point in time the litigation should be able to be --

6 MR. KENNEDY: Well, Your Honor, our position would be if  
7 they're going to bring a Motion for Summary Judgment on claims that --  
8 you know, anything -- anything not pertaining to the arbitration, it should  
9 be done by a separate motion, a properly supported one and -- that sort  
10 of thing. We can certainly talk and try and find a way to avoid doing that,  
11 but I don't think it's appropriately done as a countermotion here --

12 MR. OLSEN: Well, and this --

13 MR. KENNEDY: -- about what claim -- about other claims that  
14 weren't subject to the arbitration.

15 MR. OLSEN: And this is why we need fees, Your Honor. I  
16 mean, we're winning the battle and losing the financial war here.

17 THE COURT: I understand what you're saying and I am  
18 sympathetic to the fees issue. So.

19 All right. You got two weeks, we'll -- and so I'll give you two  
20 weeks to file anything. Additionally, you want to file as to your Motion for  
21 Summary Judgment and for attorney's fees.

22 MR. OLSEN: Okay.

23 THE COURT: You have two weeks after that to respond. I  
24 don't think you need a Reply, but do you want a Reply?

25 MR. OLSEN: I won't.

1 THE COURT: All right.

2 THE CLERK: Do you want a Reply?

3 THE COURT: He said no.

4 MR. OLSEN: I do not want a Reply.

5 THE COURT: All right. So do two, two, and then set this for a  
6 hearing a week after.

7 THE CLERK: Okay. So Mr. Olsen to supplement by  
8 September 5<sup>th</sup>.

9 MR. OLSEN: Okay.

10 THE CLERK: Mr. Kennedy to file by September 19<sup>th</sup>. And  
11 we'll have a hearing September 26<sup>th</sup> at 10:30.

12 MR. OLSEN: I'm out of town on the 26<sup>th</sup>, could we do it --

13 THE CLERK: Okay.

14 MR. OLSEN: -- a week later than that?

15 THE CLERK: It'll have to go two weeks.

16 MR. OLSEN: Is that okay with you, Todd?

17 THE CLERK: Go to September 10<sup>th</sup>.

18 MR. OLSEN: Okay. Thank you.

19 THE CLERK: I mean -- I'm sorry, October 10<sup>th</sup>.

20 MR. OLSEN: Okay. Yep --

21 THE CLERK: At 8:30.

22 MR. OLSEN: -- October 10<sup>th</sup>.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you, guys.

25 Are you going to submit an order on the --

1 MR. OLSEN: I will. I'll submit an order on the confirmation of  
2 the arbitration award and the scheduling order basically.

3 THE COURT: Okay. Very good.

4 MR. OLSEN: I'll run it by Counsel.

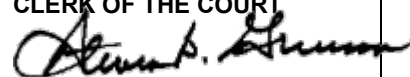
5 [Proceeding concluded at 11:15 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

24   
25 Brittany Mangelson  
Independent Transcriber



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CLARK COUNTY, NEVADA**BETTY CHAN and ASIAN AMERICAN  
REALTY & PROPERTY MANAGEMENT,

Plaintiffs/Counterdefendants,

v.

WAYNE WU, JUDITH SULLIVAN,  
NEVADA REAL ESTATE CORP., JERRIN  
CHIU, KB HOME SALES – NEVADA INC.,

Defendants/Counterclaimants.

Case No: A-16-744109-C

Dept. No: ~~XII~~ XX**FIRST SUPPLEMENT TO  
COUNTERMOTION TO  
RECOGNIZE WU AS THE  
PROCURING CAUSE, FOR  
SUMMARY JUDGMENT, AND  
FOR ATTORNEY FEES**

COMES NOW, Defendants and Counterclaimants, WAYNE WU (“Wu”), JUDITH SULLIVAN (“Sullivan”), NEVADA REAL ESTATE CORP. (“NREC”) and JERRIN CHIU (“Chiu”) (collectively “Counterclaimants”), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, submit their *First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees* and state as follows:

///

## **BACKGROUND**

This matter came on for hearing on August 22, 2018 regarding Betty Chan's *Motion to Vacate or Modify Arbitration Award* and Counterclaimants' opposition and countermotion. The Court denied Chan's motion, and took the Counterclaimants' countermotion under advisement after requesting additional briefing be provided regarding the same.

With the Court's confirmation of the arbitration award by way of the August 22, 2018 hearing on this matter and corresponding order, the underlying dispute, dispositive as to all claims, has been resolved. Accordingly, the case may be summarily adjudicated.

Moreover, Counterclaimants should be awarded fees and expenses that they have been forced to incur unnecessarily as a result of Chan's improper filings before this Court. These fees include those improperly incurred in this matter when it was launched before arbitration, as well as fees incurred since the award was entered.

## **LEGAL ANALYSIS**

### **I. SUMMARY JUDGMENT IS APPROPRIATE AT THIS TIME**

This entire dispute has revolved around commission funds related to the sale of real property located at 477 Cabral Peak Street, Las Vegas, Nevada 89138. This property was purchased by Dr. Chiu on January 8, 2016, over two and a half years ago. After the purchase, it became clear that Counterdefendants were intent on preventing disbursement of \$13,795.32 in commission proceeds held by the title company. Faced with Counterdefendants' delays and incessant challenges, the title company determined it would hold all commissions pending the outcome of arbitration or court ruling. Following Counterdefendants successful outcome in arbitration before the GLVAR, and pursuant to instructions by all parties, the title company turned the commission proceeds over to the GLVAR for safekeeping and disbursement. And through the Arbitration Award, confirmed by this Court, the GLVAR provided clear instructions

1 regarding treatment of the commission proceeds: \$10,346.49 (75%) is to be paid to Wu, while  
2 only \$3,448.83 (25%) is to be paid to Chan.

3 A party is entitled to summary judgment when there are no genuine issues of material  
4 fact in dispute and the moving party is entitled to summary judgment as a matter of law.<sup>1</sup> A  
5 factual dispute is “genuine” when the evidence is such that a rational trier of fact could return a  
6 verdict for the nonmoving party.<sup>2</sup> Once the moving party has shown that there is no genuine  
7 dispute as to material facts, the burden shifts to the nonmoving party to set forth specific facts  
8 demonstrating the existence of a genuine issue for trial or have summary judgment entered  
9 against that party.<sup>3</sup> In meeting this burden, the nonmoving party, “is not entitled to build a case  
10 on the gossamer threads of whimsy, speculation and conjecture.”<sup>4</sup>

11 “This court’s duty is not to render advisory opinions but, rather, to resolve actual  
12 controversies by an enforceable judgment.”<sup>5</sup> A matter that has become moot must not continue to  
13 be litigated as it is no longer justiciable. “Thus, a controversy must be present through all stages  
14 of the proceeding, and even though a case may present a live controversy at its beginning,  
15 subsequent events may render the case moot.”<sup>6</sup>

16 “The general rule of issue preclusion is that if an issue of fact or law was actually  
17 litigated and determined by a valid and final judgment, the determination is conclusive in a  
18 subsequent action between the parties.”<sup>7</sup> Moreover, where a claim against a party has been  
19  
20

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21 <sup>1</sup> NRCP 56.

22 <sup>2</sup> See also NRCP 56.

23 <sup>3</sup> NGA #2, LLC v. Rains, 113 Nev. 1151, 1156, 946 P.2d 163, 166 (1997).

24 <sup>4</sup> Collins v. Union Federal Savings and Loan Association, 99 Nev. 284, 302, 662 P.2d 610, 621  
(1983) (citations omitted).

25 <sup>5</sup> Personhood Nevada v. Bristol, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).

<sup>6</sup> Personhood Nevada, 126 Nev. at 602, 245 P.3d at 574.

<sup>7</sup> LaForge v. Nevada, 116 Nev. 415, 420, 997 P.2d 130, 133, (2000) quoting Executive Management Ltd. v. Ticor Title Insurance Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998).

1 decided, the doctrine of claim preclusion prevents the party from continuing litigation related to  
2 that claim, including on grounds “that could have been asserted” previously.<sup>8</sup>

3 When a motion to vacate, modify, or correct an arbitration award is unsuccessful, “the court shall  
4 confirm the award.”<sup>9</sup> In the present matter, the Court has denied Counterdefendants’ attempts to  
5 avoid the ultimate decision and associated implications of the Arbitration Award. Continued  
6 litigation of this matter can only attempt to render an advisory opinion on moot issues as there is  
7 no material factual issue that is not conclusively resolved by virtue of the Arbitration Award.  
8 Thus, this matter should be summarily adjudicated.

9 The Complaint in this matter purports to allege three causes of action: declaratory relief,  
10 breach of contract, and unjust enrichment.

11 As to declaratory relief, the Complaint seeks specific relief, adjudication of which is  
12 controlled by the Arbitration Award. Specifically, Counterdefendants seek

- 13 1) “a declaration from the Court that Plaintiffs are entitled to the commission on the sale of  
the Property”;
- 14 2) “a declaration from the court that Defendants Wu, Sullivan and Nevada Real Estate Corp.  
are not entitled to the commission on the sale of the Property”;
- 15 3) “a declaration from the court that Defendant KB Homes breached its obligation to pay the  
commission to Plaintiffs”; and
- 16 4) “a declaration from the court that the commission be released from the title company to  
Plaintiffs and any shortfall be paid by Defendants.”<sup>10</sup>

17 Yet each of these claims related to the \$13,795.32 commission have already been  
18 conclusively resolved by way of the Arbitration Award. There is no question of material fact  
19 remaining to prevent adjudication of this cause of action, which must be summarily adjudicated  
20 by deferring to enforcement of the Award. These issues are resolved by the finding that  
21 \$10,346.49 (75%) is to be paid to Wu, while only \$3,448.83 (25%) is to be paid to Chan.

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24 <sup>8</sup> Executive Management Ltd., 114 Nev. at 835, 963 P.2d at 473.

25 <sup>9</sup> NRS 38.242(2); see also NRS 38.241(4).

<sup>10</sup> Complaint, ¶¶ 52–55.

1 In their second purported cause of action, alleging breach of contract, the  
2 Counterdefendants claim that “KB Homes failed to pay Plaintiffs the commission for the sale of  
3 the Property” and that accordingly “KB Homes breached its obligation to pay a commission to  
4 Plaintiffs.”<sup>11</sup> Notwithstanding, the Arbitration Award already determined proper distribution of  
5 the commission funds, the majority of which are to be transferred to Counterclaimants, not  
6 Counterdefendants. Of course, neither KB Homes nor the title company could know that the  
7 Arbitration Award would ultimately dictate that \$10,346.49 (75%) of commission proceeds be  
8 paid to Wu, with only the remaining \$3,448.83 (25%) to be to Chan. Yet KB Homes properly  
9 placed the commission funds in escrow with the title company,<sup>12</sup> and the title company (**not a**  
10 **party to this litigation**) properly transferred the disputed funds to the GLVAR after the  
11 Arbitration Award was issued. Based on the Arbitration Award and delivery of the funds to the  
12 GLVAR—similar to interpleading funds with the Court pursuant to NRCP 67—there is no  
13 question of material fact as to Counterdefendants’ second cause of action, which must be  
14 summarily adjudicated in favor of Counterclaimants.

15 It should also be noted that the entirety of Plaintiff’s claim for breach of contract against  
16 KB Homes is based upon Plaintiff’s assertion that she had in her possession a copy of a  
17 registration card that had been submitted to KB Homes. Plaintiff has now admitted during  
18 arbitration that she has no such document and that KB Homes was unable to locate any such  
19 document. In fact during testimony at arbitration Plaintiff testified that she left the card on a  
20 table with other documents and did NOT provide it directly to a KB Homes representative.

21 Plaintiff has no claim for breach of contract with any of the other defendants.  
22  
23

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24 <sup>11</sup> Complaint, at ¶¶63–64.

25 <sup>12</sup> Complaint, at ¶ 42 (“Upon information and belief, the commission is held with First American Title Company.”); see also Complaint, at ¶ 55 (seeking “the commission be released **from the title company** to Plaintiffs”).

1 In their third and final cause of action for unjust enrichment, the Counterdefendants assert  
2 that “Plaintiff Chan did not receive a commission despite being the procuring cause of the sale of  
3 the Property to Defendant Chiu,” and argues that “Defendant Wu’s receipt of any commission  
4 would be unjust.”<sup>13</sup> But Counterdefendants clearly were not the predominating or procuring  
5 cause, as conclusively demonstrated by the Arbitration Award conferring seventy-five percent  
6 (75%) of the commission to Mr. Wu. The GLVAR arbitration panel was enabled to take into  
7 account equitable considerations and split the Award to the extent equitable considerations  
8 justified the same.<sup>14</sup> The arbitration panel did so, and its findings in the Arbitration Award have  
9 been confirmed by this Court. Summary judgment should be entered as to the claim of unjust  
10 enrichment, as no material fact (including equitable considerations) remains as to entitlement to  
11 the commission proceeds. After a review of all matters presented to the arbitration panel—  
12 including equitable considerations—the GLVAR awarded \$10,346.49 (75%) of commission  
13 proceeds to Wu, with only \$3,448.83 (25%) to be paid to Chan.

14 Counterdefendants have indicated that they want to prolong litigation even further by  
15 seeking discovery pursuant to NRCP 56(f) if the Court determines there are no factual issues  
16 precluding discovery.<sup>15</sup> Although the Court may postpone adjudication of a motion for summary  
17 judgment by exercising some discretion to grant additional time for discovery, said discretion is  
18 not limitless.<sup>16</sup>

19 Rule 56(f) is not a shield that can be raised to block a motion for summary judgment  
20 without even the slightest showing by the opposing party that his opposition is meritorious.  
21 A party invoking its protections must do so in good faith **by affirmatively demonstrating**

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22 <sup>13</sup> Complaint, at ¶¶ 72–73.

23 <sup>14</sup> *Code of Ethics and Arbitration Manual*, Appendix II to Part Ten: Arbitration Guidelines  
(Suggested Factors for Consideration by a Hearing Panel in Arbitration), at 158; Moncharsh v.  
Heily & Blase, 3 Cal. 4th 1, 10–11, 832 P.2d 899, 903–04 (1992) (noting that arbitrators “may  
24 base their decision upon broad principles of justice and equity”).

25 <sup>15</sup> See Reply in Support of Motion to Vacate or Modify Arbitration Award and  
Opposition/Motion to Strike Improper Countermotion, at 14:7–10.

<sup>16</sup> See NRCP 56(f) (requiring that party describe in an affidavit the “facts essential to justify the  
party’s opposition” which are unavailable to it pending discovery).

1 why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and  
2 how postponement of a ruling on the motion will enable him, by discovery or other  
3 means, to rebut the movant's showing of the absence of a genuine issue of fact. Where,  
as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a  
motion for summary judgment is unjustified.<sup>17</sup>

4 "[A] motion for a continuance under NRCP 56(f) is appropriate only when the movant  
5 expresses how further discovery will lead to the creation of a genuine issue of material fact."<sup>18</sup> A  
6 review of Counterdefendants' rant attempting to leave this matter open reveals nothing more  
7 than the same type of vitriol against Counterclaimants already presented to the GLVAR.  
8 However, discovery related to these baseless accusations cannot prevent summary judgment: the  
9 GLVAR arbitration panel weighed all the allegations and determined the appropriate Award.

10 Counterdefendants advance three causes of action. But the remedy for each inevitably  
11 relates to Counterdefendants' ability to successfully claim the \$13,795.32 of commission  
12 proceeds. Because the Arbitration Award has been confirmed by the Court, Counterdefendants'  
13 cannot prevail in such an endeavor under any of their causes of action, and summary judgment  
14 should be entered.

## 15 II. COUNTERCLAIMANTS SHOULD BE AWARDED FEES AND COSTS

16 Counterclaimants were forced to incur fees and expenses to prepare and file an *Answer*  
17 *and Counterclaim* when Counterdefendants improperly initiated this action. Counterclaimants  
18 incurred these and additional fees demonstrating that Chan had neglected her duty as a Realtor to  
19 seek arbitration of her purported claims from the onset. As late as May 1, 2017 months after  
20 filing their *Opposition to Motion to Stay Pending Arbitration and Countermotion to Dismiss with*

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23 <sup>17</sup> Bakerink v. Orthopedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978) (citation  
omitted).

24 <sup>18</sup> Francis v. Wynn Las Vegas, LLC, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011) (citation  
omitted) (emphasis added).



1 *Prejudice or in the Alternative for Summary Judgment* Counterclaimants still had no word of any  
2 arbitration action being taken by Chan.<sup>19</sup>

3 Defendants/Counterclaimants must be awarded their costs in this matter. In certain cases,  
4 the prevailing party must be awarded his costs, including any “reasonable and necessary expense  
5 incurred in connection with the action.”<sup>20</sup>

6 **Cases in which costs allowed prevailing party.** Costs must be allowed of course to the  
7 prevailing party against any adverse party against whom judgment is rendered, in the  
8 following cases:

9 . . .

10 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover  
11 more than \$2,500.<sup>21</sup>

12 In other words, when a party seeking more than \$2,500.00 in damages prevails, “an  
13 award of costs under NRS 18.020(3) [is] mandatory.”<sup>22</sup> Interest is awarded on the costs incurred  
14 by the prevailing party.<sup>23</sup>

15 Counterclaimants sought and ultimately obtained more than \$2,500.00 in damages,  
16 despite Counterdefendants’ attempt to prevent them from receiving the commission. Indeed, they  
17 were awarded seventy-five percent (75%) of the Arbitration Award. Accordingly, they must be  
18 awarded their costs in this matter.

19 Counterclaimants request that the Court award their attorney fees related to this litigation.  
20 The Court is vested with statutory authority to award attorney fees to a prevailing party “When  
21 the prevailing party has not recovered more than \$20,000.”<sup>24</sup> Thus, any party obtaining a  
22 judgment of \$20,000.00 or less can be awarded all his attorney fees.

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23 <sup>19</sup> **Exhibit “A”.**

24 <sup>20</sup> NRS 18.005(17).

25 <sup>21</sup> NRS 18.020(3).

<sup>22</sup> U.S. Design and Construction Corp. v. International Brotherhood of Electrical Workers, Local 357, 118 Nev. 458, 463, 50P.3d 170, 173 (2002).

<sup>23</sup> Gibellini v. Klindt, 110 Nev. 1201, 885 P.2d 540 (1994).

<sup>24</sup> NRS 18.010(2)(a).

EDCR 7.60(b) allows the Court to “impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause” “[p]resents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted” or “[s]o multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.”<sup>25</sup>

Honestly from day one i met you my focus is not the commission, i felt insulted and humiliated, another agent dared challenge me and he really do not know who I am. I have been really sad more than i am angry. Last night i read many court cases. Even though my card has disappeared, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen i do have few hundred thousand in hand that i can use. If they are willing to go along with me to spend equal amount of money, then I will be very happy to play their game. I got my direction last nite, so i felt peaceful now. All i need KB to understand I don't hate kb for this, and i need them to work with me on my plan. Jana, i dont blame you either and take care of yourself.<sup>26</sup>

Moreover, in the Agreement to Arbitrate Chan explicitly agreed that “In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, I agree to pay that party costs and reasonable attorney's fees incurred obtaining such confirmation and enforcement.”<sup>27</sup> Although Counterclaimants have attempted to discredit the applicability of this provision, the necessity of the present briefing to preempt continued challenges to the relief provided to Counterclaimants by the Arbitration Award demonstrates that the provision applies. In fact common sense dictates that this is EXACTLY the type of scenario where the award of attorney's fees must apply. It was NOT incumbent on Counterclaimants to have to seek confirmation of the arbitration award. Ms. Chan could simply have agreed to abide by the binding arbitration award and instructed GLVAR to distribute the commission as dictated by the award. No Court intervention was necessary. However, instead of doing that Ms. Chan elected to proceed with her declared intent

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<sup>25</sup> EDCR 7.60(b)(1), (3).

<sup>26</sup> Exhibit “C”.

<sup>27</sup> Exhibit “B”, P0001, ¶ 5 (emphasis added).

1 to waste tens of thousands of dollars in litigation costs, because, after all, this is not about the  
2 commission, but rather about the fact that another real estate agent dared to represent a client she  
3 had neglected.

4 Counsel for Counterclaimants has invested considerable time to defend against  
5 Counterdefendants' allegations and prosecute Counterclaimants claims in order to obtain a  
6 favorable judgment. The attorney fees award should reflect the extensive work performed by  
7 Counterclaimants' counsel.

8 "[I]n determining the amount of fees to award, the court is not limited to one specific  
9 approach; its analysis may begin with any method rationally designed to calculate a reasonable  
10 amount, including those based on a 'lodestar' amount or a contingency fee."<sup>28</sup> "The lodestar  
11 approach involves multiplying 'the number of hours reasonably spent on the case by a reasonable  
12 hourly rate.'"<sup>29</sup> Reasonable hourly rates for purposes of a lodestar calculation in Nevada include  
13 \$425.00-\$475.00 for partners, \$250.00-\$325.00 for associates, and \$100.00 for paralegals.<sup>30</sup>

14 In Scott v. Zhou, a tortfeasor appealed a \$10,000.00 attorney fee award to the plaintiff.<sup>31</sup>  
15 The plaintiff had retained counsel on a contingency fee basis and obtained a jury verdict  
16 awarding \$4,215.00 based on damages caused by the tortfeasor. The attorney fee award was  
17 affirmed.

18 The court considered that [plaintiff]'s case was handled on a contingency fee basis;  
19 [plaintiff]'s attorney normally charges \$200 per hour for non-contingent fee matters, which  
20 the district court found to be reasonable. The court further considered that [plaintiff]'s  
21 counsel estimated that he had expended 75 hours from preparation through the jury trial,  
22 which the district court also concluded was reasonable, considering the nature of the case  
23 and the difficulties associated with [it] . . . .<sup>32</sup>

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23 <sup>28</sup> Shuette v. Beazer Homes Holding Corp., 121 Nev. 837, 864, 124 P.3d 530 (2005).

24 <sup>29</sup> Shuette, 121 Nev. at 864 n.98.

25 <sup>30</sup> Plaza Bank v. Alan Green Family Trust, 2013 U.S. Dist. LEXIS 58657, at \*4, 2013 WL 1759580 (D. Nev. 2013).

<sup>31</sup> Scott v. Zhou, 120 Nev. 571, 572, 98 P.3d 313, 313 (2004).

<sup>32</sup> Scott, 120 Nev. at 574.

Thus, a court exercising its discretion to award an attorney fee considers numerous factors, including the amount of time the prevailing party's attorneys had to invest in the case, and the normal hourly rate charged by the prevailing party's attorneys.<sup>33</sup>

Counterclaimants initially failed to submit this matter to binding arbitration, preferring instead to launch the present litigation. And after the arbitration award was finalized, Counterclaimants have preferred to drive up costs by attempting to continue litigating issues that have already been finally determined or rendered moot. All to satisfy promised vindictive behavior.

Chan's vindictive attitude has resulted in significantly increased time required to prosecute Counterclaimants' allegations and defend against Counterdefendants' spurious contentions. Counsel's redacted time entries for this case reflect the following amounts of time spent to prosecute this matter, which should be compensated by an award against Counterclaimants.<sup>34</sup>

POSITION AT FIRM	HOURS (through August 2018)	REASONABLE RATE <sup>35</sup>	TOTAL
Partner	65	\$450.00	\$29,250.00
Associate	62.8	\$250.00	\$15,700.00
Law Clerk	22.8	\$150.00	\$3,420.00
Paralegal/Legal Assistant	4.5	\$100.00	\$450.00

<sup>33</sup> Scott, 120 Nev. at 574.

<sup>34</sup> **Exhibit "D"**. Michael A. Olsen, Esq. is a founding partner of Goodsell & Olsen, LLP. Roman C. Harper, Esq. is an associate at Goodsell & Olsen. Julian Campbell worked on this matter as a paralegal. Former employee worked on this matter, including Daniel R. Ormsby, Esq. as a law clerk, and Laura Myers as a paralegal.

<sup>35</sup> Plaza Bank v. Alan Green Family Trust, 2013 U.S. Dist. LEXIS 58657, at \*4, 2013 WL 1759580 (D. Nev. 2013).

TOTAL HOURS: 155.1

TOTAL FEES: \$48,820.00

As reflected in the attached time entries, Counterclaimants' counsel has expended reasonable amounts of time to ensure a favorable judgment in this matter given its complexity and Counterdefendants' conduct. Through the efforts of Counterclaimants' counsel, this matter ultimately proceeded to arbitration, which resulted in an Award in their favor that has now been confirmed. The time needed to successfully prosecute Counterclaimants' claims was increased due to Counterdefendants' litigious nature.

Counsel for Counterdefendants continues to invest reasonable amounts of time in this matter in furtherance of post-judgment motion practice (including preparation of the present supplement) and to secure fulfillment of the Arbitration Award. Based on the time already invested in this matter, charged at reasonable rates, a \$48,820.00 attorney fee award is appropriate.

The fees incurred before this Court have been completely unnecessary. Chan, as a Realtor, should have never initiated this matter on September 27, 2016 because she had not taken any effort to comply with her obligation as a Realtor to submit to binding arbitration before the GLVAR. Yet Chan did indeed launch a lawsuit in an attempt to avoid arbitration. After Counterclaimants incurred nearly **80 hours** for legal services before the District Court, Chan finally submitted a claim for arbitration.

Arbitration presumably finalized this matter by way of the conclusive Arbitration Award, especially since Chan spurned her opportunity to present a procedural challenge of the Award to the GLVAR. Notwithstanding, Counterdefendants not only challenged the Arbitration Award before this Court without meeting their burden of proof, they also now insist that they must be allowed to continue litigating issues that have already been conclusively determined.

Counterclaimants should be awarded their attorney fees incurred after the Arbitration Award was

1 entered, which already consists of 75.4 hours of legal services and will surpass 80 hours by the  
2 time of the hearing.

3 None of the time set forth above was incurred in preparing for or attending the arbitration  
4 but is solely related to this instant litigation. The time was spent reviewing the complaint filed by  
5 Chan and preparing an answer, negotiating with different attorneys (Chan has had three) on  
6 numerous occasions in an attempt to reach a settlement, and engaging in motion practice related  
7 to the complaint. Moreover, since the arbitration award was entered, time for legal services has  
8 been expended as counsel has been required to enforce the Arbitration Award, which Chan  
9 continues to disregard.

### 10 CONCLUSION

11 The Award properly disposed of the underlying issues in this matter in accordance with  
12 the Arbitration Manual and the Agreement to Arbitrate submitted by Chan to the GLVAR. In  
13 doing so, any factual issue in this matter was conclusively resolved, making summary judgment  
14 appropriate at this time. Counterdefendants should be ordered to pay the fees, unnecessarily  
15 caused by them, and which Chan also agreed to pay by way of the Agreement to Arbitrate.

16 WHEREFORE, Counterclaimants request the following relief:

- 17 1. That this Court enter an Order Granting Summary Judgment;
- 18 2. That this Court award Defendants the fees and costs they have been forced  
19 to incur by Chan; and
- 20 3. For such other and further relief as the Court deems just and proper.

21 DATED this 5th day of SEPTEMBER 2018.

23 /s/ Roman C. Harper, Esq.  
MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6076  
24 ROMAN C. HARPER, ESQ.  
Nevada Bar No. 14374  
25 **GOODSELL & OLSEN, LLP**

## **EXHIBIT “A”**



**REGISTER OF ACTIONS****CASE No. A-16-744109-C****Betty Chan, Plaintiff(s) vs. Wayne Wu, Defendant(s)**§  
§  
§  
§  
§  
§  
§Case Type: **Other Contract**Date Filed: **09/27/2016**Location: **Department 20**Cross-Reference Case Number: **A744109**

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**PARTY INFORMATION**

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<b>Counter Claimant</b>	<b>Chiu, Jerin</b>	<b>Lead Attorneys</b> <b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Counter Claimant</b>	<b>Nevada Real Estate Corp</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Counter Claimant</b>	<b>Sullivan, Judith</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Counter Claimant</b>	<b>Wu, Wayne</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Counter Defendant</b>	<b>Chan, Betty</b>	<b>Todd E. Kennedy</b> <i>Retained</i> 702-605-3440(W)
<b>Defendant</b>	<b>Chiu, Jerin</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Defendant</b>	<b>KB Home Sales-Nevada Inc</b>	<b>Janice M Michaels</b> <i>Retained</i> 702-251-4100(W)
<b>Defendant</b>	<b>Nevada Real Estate Corp</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Defendant</b>	<b>Sullivan, Judith</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Defendant</b>	<b>Wu, Wayne</b>	<b>Michael A. Olsen</b> <i>Retained</i> 7028696261(W)
<b>Plaintiff</b>	<b>Asian American Realty &amp; Property Management</b>	<b>Todd E. Kennedy</b> <i>Retained</i> 702-605-3440(W)
<b>Plaintiff</b>	<b>Chan, Betty</b>	<b>Todd E. Kennedy</b> <i>Retained</i> 702-605-3440(W)

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**EVENTS & ORDERS OF THE COURT**

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05/01/2017 | [Status Check](#) (8:30 AM) (Judicial Officer Leavitt, Michelle)**3 Appx 000663**

*Status Check: New Counsel For Plaintiffs*

**Minutes**

05/01/2017 8:30 AM

- Mr. Kennedy advised he did not file a notice yet, however, he is confirming as counsel for Plaintiffs today. Mr. Olsen advised this case was stayed, however, arbitration proceedings have not happened yet. Court stated that is up to Plaintiff. Court advised defense counsel if Plaintiff does not proceed, a motion to stay may be filed. COURT ORDERED, matter OFF CALENDAR.

[Parties Present](#)

[Return to Register of Actions](#)

## **EXHIBIT “B”**

Greater Las Vegas Association of REALTORS®  
1750 E. Sahara AV., Las Vegas, NV 89104  
(702) 784-5052

REQUEST AND AGREEMENT TO ARBITRATE (MEMBER)  
**PAGES 2, 3, 4 AND 5 MUST BE COMPLETED, SIGNED AND SUBMITTED  
WITH A SUMMARY AND SUPPORTING DOCUMENTS  
OR YOUR COMPLAINT WILL BE RETURNED TO YOU.**

DATE: 11/9/2016

CASE NUMBER: 1620/A (assigned by GLVAR@staff)

1. The undersigned, by becoming and remaining a member of the Greater Las Vegas Association of REALTORS®, (or participate in its MLS), has previously consented to arbitration through the Association under its Rules and regulations.
2. Each person named below is a member in good standing of the Association or was a member at the time the dispute arose.
3. A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons and/or firms you wish to name as respondents to this arbitration):\*

**PLEASE NAME RESPONDENTS:**

Judith Sullivan, Principal Broker of Nevada Real Estate Corp. Company  
Wayne Wu, Agent of Nevada Real Estate Corp. Company

(Note: Arbitration is generally conducted between REALTORS® (principals) or between firms comprised of REALTOR® principals.)

4. There is due, unpaid, and owing to me (or I retain) from the above named person(s) the sum of \$ 13,795.32. My claim is predicated upon the statement attached, marked Exhibit "1", and supporting documents which are incorporated by reference into this application. DO NOT STAPLE your packet - turn in original complaint form and copies of supporting documents.  
disputed funds are held by First American Title: Escrow No. 112-24908656

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

5. I request and consent to arbitration through the Association in accordance with the *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the award and it is necessary for any party to obtain judicial confirmation and enforcement of the award against me, I agree to pay that party costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

11/9/16  
gk  
1-1

6. I have enclosed my check in the sum of \$500.00 for the arbitration filing deposit of commissions of \$501.00 and above. I have enclosed my check in the sum of \$100.00 for the arbitration filing deposit of commissions \$500.00 and below which I understand is refundable to the prevailing party or if arbitration does not take place.
7. I understand that I may be represented by counsel and that I must provide written notice no less than (15) fifteen days before the hearing of the name, address and phone number of my attorney to all parties and the Association. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party (ies) require representation.

All parties appearing at a hearing may be called as a witness without advance notice.

Notice of witnesses and legal and/or REALTOR® Counsel must be submitted at least 15 days prior to the hearing date. Each party shall arrange for his witnesses to be present at the time and place designates for the hearing. The following REALTOR® non-principal (or REALTOR-ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and has the right to be present throughout the hearing:

8. I declare this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been in the exercise of reasonable diligence, whichever is later.
9. If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.
10. Are the circumstances giving rise to this arbitration request the subject of civil litigation? ☒ Yes ☐ No
11. Important note related to arbitration conducted pursuant to Standards of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standards of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.
12. Address of the property in the transaction given rise to this arbitration request  
477 Cabral Peak Street, Las Vegas, NV89138
13. The sale/lease closed on: May 27 2016

Agreements to arbitrate are irrevocable except as otherwise provided under state law.

By submission of this complaint and / or response, I consent to receive communications sent from the Greater Las Vegas Association of REALTORS® via U.S. Mail, e-mail telephone or facsimile at the numbers and locations noted by you on this form. This permission includes all future U.S. mailing address, e-mail, telephone, which I might supply to the Greater Las Vegas Association of REALTORS®. Permission continues until / unless specifically revoked, in writing, to the Greater Las Vegas Association of REALTORS®.

Signature (Broker): Betty Chan  
Broker's Name (print): Betty Chan  
Company: Asian American Realty & Property Management  
Address: 4651 Spring Mountain Road, Las Vegas, NV 89102

Signature (Agent): Betty Chan  
Agent's Name (print): Betty Chan  
Company: Asian American Realty & Property Management  
Address: 4651 Spring Mountain Road, Las Vegas, NV 89102

Telephone: (702 ) 222-0078

Telephone: (702 ) 222-0078

NOTE: This Association offers voluntary mediation, binding only if parties reach a written, signed settlement.

Rev 2/5/16 JK

Greater Las Vegas Association of REALTORS®  
1750 E. Sahara AV., Las Vegas, NV 89104  
Phone Number (702) 784-5052

**DESIGNATION OF LEGAL COUNSEL  
(ARBITRATION)**

DATE: 11/9/2016

CASE NUMBER: \_\_\_\_\_

COMPLAINANT(S):

RESPONDENT(S):

Betty Chan

v.

Judith Sullivan

Wayne Wu

☐ I do not wish to designate counsel at this time

**OR**

☐ I, Betty Chan, do hereby designate the following LEGAL counsel\* for representation in all aspects of these proceedings:

Attorney Name: Avece M Higbee

Firm Name: Marquis Aurbach Coffing

Address: 10001 Park Run Drive, Las Vegas, NV 89145

Phone: ( 702 ) 942-2194

The Greater Las Vegas Association of REALTORS® is requested to send copies of any and all notices and other documents pertaining to this case to the above attorney and the undersigned does hereby designate the attorney as his/her agent and spokesman in these proceedings.

Date: 11/9/2016

Betty Chan  
Signature of Broker

Betty Chan

Name (please print)

Asian American Realty & Property Management  
Company

\*REALTOR® counsel (a fellow REALTOR® who may offer guidance or advice) may be used in ethics hearings only, not in arbitration hearings.

Exhibit 12



Greater Las Vegas Association of REALTORS®  
 1750 E. Sahara Ave., Las Vegas, NV 89104  
 702-784-5052

Case# \_\_\_\_\_

### Notice of Right to Challenge Hearing Panel Members

Notice is given herewith to parties in the matter of:

Betty Chan

vs. Judith Sullivan/Wayne Wu

an arbitration proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualification of any of the individuals listed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or copy of same with a letter the Professional Standards explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 27 Qualification for Tribunal, challenges must be filed with the Board within fifteen (15) days from the date the list of names is mailed.

See names crossed out below

Challenge: ☒ Yes ☐ No

Challenge: ☐ Yes ☐ No

Challenge: ☐ Yes ☐ No

~~Roger Stein~~  
~~Jean Kaptz~~  
 Nancy Anderson  
~~Tod Barton~~  
 Honey Borla  
~~Kathryn Bovard~~  
~~Damon Caldwell~~  
~~Teresa Chapman~~  
 Elaine Christensen  
~~Lisa Cobb~~  
~~Rosilyn Cobb~~  
 Walt Coffey  
 Peggy Cook  
 Chuck Doty  
 Ross Fabrizio  
 Mina Farah  
~~Deirdre Felgar~~  
~~Richard Foster~~  
~~Britney Gaitan~~  
~~Lonnie Garvin~~  
~~Jede Gavish~~

Danny Gennette  
~~Ernest Gonzales~~  
~~Vince Haakett~~  
~~Tina Helberg~~  
~~Jennie Helder~~  
~~Barbara Holland~~  
~~Eric Humes~~  
 Jean Sharon Jones  
 Melissa Jones  
 Keith Kelley  
 Myrna Kingham  
 Donald Lainer  
~~Patrick Leibovici~~  
~~Charles Martin~~  
~~Patrick Martino~~  
 Ashley McCormick  
 JC Melvin  
 Eric Mendoza  
 Todd Miller  
 Michele Mittenmiller  
~~Eafie Moore~~

Jackie Porter  
 Douglas Proudfit  
~~Ben Ramirez~~  
~~Di Redman Wolfgram~~  
~~Michael Reiss~~  
~~Linda Rheinberger~~  
 Bradford Roberts  
 Louise Rozich  
 Donna A. Ruthe  
 Sandra Salsbury  
 Ronnie Schwartz  
~~Carol Sovers~~  
~~Tim Shaw~~  
 Peggy Simon  
 Susan Sippel  
~~Nora Slagle~~  
~~Linda Stegall~~  
~~Jona Sterlacci~~  
 Robert Sweeney  
 David Tina Sr.  
 Melissa Towbin

Linda Turman  
 Tom Uribe  
 Susann Weisse  
 Erin Young  
 BOD-Appeal Purposes  
 Jillian Batchelor  
~~Scott Beaudry~~  
~~Vandana Bhalla~~  
 Chris Bishop  
~~Tom Blanchard~~  
 Janet Carpenter  
~~Soozi Jones Walker~~  
 Kolleen Kelley  
~~Omar Lopez~~  
 Keith Lynam  
~~Aldo Martinez~~  
 Georgia Purpura  
 Torres Ramey  
 Brandon Roberts  
 Krystal Sherry  
 Mark Sivek  
 David Tina Jr.

*Request 10 years or more experience*

OR

I have no challenges:

(Print Name)

(Signature)

I have no challenges:

## **EXHIBIT “C”**

6/29/2016

Gmail - (no subject)



Betty Chan <aaroffer@gmail.com>

---

(no subject)

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7025951268@mms.att.net <7025951268@mms.att.net>

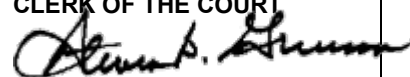
Fri, Feb 5, 2016 at 6:01 PM

To: aaroffer@gmail.com

Honestly from day one i met you my focus is not on the commission, i felt insulted and humiliated, another agent dared challenge me and he really do not know who i am. I have been really sad more than i am angry. Last night i read many court cases. Even though my card was disappeared, it wont hurt me winning. I liked to teach them a lesson. Life is not about money. So happen i do have few hundred thousand in hand that i can use. If they are willing to go along with me to spend equal amount of money, then i will be very happy to play their game. I got my direction last nite, so i felt peaceful now. All i need KB to understand I dont hate KB for this, and i need them to work with me on my plan. Jana, i dont blame you either and take care of yourself.

9-8  
1-9  
1/1

## **EXHIBIT “D”**



**SUPP**  
MICHAEL A. OLSEN, ESQ.  
Nevada Bar No. 6076  
ROMAN C. HARPER, ESQ.  
Nevada Bar No. 14374  
**Goodsell & Olsen, LLP**  
10155 W. Twain Ave., Suite 100  
Las Vegas, Nevada 89147  
Tel: (702) 869-6261  
Fax: (702) 869-8243  
[mike@goodsellolsen.com](mailto:mike@goodsellolsen.com)  
[roman@goodsellolsen.com](mailto:roman@goodsellolsen.com)  
*Attorneys for Defendants/Counterclaimants*  
*Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*  
*and Jerrin Chiu*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

BETTY CHAN and ASIAN AMERICAN	)	Case No: A-16-744109-C
REALTY & PROPERTY MANAGEMENT,	)	
	)	Dept. No: XII
Plaintiffs/Counterdefendants,	)	
v.	)	<b>SUPPLEMENT TO FIRST</b>
	)	<b>SUPPLEMENT TO</b>
WAYNE WU, JUDITH SULLIVAN,	)	<b>COUNTERMOTION TO</b>
NEVADA REAL ESTATE CORP., JERRIN	)	<b>RECOGNIZE WU AS THE</b>
CHIU, KB HOME SALES – NEVADA INC.,	)	<b>PROCURING CAUSE, FOR</b>
	)	<b>SUMMARY JUDGMENT, AND</b>
Defendants/Counterclaimants.	)	<b>FOR ATTORNEY FEES</b>
	)	
	)	
	)	

COME NOW, Defendants and Counterclaimants, WAYNE WU (“Wu”), JUDITH SULLIVAN (“Sullivan”), NEVADA REAL ESTATE CORP. (“NREC”) and JERRIN CHIU (“Chiu”) (collectively “Counterclaimants”), by and through their attorney, Michael A. Olsen, Esq. of the law firm Goodsell & Olsen, LLP, and submit their *Supplement to First Supplement to Countermotion to Recognize Wu as the Procuring Cause, for Summary Judgment, and for Attorney Fees* and state as follows.

1 Attached hereto as **Exhibit "D"** is the Affidavit and corresponding invoices referred to in  
2 the First Supplement to Countermotion to Recognize Wu as the Procuring Case, for Summary  
3 Judgment and for Attorney Fees.

4 The exhibit demonstrates time invested by Counterclaimants' counsel, as well as costs  
5 totaling \$796.39.

6 DATED this 12th day of SEPTEMBER 2018.

7  
8 /s/ Roman C. Harper, Esq.

MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

ROMAN C. HARPER, ESQ.

Nevada Bar No. 14374

**GOODSELL & OLSEN, LLP**

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

*Attorneys for Defendants/Counterclaimants*

*Wayne Wu, Judith Sullivan, Nevada Real Estate*

*Corp. and Jerrin Chiu*

## **EXHIBIT “D”**



## AFFIDAVIT OF MICHAEL A. OLSEN, ESQ.

State of NEVADA     )  
                                  ) ss:  
County of CLARK     )

MICHAEL A. OLSEN, ESQ., being first duly sworn, deposes and says that I have personal knowledge of and am competent to testify to the following facts:

1. I am a managing partner with the law firm of Goodsell & Olsen, LLP in Las Vegas, Nevada, and am a twenty-one year member of the State Bar of Nevada in good standing.

2. Goodsell & Olsen, LLP has represented Defendants/Counterclaimants, Wayne Wu, Judith Sullivan, Nevada Real Estate Corp. and Jerrin Chiu in Chan v. Wu, A-16-744109-C, District Court, Clark County Nevada. Defendants/Counterclaimants have incurred attorney fees and costs based on this representation.

3. The time and costs invested in this matter as shown by invoices attached as Exhibit "1" hereto were actually and necessarily incurred.

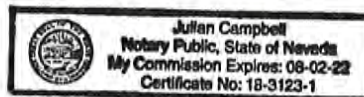
4. Given the complexities of this matter, the time required to successfully defend against Plaintiffs' claims and prosecute counterclaims in this matter was reasonable.

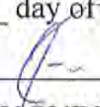
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 12<sup>th</sup> day of SEPTEMBER 2018.

  
MICHAEL A. OLSEN, ESQ.

SIGNED AND SWORN to before me  
this 15<sup>th</sup> day of SEPTEMBER 2018.



  
NOTARY PUBLIC in and for said  
County and State.

**EXHIBIT “1”**

10155 W Twain Ave, Suite 100  
Las Vegas, NV 89147 US

**GOODSELL & OLSEN**  
ATTORNEYS AT LAW

**Invoice**

**BILL TO**

Wu, Wayne et. al. adv. Chan, Betty

INVOICE #	DATE	TOTAL DUE	ENCLOSED
10598	09/10/2018		

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
06/17/2016	<b>Kimberly Gray:\$100</b> Email to Jeff Hall, Esq. requesting broker registration.	100.00	0:12	20.00
06/20/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Draft emails to opposing counsel re: missing documents and fact that our client is the broker/agent of record.	450.00	0:30	225.00
06/24/2016	<b>MICHAEL A. OLSEN, ESQ.:</b> ce with paralegal re: [REDACTED]	450.00	0:36	270.00
07/06/2016	<b>Kimberly Gray:\$100</b> Finalize demand letter to FATCO, assemble exhibits and send.	100.00	0:48	80.00
08/31/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on call with Avece Higbee, Esq. re: whether she has documents in support of her client's claim.	450.00	0:30	225.00
10/06/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Telephone calls (2) with opposing counsel re: our offer to settle case for 70/30 split of the commission.	450.00	0:36	270.00
10/13/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review offer from opposing side proposing my client gets \$3,000.00 and her \$10,000.00; counter with 60/40 for my client.	450.00	1:00	450.00
10/18/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review documents again and place multiple calls to opposing counsel in an attempt to settle the case.	450.00	0:24	180.00
10/19/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review documents again and place multiple calls to opposing counsel in an attempt to settle the case.	450.00	0:18	135.00
10/24/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and counteroffer.	450.00	0:30	225.00
10/25/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on counter offer to settle for \$5,000.00	450.00	0:18	135.00
11/03/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review counter offer and counter again at \$4,000.00.	450.00	0:30	225.00
11/04/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on status of counter offer.	450.00	0:24	180.00
11/10/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and respond to email from opposing counsel.	450.00	0:30	225.00
11/14/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and respond to email from opposing counsel.	450.00	0:36	270.00
11/15/2016	<b>ROMAN HA</b> [REDACTED] sent GLVAR packets for mediation and arbitration to MAO and LLM	250.00	1:42	425.00
11/15/2016	<b>MICHAEL A. OLSEN</b> [REDACTED] with [REDACTED]	450.00	1:48	810.00
11/16/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Last offer to settle with opposing attorney; draft emails to opposing counsel; review facts an [REDACTED] et nd Wayne Wu [REDACTED]	450.00	0:48	360.00

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
11/17/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Last offer to settle with opposing attorney; draft emails to opposing counsel; review facts and d [REDACTED] eet and Wayne Wu re: [REDACTED]	450.00	1:18	585.00
11/18/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Last offer to settle with opposing attorney; draft emails to opposing counsel; review facts and d [REDACTED] eet and Wayne Wu re: [REDACTED]	450.00	0:24	180.00
11/22/2016	<b>MICHAEL A. OLSEN, ES</b> Review email from client, [REDACTED]	450.00	0:42	315.00
11/28/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Form strategy for answering complaint.	450.00	0:30	225.00
11/28/2016	<b>MICHAEL A. OLSEN, ES</b> Review email from client [REDACTED] [REDACTED] legal re: letter to opposing counsel [REDACTED]	450.00	0:36	270.00
11/29/2016	<b>MICHAEL A. OLSEN,</b> [REDACTED]	450.00	0:36	270.00
11/30/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and send em [REDACTED] esponse [REDACTED]; review [REDACTED]	450.00	0:24	180.00
11/30/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and [REDACTED] esponse to [REDACTED]; [REDACTED] [REDACTED]	450.00	0:24	180.00
12/01/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and [REDACTED] esponse [REDACTED]; [REDACTED]	450.00	0:36	270.00
12/06/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review, re-draft and revise Answer and Counterclaim.	450.00	1:06	495.00
12/09/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on filing o [REDACTED] digital service of the same; [REDACTED]	450.00	0:24	180.00
12/12/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on email to opposing counsel re: whether his client is going to withdraw the District Court Complaint.	450.00	0:36	270.00
12/13/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and analysis of file from Title.	450.00	0:36	270.00
12/15/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and analysis of email from Higbee, Esq. indicating that her client would drop the district court case and proceed with GLVAR.	450.00	0:24	180.00
12/19/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review filing of Reply to Counterclaim.	450.00	0:24	180.00
12/19/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review filing of Reply to Counterclaim.	450.00	0:24	180.00
12/20/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on getting matter dismissed with prejudice and moving forward in arbitration.	450.00	0:30	225.00
12/29/2016	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and analysis of correspondence from Avece Higbee, Esq. re: stipulation to dismiss Civil Case; respond to the same.	450.00	0:24	180.00
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
01/02/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and respond to email from Avece High [REDACTED] p on [REDACTED] on moving forward. [REDACTED]	450.00	0:18	135.00
01/03/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> [REDACTED]	450.00	0:42	315.00
01/03/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and respond to email from Avece High [REDACTED] p on [REDACTED] on moving forward. [REDACTED]	450.00	0:12	90.00
01/04/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on status of getting Stip and Order for Dismisal from Avece; draft email re: same.	450.00	0:36	270.00

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
01/05/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review email from opposing counsel and draft response asking for status of Stip and order for Dismissal with prejudice. No response.	450.00	0:36	270.00
01/09/2017	<b>Kimberly Gray:\$100</b> Check e-file queue and download pleading to client file; Attention to calendaring	100.00	0:12	20.00
01/09/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review email from opposing counsel re: refusal to dismiss with prejudice; review email re: withdrawal and execute Stip and Order agreeing to continue 16.1 conference.	450.00	0:36	270.00
01/10/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review email from opposing counsel re: refusal to dismiss with prejudice; review email re: withdrawal and execute Stip and Order agreeing to continue 16.1 conference.	450.00	0:48	360.00
01/10/2017	<b>Kimberly Gray:\$100</b> Assist with e-filing Notice of Non-Opposition; Prepare and e-file certificate of service; Check e-file queue and download pleadings to client file; Attention to calendaring.	100.00	0:12	20.00
01/12/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on status of Avece Higbee withdrawing as counsel.	450.00	0:36	270.00
01/16/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and analysis of Motion to Stay litigation pending outcome of Arbitration.	450.00	0:36	270.00
01/17/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review Motion to Stay and commence outline for Opposition and Countermotion to Dismiss w/ prejudice.	450.00	1:00	450.00
01/17/2017	<b>Kimberly Gray:\$100</b> Check e-file queue and download pleading to client file; Attention to calendaring.	100.00	0:12	20.00
01/18/2017	<b>MICHAEL A. OLSEN, ESQ.:</b> [REDACTED] nce with associate re: [REDACTED]	450.00	0:48	360.00
01/19/2017	<b>Kimberly Gray:\$100</b> [REDACTED] AO and DO re [REDACTED]	100.00	0:42	70.00
01/19/2017	<b>Lenny Whiting:\$150</b> [REDACTED]	150.00	2:36	390.00
01/19/2017	<b>Lenny Whiting:\$150</b> [REDACTED] LM regarding [REDACTED]	150.00	0:30	75.00
01/19/2017	<b>MICHAEL A. OLSEN, ESQ.:</b> [REDACTED]	450.00	0:42	315.00
01/20/2017	<b>Lenny Whiting:\$150</b> Phone call with Kwang Chiu	150.00	0:18	45.00
01/20/2017	<b>Lenny Whiting:\$150</b> commenced drafting the opposition and countermotion to dismiss	150.00	2:48	420.00
01/24/2017	<b>Lenny Whiting:\$150</b> research on procuring cause	150.00	1:12	180.00
01/24/2017	<b>Lenny Whiting:\$150</b> continued working on the opposition to motion to stay	150.00	1:24	210.00
01/24/2017	<b>MICHAEL A. OLSEN, ESQ.:</b> Co [REDACTED] to [REDACTED]	450.00	0:36	270.00
01/26/2017	<b>Lenny Whiting:\$150</b> continued researching for [REDACTED]	150.00	1:48	270.00
01/26/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Fol [REDACTED] for [REDACTED]	450.00	0:36	270.00
01/26/2017	<b>Lenny Whiting:\$150</b> spoke to Jerrin Chiu [REDACTED]	150.00	1:12	180.00
01/26/2017	[REDACTED] and Jerrin to [REDACTED]	150.00	0:36	90.00
01/27/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Complete outline of Opposition and Counterclaim for law clerk.	450.00	0:54	405.00
01/27/2017	<b>Lenny Whiting:\$150</b> continued working on the opposition and countermotion	150.00	2:30	375.00
01/31/2017	<b>Lenny Whiting:\$150</b> Finished a draft of the opposition and countermotion to dismiss.	150.00	3:12	480.00

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
02/01/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review, re-draft and revise Opposition to Motion to Stay and Countermotion to Dismiss or for Summary Judgment.	450.00	1:18	585.00
02/02/2017	██████████ Jerrin's review	150.00	1:30	225.00
02/02/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> w of final draft; notes from client ██████████	450.00	1:06	495.00
02/06/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Travel to and attend hearing on Motion for Leave to Amend Pleading.	450.00	1:30	675.00
02/08/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and respond to email from opposing counsel; review calendaring deadlines; review and execute Stipulation to move hearing to February 27; insure filing of Supplemental affidavit.	450.00	0:36	270.00
02/09/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on continuance of hearing set for Monday.	450.00	0:30	225.00
02/10/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and analysis of status of setting hearing on Motion to Withdraw as counsel; follow up on getting Reply brief.	450.00	0:36	270.00
02/15/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review Reply to Opposition and Opposition to MSJ.	450.00	0:48	360.00
02/24/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Print out and commence review of all pleadings in preparation of Oral Argument for Monday Morning on Motion for Summary Judgment.	450.00	1:06	495.00
02/28/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on getting draft of Order.	450.00	0:24	180.00
03/01/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review notice of withdrawal by Avece Higbee, Esq.; follow up to determine if Arbitration has been set with GLVAR.	450.00	0:36	270.00
03/02/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review status of Order Staying action; review notice of hearing for Avece Higbee, Esq. to withdraw as counsel.	450.00	0:42	315.00
03/09/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and approve proposed order.	450.00	0:36	270.00
03/27/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review email from opposing counsel re: holding 16.1 conference; review status of Order being signed by the Court.	450.00	0:24	180.00
03/30/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review and respond to email from opposing counsel re: 16.1.	450.00	0:18	135.00
04/03/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Confirm hearing for Avece Higbee, Esq.'s withdrawal as counsel of record; follow up with getting arbitration going.	450.00	0:42	315.00
04/17/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review Notice of status check re: withdrawal of counsel; review Notice of Entry of Order re: same; case analysis re: strategy for dealing with the fact that Betty Chan has not filed for arbitration with GLVAR.	450.00	0:42	315.00
04/18/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Conference with paralegal re: her contact with GLVAR and lack of filing by Betty Chan; review strategy for Dist Court case.	450.00	0:30	225.00
04/24/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review of Court schedule; note status check re: withdrawal of counsel.	450.00	0:24	180.00
05/01/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Travel to and attend hearing on Status check re: Plaintiff obtaining new counsel; inform Court we intend to lift the stay and renew our MSJ if Arbitration is not filed immediately.	450.00	1:36	720.00
05/03/2017	<b>Kimberly Gray:\$100</b> Check e-file queue and download pleading to client file.	100.00	0:12	20.00
05/04/2017	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review notice of appearance of counsel.	450.00	0:24	180.00
05/04/2017	<b>Kimberly Gray:\$100</b> Check e-file queue and download pleading to client file.	100.00	0:12	20.00
05/09/2017	<b>Kimberly Gray:\$100</b> Check e-file queue and download notice of entry of order to client file.	100.00	0:12	20.00
06/14/2018	<b>Julian Campbell:\$100</b> Scanned and Served Documents to the Server, Conducted Correspondence	100.00	0:18	30.00

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
07/19/2018	<b>MICHAEL A. OLSEN, ESQ.</b> [REDACTED]	450.00	0:36	270.00
07/25/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Reviewed motion to vacate filed by opposing party; conducted precursory legal research and a quick review of documents cited to by opposing party	250.00	1:54	475.00
07/27/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Began working on outline for opposition and countermotion; initiated legal research regarding potential main points	250.00	2:18	575.00
07/30/2018	<b>ROMAN HARPER, ESQ.: \$250</b> [REDACTED]	250.00	4:42	1,175.00
07/30/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Continued work on outline of briefing to reflect findings in continued legal research; began working on drafting analysis of procedural errors being forced by Chan in response to the arbitration award	250.00	3:30	875.00
07/31/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Continued research regarding standard of challenging arbitration in Nevada; reviewed record to identify parameters of agreement to arbitrate and other helpful information regarding treatment of arbitration	250.00	3:12	800.00
07/31/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Worked on summary of facts and procedural history related to litigation; used same to frame current status of matter in support of posture of litigation	250.00	3:42	925.00
08/01/2018	<b>MICHAEL A. OLSEN, ESQ.: \$450</b> Review Motion to Vacate; put together comprehensive outline of arguments against the same; also review arguments for Countermotion for Summary Judgment and/or to Dismiss the case.	450.00	0:48	360.00
08/01/2018	<b>MICHAEL A. OLSEN, ESQ.: Flat Fee</b> Continue work on research for Opposition to Motion to Vacate.	450.00	1:06	495.00
08/01/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Drafted analysis of legal standard that applies to review of an arbitration award, focusing on authorities that demonstrate the very difficult nature of overturning or changing the same	250.00	4:36	1,150.00
08/01/2018	<b>ROMAN HARPER, ESQ.: Flat Fee</b> Finished drafting factual background to include description of underlying agreement to arbitrate and subsequent reaction to award by opposing party	150.00	3:30	525.00
08/02/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Reviewed motion to vacate and identified additional grounds purportedly invoked; drafted analysis demonstrating that standard for fraud in the arbitration award has not been met in this matter; worked on analysis demonstrating that the award should not be vacated	250.00	1:24	350.00
08/03/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Worked on identifying and drafting analysis to demonstrate the broad authority conferred on the arbitrator that eviscerates claims that the arbitrator exceeded authority	250.00	3:06	775.00
08/06/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Finalized analysis and arguments related to statutory bases claimed by Chan in her attempt to overturn the arbitration award; worked on connecting arguments in opposition and related legal analysis	250.00	3:36	900.00
08/06/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Finalized analysis and arguments related to the common law grounds for seeking a review of an arbitration award; demonstrated that these grounds have not been properly invoked in the case at hand; reviewed and finalized draft of opposition and countermotion and forwarded to MAO for review	250.00	3:36	900.00
08/06/2018	<b>ROMAN HARPER, ESQ.: \$250</b> Finalized briefing by incorporating revisions by MAO to opposition and countermotion; filed same with exhibits in support thereof	250.00	0:30	125.00
08/06/2018	<b>MICHAEL A. OLSEN, ESQ.: \$450</b> Review, re-draft and revise Opposition to Motion to Vacate and Countermotion for Summary Judgment.	450.00	1:42	765.00
08/07/2018	<b>MICHAEL A. OLSEN, ESQ.: \$450</b> Review billings and ask paralegal to cull out entries related to civil case in order to supplement our Countermotion for fees.	450.00	0:36	270.00

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
08/07/2018	<b>Julian Campbell:\$100</b> Prepared IAFD; Electronically filed and Served Documents on the Court	100.00	0:12	20.00
08/10/2018	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review time frame for Reply and Opposition to our Countermotion for Summary Judgment and fees.	450.00	0:30	225.00
08/15/2018	<b>MICHAEL A. OLSEN, ESQ.:Flat Fee</b> Review and analysis of Summary Judgment; [REDACTED]	450.00	1:06	495.00
08/20/2018	<b>Julian Campbell:\$100</b> Prepared Hearing Binder	100.00	0:18	30.00
08/20/2018	<b>MICHAEL A. OLSEN, ESQ.:Flat Fee</b> Follow up on getting documents together for hearing on Wed.	450.00	0:24	180.00
08/21/2018	<b>MICHAEL A. OLSEN, ESQ.:Contingency</b> Review all pleadings and prepare oral argument in defending Motion to Vacate and pursuing Countermotion for Summary Judgment and for Attorney's fees.	450.00	2:36	1,170.00
08/22/2018	<b>CLIENT COST REIMBURSEMENTS:Postage</b> Parking Fees	21.00	1	21.00
08/22/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Reviewed results of hearing; prepared, edited and revised order making findings and conclusions reached by court; sent same to MAO for review	250.00	3:06	775.00
08/22/2018	<b>MICHAEL A. OLSEN, ESQ.:Contingency</b> Travel to and attend hearing on Motion to Vacate which was denied; fees and Summary judgment taken; request for further briefing; consult with [REDACTED] and [REDACTED]	450.00	3:48	1,710.00
08/24/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Began outlining and drafting supplemental points and authorities requested by court	250.00	0:54	225.00
08/27/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Reviewed reply in support of motion to vacate and opposition to MSJ; reviewed declarations by Chan in support of her reply/opposition; reviewed complaint and the specific allegations being pursued in the complaint; continued working on supplement to motions for summary judgment and for fees	250.00	6:48	1,700.00
08/28/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Conducted legal research regarding justiciability and mootness; conducted legal research regarding issue and claim preclusion; drafted analysis of these doctrines; worked on legal research regarding ability to collect attorney fees and theories in support of same; drafted argument in support of fees	250.00	4:06	1,025.00
08/29/2018	<b>ROMAN HARPER, ESQ.:\$2</b> [REDACTED]	250.00	3:48	950.00
08/29/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Continued working on drafting legal and factual analysis for supplemental briefing	250.00	3:36	900.00
08/29/2018	<b>MICHAEL A. OLSEN, ESQ.:Contingency</b> Conference with associate and paralegal to re: [REDACTED] for [REDACTED]	450.00	0:54	405.00
08/30/2018	<b>ROMAN HARPER, ESQ.</b> [REDACTED]	250.00	0:18	75.00
08/31/2018	<b>MICHAEL A. OLSEN, ESQ.:Contingency</b> Review status of supplemental briefing; work with bookkeeper on gathering all invoice entries related to the civil case; follow up on arguments for Summary Judgment.	450.00	0:30	225.00
08/31/2018	<b>CLIENT COST REIMBURSEMENTS:Court Filing Fee-Wiznet</b> Electronic Filing Fees	3.50	1	3.50
08/31/2018	<b>CLIENT COST REIMBURSEMENTS:Court Filing Fee-Wiznet</b> Electronic Filing Fees	209.00	1	209.00
09/04/2018	<b>MICHAEL A. OLSEN, ESQ.:</b> [REDACTED] conference with associate re: [REDACTED]; review invoices; follow up with accountant re: getting billing invoices redacted for production to the Court.	450.00	0:36	270.00
09/04/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Revised and [REDACTED] Countermotion; [REDACTED]	250.00	2:54	725.00
09/05/2018	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Review, revise and re-draft Supplemental Motion for Fees Costs and SJ.	450.00	1:06	495.00



SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
09/05/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Reviewed billings; incorporated totals into supplement; revised and edited supplement to opp and countermotion	250.00	1:54	475.00
09/05/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Finalized supplement to Opp and counter-motion, incorporating changes by MAO and making necessary revisions; filed same.3	250.00	1:00	250.00
09/10/2018	<b>MICHAEL A. OLSEN, ESQ.:\$450</b> Follow up on status of supplement with our invoices.	450.00	0:30	225.00
09/10/2018	<b>ROMAN HARPER, ESQ.:\$250</b> Worked with paralegal to obtain invoices that are needed to support supplement	250.00	0:12	50.00
BALANCE DUE				

GOODSELL & OLSEN  
ATTORNEYS AT LAW

**BILL TO**

Wayne Wu

[illegible]

SERVICED	DESCRIPTION	RATE	QTY	AMOUNT
12/31/2016	<b>CLIENT COST REIMBURSEMENTS: Court Filing Fee- Wiznet</b> Electronic Filing Fees- (\$334.84 divided by 3 clients)	111.61	1	111.61

PAYMENT	111.61
BALANCE DUE	

GOODSELL & OLSEN  
ATTORNEYS AT LAW

**BILL TO**

Wayne Wu

INVOICE #	DATE	TOTAL DUE			ENCLOSED
8862	01/31/2017				

[illegible]

SERVICED	DESCRIPTION	RATE	QTY	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]
[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] [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]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
01/31/2017	<b>CLIENT COST REIMBURSEMENTS:</b> Court Filing Fee-Wiznet Electronic Filing Fees	2.80	1	2.80
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PAYMENT	
BALANCE DUE	

2.80

10155 W Twain Ave, Suite 100  
Las Vegas, NV 89147 US

**GOODSELL & OLSEN**  
ATTORNEYS AT LAW

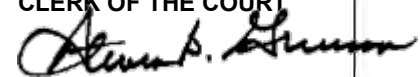
**Invoice**

**BILL TO**

Wayne Wu  
[REDACTED]

INVOICE #	DATE	TOTAL DUE		ENCLOSED
8937	02/28/2017	[REDACTED]		

SERVICED	DESCRIPTION	RATE	QTY	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]	[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]
02/28/2017	CLIENT COST REIMBURSEMENTS: Court Filing Fee- Wiznet Electronic Filing Fees	3.50	5	17.50
02/28/2017	CLIENT COST REIMBURSEMENTS: Court Filing Fee- Wiznet Electronic Filing Fees- access fee	1.75	1	1.75
02/28/2017	CLIENT COST REIMBURSEMENTS: Court Filing Fee- Wiznet Electronic Filing Fees- Opposition Filing Fee	206.00	1	206.00
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



1 **ORD**

2 MICHAEL A. OLSEN, ESQ.

3 Nevada Bar No. 6076

4 ROMAN C. HARPER, ESQ.

5 Nevada Bar No. 14374

6 **Goodsell & Olsen, LLP**

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13 *Attorneys for Defendants/Counterclaimants*

14 *Wayne Wu, Judith Sullivan, Nevada Real Estate Corp.*

15 *and Jerrin Chiu*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 BETTY CHAN and ASIAN AMERICAN  
12 REALTY & PROPERTY MANAGEMENT,

13 Plaintiffs/Counterdefendants,

14 v.

15 WAYNE WU, JUDITH SULLIVAN,  
16 NEVADA REAL ESTATE CORP., JERRIN  
17 CHIU, KB HOME SALES – NEVADA INC.,

18 Defendants/Counterclaimants.

) Case No: A-16-744109-C

) Dept. No: XX

) **ORDER DENYING MOTION TO**  
) **VACATE OR MODIFY**  
) **ARBITRATION AWARD**

16 **APPEARANCES**

17 Michael A. Olsen, Esq. of Goodsell & Olsen, LLP, on behalf of Wayne Wu, Judith  
18 Sullivan, Nevada Real Estate Corp., and Jerrin Chiu, Defendants/Counterclaimants.

19 Todd E. Kennedy, Esq. of Kennedy & Couvillier, PLLC on behalf of Betty Chan and  
20 Asian American Realty & Property Management, Plaintiffs/Counterdefendants.

21 This matter came on for hearing on August 22, 2018 before the Honorable Eric Johnson  
22 regarding Plaintiffs/Counterdefendants' *Motion to Vacate or Modify Arbitration Award*  
23 (hereafter "Motion to Vacate"), and Defendants/Counterclaimants' *Opposition to Motion to*  
24 *Vacate or Modify Arbitration Award and Countermotion to Recognize Wu as the Procuring*  
25 *Cause, for Summary Judgment, and for Attorney Fees* (hereafter "Countermotion"). The Court

1 having read and considered the papers and pleadings on file, having heard oral arguments made  
2 at the time of hearing, and good cause appearing, therefore the Court makes the following  
3 findings of fact and conclusions of law:

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. Because Betty Chan, Wayne Wu, and Judith Sullivan are all Realtors, the parties  
6 recognize that the underlying dispute in this matter involving commission funds totaling  
7 \$13,795.32 was required to be submitted to the Greater Las Vegas Association of Realtors  
8 (hereafter "GLVAR") for binding arbitration. Plaintiff/Counterdefendant Betty Chan submitted  
9 her *Request and Agreement to Arbitrate (Member)* (hereafter "Agreement to Arbitrate") to the  
10 GLVAR seeking arbitration of the dispute.

11 2. The Agreement to Arbitrate contained express consent to arbitrate the dispute  
12 between the parties through the GLVAR in accordance with the *Code of Ethics and Arbitration*  
13 *Manual* subscribed to by Realtors.

14 3. This matter proceeded to an arbitration before a GLVAR arbitration panel on  
15 April 17, 2018.

16 4. Plaintiffs/Counterdefendants have brought their Motion to Vacate seeking to  
17 overturn or modify the arbitration award (hereafter "Award") that was duly entered by the  
18 GLVAR arbitration panel on April 27, 2018. The Award determined, that of the \$13,795.32 in  
19 total commission, \$3,228.83 was to be paid to Betty Chan and that the remaining \$10,346.49 was  
20 to be paid to Defendant/Counterclaimant Wayne Wu.

21 5. Specifically, Plaintiffs/Counterdefendants have attempted to assert the Award  
22 should be modified based on statutory and common law grounds, including that the GLVAR  
23 purportedly exceeded its authority to arbitrate, acted in an arbitrary and capricious manner,  
24 demonstrated manifest disregard for the law, or that the Award was procured by fraud.  
25



6. Notwithstanding, the Court finds that Nevada law does not prohibit splitting a commission between two individuals both claiming to be the procuring cause and therefore Plaintiffs/Counterdefendants have failed to meet their burden of demonstrating clear and convincing evidence of a violation under any of the standards asserted in the Motion to Vacate that would justify modifying or vacating the Award.

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**IT IS HEREBY ORDERED, AJUDICATED, AND DECREED:**

a. That the *Motion to Vacate or Modify Arbitration Award* is DENIED.

b. That pursuant to NRS 38.241(4) and NRS 38.242(2) the Arbitration Award of the GLVAR arbitration panel is CONFIRMED.


c. That the Counter-Motion seeking summary judgment and an award of attorney fees is taken under advisement, with supplemental briefing to be filed by the Defendants/Counterclaimants by September 5, 2018;

d. That Plaintiffs/Counterclaimants shall have until September 19, 2018 to submit any responsive briefing regarding the Counter-Motion as supplemented.

e. AND THAT a hearing on the Countermotion for Summary Judgment and for Attorney's fees shall be held on October 10, 2018 at 8:30 a.m.

f. It is further ordered that the stay ordered by the Court pending resolution of the arbitration is lifted.

IT IS SO ORDERED this 14 <sup>SEPT</sup> of ~~AUGUST~~ 2018.

  
DISTRICT COURT JUDGE

ERIC JOHNSON

KM

Prepared and submitted by:



MICHAEL A. OLSEN, ESQ.

Nevada Bar No. 6076

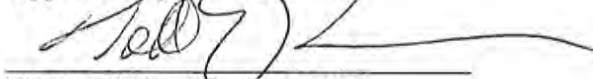
ROMAN C. HARPER, ESQ.

Nevada Bar No. 14374

**GOODSELL & OLSEN, LLP**

*Attorneys for Wayne Wu, Judith Sullivan,  
Nevada Real Estate Corp. and Jerrin Chiu*

Approved by:



TODD E. KENNEDY, ESQ.

Nevada Bar No. 6014

MAXIMILIANO COUVILLIER, ESQ.

Nevada Bar No. 7661

**KENNEDY & COUVILLIER, PLLC**

*Attorneys for Betty Chan and Asian  
American Realty & Property Management*