IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, Petitioners, v. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE, Respondents. and AAL-JAY, INC., a Nevada corporation; CHRISTIANO DE CARLO, an individual; and LAIL LEONARD, an individual Real Party in Interest.	Supreme Court No.: Case No. A-21-832379-C

APPENDIX TO EMERGENCY PETITION UNDER NRAP 27(e)
PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF PROHIBITION UNDER 21(a)(6)

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APPEAL
FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE ERIKA BALLOU/CASE NO. A-21-832379-C

APPENDIX ON APPEAL
VOLUME II OF III
INDEX TO PETITIONERS' APPENDIX OF RECORD

VOLUMES

No.	Date of Item	Description	Vol.	Bates Nos.

VOLUME I

1.	04/06/2021	Complaint	I	PET000001 PET000019
2.	04/06/2021	Initial Appearance Fee Disclosure	I	PET000020
3.	05/03/2021	First Amended Complaint	I	PET000021 PET000082
4.	05/04/2021	Affidavit of Service – Philip Fagan, Jr.	I	PET000083
5.	05/04/2021	Affidavit of Service – Philip Fagan Trust	I	PET000084
6.	05/18/2021	Answer to Plaintiff's Amended Complaint and Counterclaim	I	PET000085 PET000122
7.	05/18/2021	Exhibits 1 – 13 to Answer to Plaintiff's Amended Complaint and Counterclaim	I	PET000123 PET000193
8.	05/18/2021	Initial Appearance Fee Disclosures	I	PET000194 PET000195
9.	05/18/2021	Emergency Motion for Specific Performance of Purchase Agreement, on An Order Shortening Time	I	PET000196 PET000223
10.	05/28/2021	Stipulation and Order to Continue Hearing	I	PET000224 PET000228
11.	06/01/2021	Notice of Entry of Stipulation and Order to Continue Hearing	I	PET000229 PET000236

VOLUME II

12.	06/08/2021	Opposition to Motion for Specific Performance	II	PET000237 PET000251
13.	06/09/2021	Exhibits 1 through 5 of Defendant's Opposition to Plaintiff's Motion for Specific Performance of Purchase Agreement	II	PET000252 PET000279

VOLUME III

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on this 30th day of August 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system, and to the following.

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DATED this 30th day of August 2021.

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DISTRICT COURT

CLARK COUNTY, NEVADA

AAL-JAY, INC., a Nevada corporation, Plaintiff, v. PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, Defendants.	Case No. A-21-832379-C Dept. No.: 24 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT**
PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, Counterclaimants, v. AAL-JAY, INC., a Nevada corporation; CHRISTIANO DE CARLO, an individual; and LAIL LEONARD, an individual, Counterdefendants.	

COMES NOW, Defendants, PHILIP J. FAGAN, JR., an individual, (hereinafter, "**Dr.**

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Fagan"), and PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001 TRUST (hereinafter, the "**Fagan Trust**"), (Dr. Fagan and the Fagan Trust may hereinafter be collectively referred to as "**Defendant**") by and through their attorney, Chris V. Yergensen, Esq. of the law firm of Black & Wadhams., and hereby submits its opposition to Plaintiff's Motion for Specific Performance.

This Opposition is based upon the following Memorandum of Points and Authorities, the Declaration of Defendant, Phillip J. Fagan, Jr., the Declaration of Cassandra Marino, the exhibits attached hereto, the papers and pleadings on file herein, and any argument or other evidence produced as the time of the hearing on this matter.

Dated this 8th day of June, 2021.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff brings this motion for specific performance to force Defendant to sell his home to Plaintiff based upon a draft "purchase agreement". This so-called "purchase agreement" was never agreed to, nor executed by Defendant, the owner of the real property. Thus, there is no written contract between the Parties, and Plaintiff's motion, among other things, flies in the face of Nevada's statute of frauds and Nevada case law. NRS §111.210 requires that contracts for the sale of real property be in writing and signed by the parties. Further, Nevada case law is clear, there must be a signed contract between the Parties for the court to entertain the remedy of specific performance. Even Plaintiff's case law citation to *Serpa v. Darling*, 107 Nev. 299. 810 P.2d 778 (1991) is misguided because the *Serpa Court* made clear that specific performance must be based upon a valid contract. *See id* at 303 (stating that the executed "agreements cannot be enforced since the parties themselves failed to agree upon the terms"). Defendant's request from this Court is not supported in law.

Further, even assuming there was a contract here where there was none, the specific terms of the contract were never formalized or agreed to timely by the Plaintiff or Defendant. The most glaring examples of the lack of definitive terms are the terms of the purchase price and the closing date. First, the draft "purchase agreement" expressed a Closing Date of December 17, 2020. Plaintiff admits that it did not even obtain a copy of the draft "purchase agreement" until January 11, 2021, which is the date in which Plaintiff agreed to it and executed it, and is some 25 days after the Closing Date expressed by the so-called "purchase agreement" requiring the Parties to close the purchase and sale transaction. By its express terms, the so-called "purchase agreement" expired prior to either Party agreeing to it and executing it.

And second, the purchase price is not a definite and certain term that was agreed to by the

Parties. Plaintiff alleges that the $800,000 "new" purchase price reflects within the draft "purchase agreement" was established by accounting for "the (35) prior payments made by Plaintiff under the terms of the original Contract." But, even though the original Contract is of no further force or effect due to Plaintiff's breach, the most novice of mathematicians can easily determine that Plaintiff's fuzzy math does not make sense, for 35 principal payments of sums ranging from $3,110.73 to $1,743.04 is closer to $80,000, which less the $1,000,000 original principal balance would put the "new" purchase price at over $900,000, not $800,000. Further, the purchase price is not even close to a definite amount, for the *Serpa Court* stated that to enforce specific performance as a remedy upon a contract, "the terms of the contract [must be] definite and certain." *See id.* at 304. The alleged purchase price based upon the (35) prior payments is not definitive, but simply an approximate number unilaterally established by Plaintiff. And given that there is no definite or certain closing date to close the purchase and sale transaction, nor is the purchase price a definite or certain number, which are both essential terms of a real estate purchase and sale transaction, specific performance is not available under Nevada law.

And finally, when the negotiations of the purchase and sale of the real property failed to reach resolution between the Parties, Plaintiff and Defendant negotiated two (2) lease agreements rather than continuing to negotiate a purchase and sale transaction. The lease agreements, executed by both Plaintiff and Defendant, state that each lease agreement "**supersedes and terminates all previous agreements, whether written or not written, between the Parties**" and the lease agreement "**replaces all previous discussions, understandings, and oral agreements, and as such all previous discussions, understandings, and oral agreements are void and of no further force or effect.**" The express language of the lease agreements terminated and voided the so-called "purchase agreement", assuming there was an agreement, and therefore, there is no valid contract in which to formulate a remedy of specific performance. Plaintiff's motion should be

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denied in its entirety.

II. LEGAL ARGUMENT

Specific performance is an order from the court requiring a valid contract be fully performed according to its terms. *See* Restatement (Second) of Contracts §357, cmt. A (1981); *see also* 71 Am. Jur. 2d Specific Performance §134 (2014) ("To succeed in an action for specific performance of a contract for the purchase of real property, a petitioner must show by clear and convincing evidence that there is a valid contract to purchase real property"). And, following the determination of a valid contract, the Nevada Supreme Court expressed that specific performance is available only when: (1) the terms of the contract are definite and certain, (2) the remedy at law is inadequate, (3) the party seeking specific performance has tendered performance, and (4) the court is willing to order it. *Serpa v. Darling*, 107 Nev. 299, 304 (1991).

The remedy of specific performance is an equitable remedy, governed by equitable principals. Thus, specific performance is not available if equity does not demand it due to evidence of unfairness, fraud, or overreaching on the part of the party seeking specific performance. *See Shreeve v. Greer*, 64 Ariz. 35, 39, 173 P.2d 641, 644 (1946).

A. There is no valid contract between Plaintiff and Defendant

Plaintiff's motion fails to address the first and foremost question that this court must determine prior to addressing the remedy of specific performance. Is there a valid contract between the parties? The answer to that simple question is no.

In *Kern v. Kern*, 107 Nev. 988, 823 P.2d 275 (1991), the Nevada Supreme Court expressed that specific performance under a contractual obligation to convey real property was not appropriate because the "agreement was not signed by the party to be bound." *Id.* at 991. The *Kern Court* made clear that NRS 111.210 (1) requires that a contract for the sale of land to be in writing, "and be subscribed by the party by whom the lease or sale is to be made." *Id.* at 992. The

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Kern Court concluded "that because Dorsey was the owner and alleged seller of the land in question, his signature as an individual was required." *Id.* (Emphasis added).

Here, there is no dispute that the "purchase agreement" relied upon by Plaintiff to seek specific performance was not executed by Defendant. The "purchase agreement" is incomplete and is missing the most important element, the signature of the seller. *See Dodge Bros. v. Williams Estate Co.,* 52 Nev. 364, 287 P. 282 (1930) (stating that "[t]here is no better established principle of equity jurisprudence than that specific performance will not be decreed when the contract is incomplete, uncertain, or indefinite.") Furthermore, given that there is no written contract contract executed by Defendant for the sale of the Property, NRS 111.2110 makes clear that Plaintiff's purported contract is void. Therefore, in accordance to Nevada case law and NRS 111.210, there is no valid contract in which to provide a remedy of specific performance. Plaintiff's motion should be denied.

Furthermore, most troubling with Plaintiff's motion is that it does not even seek to distinguish itself from the facts of the *Kern Court*, which is squarely on point. Plaintiff also fails to even address NRS 111.210, Nevada's long-standing requirement that real estate sales contracts be in writing. Rather, Plaintiff alludes to verbal discussions with Richard Scott, Esq. (Defendant's prior attorney) in November 2020 regarding the purchase of the Property. *See* Plaintiff Mot. ¶¶ 43 and 44. Plaintiff then uneventfully concludes that "as a result of these conversations" the "purchase agreement" was then prepared by Defendant's counsel. *Id.* Nowhere in Plaintiff's motion does Plaintiff argue, or even conclude, that a valid contract had been formed due to these alleged conversations with Richard Scott. Plaintiff simply suggest that, "based upon a Purchase Agreement drafted by Defendants' counsel and submitted to the title company", this Court should direct "Defendants to specifically perform the Purchase Agreement by immediately executing the

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Purchase Agreement". [1] This is a bastardization of contract law and the remedy of specific performance.

Furthermore, it is highly questionable that any conversations with Richard Scott and Plaintiff ever occurred in the latter part of 2020. According to Defendant and the daughter of Richard Scoot, Mr. Scott has not been acting as Defendant's counsel since 2019, has been retired from the practice of law since 2019, and has been in a 24-hour memory care facility since 2019. *See* Dec. of Cassandra Marino and Dec. of Phillip J. Fagan, Jr. attached as **Exhibits 1 and 2**, respectively. Plaintiff's attempt to establish a valid contract through phantom conversations with Richard Scott fails as a matter of fact, and as a matter of law.

Here, there is no valid contract in which this court can even determine a remedy of specific performance. There were no conversations between Richard Scott and Plaintiff that purportedly established the draft "purchase agreement" in the first place. The draft "purchase agreement" was prepared upon terms and conditions that were created unilaterally by Plaintiff, and the draft "purchase agreement" was not executed by Defendant, as the seller of the real property. *See* Dec. of Phillip J. Fagan, Jr., **Ex. 2** attached hereto. The Nevada Supreme Court has made clear that the "enforcement of a nonenforceable contract [is] impossible." *Serpa*, 107 Nev. at 304. The motion for specific performance should be denied in its entirety.

B. <u>Even if this court finds a valid contract, the terms of the contract are not definite or certain.</u>

Assuming that this Court finds a valid contract between Plaintiff and Defendant that does not violate Nevada case law and Nevada's statute of frauds, then "[s]pecific performance is

[1] Defendant is unaware of any authority, nor does Plaintiff provide any authority, for whether this court has the authority to order a party to <u>execute</u> a contract in order to validate the contract so that the court can then consider the remedy of specific performance. Plaintiff's request that the court order Defendant to take action by executing the "purchase agreement" is a request for injunctive relief, not a request for remedy of specific performance, and is not supported by any argument or authority within Plaintiff's motion.

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available only when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the appellant has tendered performance; and (4) the court is willing to order it." *Serpa*, 107 Nev. at 304. Here, as explained below, the essential terms of the contract are not definite and certain. *See id*. at 305 ("Even if we were to conclude that the agreements between the parties were enforceable . . . we do not find the terms of the parties' agreement to be sufficiently definite and certain to allow specific performance.")

First, Plaintiff glosses over the facts that the express terms of the "purchase agreement" provide for a closing date of December 17, 2020. *See* **Ex. 13** to Plaintiff Mot. Plaintiff admits that it did not receive, accept or even execute the draft "purchase agreement" until January 11, 2021. See Plaintiff Mot. ¶46 Therefore, the "purchase agreement" is incomplete and indefinite. The draft "purchase agreement" allegedly between Plaintiff and Defendant does not provide for a closing date, which would require the Parties to further negotiate the essential term and condition of a closing date. *See Lahaina-Maui Corp. v. Tau Tet Hew,* 362 F.2d 419, 422 (9th Cir. 1966) (stating that "if . . . negotiations of the parties affirmatively disclose or indicate ***further*** negotiations, terms and conditions are contemplated, the proposed [contract] . . . is considered incomplete and incapable of being specifically enforced."). The draft "purchase agreement" by its express terms had expired prior to any acceptance by either Party. By the very facts presented here, the draft "purchase agreement" could not be completed by its express terms, and therefore further negotiations were necessary by the Parties to establish definite and certain terms and conditions. Specific performance is not warranted under these specific facts.

And secondly, the "purchase agreement" does not provide for a certain and definite purchase price. Plaintiff attempts to establish the $800,000 "new" purchase price by indicating that the "New Purchase Price reflected the (35) prior payments made under the terms of the original Contract and Addendum." *See* Plaintiff Mot. at ¶ 44. But the math does not figure under any

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analysis of any number of prior payments having been made. For instance, the original contract amount in 2016 was $1,000,000. That would mean that the application of the prior payments totaled exactly $200,000 in order for the remaining amount to be $800,000.

But each and every prior payment was not a rounded amount. Rather, the payments were listed at $5,671.96 per month in the original contract, and the payments included interest that was "deducted from [the] payment and the balance of payment applied on principal." *See* the original contract attached as **Ex. 1** of Amended Complaint. Even by Plaintiff own numbers, the reduction of the principal amount over time ranged from $3,110.73 to $1,743.04 per month. *See* Plaintiff's spreadsheet attached as **Ex. 2** of Amended Complaint. To conclude that 35 prior payments somehow managed to equate to exactly $200,000 to establish a "new" purchase price of $800,000 is disingenuous, misleading and impossible.

The "new" purchase price, as alleged by Plaintiff, was not definite or certain, was never agreed to by Defendant, and therefore, specific performance is not available in accordance to Nevada law.

C. <u>The remedy at law is adequate – Not owner-occupied housing</u>

Plaintiff concludes that any monetary remedy would be inadequate because there are alleged contractual obligations between the Parties, and that Plaintiff has paid money in accordance to those alleged contractual obligations. *See* Plaintiff Mot. pp 19. Plaintiff's claims are nonsensical for a remedy of specific performance, for if in fact Plaintiff's damages are the funds that have been paid to Defendant, then it seems sensical that the damages in which Plaintiff should receive is the compensatory monetary damages of the funds in return. The remedy of compensatory damages appears to be appropriate here, and therefore, specific performance should be denied. *See Hamm v. Arrowcreek Homeowners' Assn,* 124 Nev. 290, 297, 183 P.3d 895, 901 (2008) (citing *Univ. Sys. v. Nevadans for Sound Gov't,* 120 Nev. 712, 721, 100P.3d 179, 187

(2004) and stating that "[generally], harm is 'irreparable' if it cannot adequately be remedied by compensatory damages").

Further, Plaintiff alludes to a claim of unjust enrichment of the funds that Plaintiff has previously paid to Defendant to justify specific performance. Problematic with this claim is that Plaintiff fails to account for its possession of the Property in return for such monetary payments to Defendant. Does Plaintiff honestly argue that Plaintiff is entitled to possession of the Property for a period of 5 years without making any payment, even a payment of rent or otherwise, to Defendant? And once again, if Defendant has been unjustly enriched by funds that were paid by Plaintiff, then the adequate remedy would be compensatory of those monetary damages in return, not specific performance.

And finally, Plaintiff quickly alludes to real property having unique characteristics in support of its conclusion that any monetary remedy is inadequate. But here, Plaintiff is a Nevada corporation, not an individual. *See Hamm*, 124 Nev. at 298 (holding that irreparable harm in the context of ownership of real property is unique because of one's ability to possess, use and enjoy the real property). While Plaintiff, as a corporation, may own the Property, it cannot possess, use or enjoy the Property. Plaintiff, as a corporation, does not benefit from the unique characteristics specified by the Nevada Supreme Court that warrants a conclusion that a monetary remedy is inadequate in the context of claims against the ownership real property. *See id.* Therefore, monetary damages are adequate in this case and specific performance should be denied.

Furthermore, Plaintiff is owned solely by Lail Leonard, who is not even an occupant of the Property. *See* Plaintiff's attorney letter indicating Lail Leonard to be the sole shareholder of AAL-JAY, Inc. attached hereto as **Exhibit 3**. Given that the Property is not owner-occupied, and cannot be so under Nevada law due to the fact that Plaintiff is a corporation, the Property has marketable value and a calculation of money damages can be easily accomplished. Specific performance is

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not warranted here because the remedy at law is adequate.

D. Plaintiff's citation to *Gullo v. City of Las Vegas*, 2015 WL 233493 (Tbl.) (Case No. 61843) (Nev. Jan. 15, 2015) and *Mayfield v. Koroghili*, 124 Nev. 343, 184 P.3d 362 (2008) is misleading for both cases are clearly distinguishable

Plaintiff wrongfully cites to two Nevada Supreme Court cases to support its claim for specific performance. First, the *Gullo* decision is an unpublished Nevada Supreme Court decision that ruled in favor of the City of Las Vegas ordering specific performance for the City of Las Vegas to purchase real property from Gullo. But the *Gullo* decision is clearly and plainly distinguishable from the facts in this case. In *Gullo*, the City of Las Vegas and Gullo had a mutually executed purchase contract in which the Court could determine if specific performance was an adequate remedy. Here, there is no such mutually executed purchase contract by and between Plaintiff and Defendant.

Also, the *Gullo Court* made clear that the City of Las Vegas took all necessary actions, such as signing and delivering all necessary closing documents, depositing the entire amount due under the purchase agreement, and seeking to close escrow **prior to and on the closing date**. *See Gullo* at *1. Here, the closing date of the unexecuted "purchase agreement" was for December 17, 2020, in which Plaintiff did not take any prior actions, such as obtaining a nonbinding letter of intent for financing and increasing the funds into escrow. It was only after Plaintiff obtained legal counsel some three months **after the closing date** that Plaintiff began to take actions on the unexecuted "purchase agreement" in an attempt to make a specific performance claim. In fact, Defendant continued to negotiate terms and conditions related to the purchase and sale of the Property, attempted to negotiate two subsequent drafts of a purchase agreement, and entered into two (2) separate lease agreements with the Defendant, all following the date of December 17, 2020.

And second, in the *Mayfield* case, Mayfield and Koroghli had a mutually executed purchase

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contract in which the Court could determine if specific performance was an adequate remedy. Here, there is no such mutually executed purchase contract by and between Plaintiff and Defendant. Specific performance is unwarranted here based upon the *Gullo Court's* unpublished opinion and the *Mayfield Court's* opinion for the facts presented here are clearly distinguishable and dispositive against specific performance.

E. Plaintiff agreed, in writing, that any previous agreements and understandings prior to March 1, 2021, were void and of no further force or effect.

As stated earlier, in February and March of 2021, some three months following the purported closing date of December 17, 2020 expressed in the unexecuted "purchase agreement", and after negotiations regarding the terms and conditions of the purchase and sale of the Property had ceased between the Parties, Plaintiff and Defendant actively negotiated and executed two (2) separate lease agreements.

Each lease agreement was in similar form. The first residential lease agreement was for the term of one (1) month for the month of February 2021, and required the payment of rent by Plaintiff in the amount of $7,000.00 (the "First Lease Agreement"). The First Lease Agreement is attached hereto as **Exhibit 4**. Plaintiff made the rent payment in accordance to the First Lease Agreement and maintained possession of the Property.

The second lease agreement was for a term of two (2) months of March and April, 2021, and required the payment of rent by Plaintiff in the amount of $13,600 (the "Second Lease Agreement"). The Second Lease Agreement is attached hereto as **Exhibit 5**. On March 15, 2021, Plaintiff executed the Second Lease Agreement and delivered to Defendant two (2) checks in the amount of $13,600, but on March 16, 2021, Plaintiff placed a "stop payment" order on both checks, thereby prohibiting Defendant from collecting the funds from either check. Then, some thirty eight days later, on April 23, 2021, Plaintiff delivered to Defendant a cashier's check for the rent for March and April, 2021, and included Fifty-Three (53) days of late fees at $75.00 per day, in

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accordance to the Second Lease Agreement.

Both residential lease agreements provide that each Lease Agreement "**supersedes and terminates all previous agreements, whether written or not written, between the Parties.**" And further, both residential lease agreements provide that "**[t]his Agreement replaces all previous discussions, understandings, and oral agreements, and as such all previous discussions, understandings, and oral agreements are void and of no further force or effect."** *See* Article II and Article XXXVII of **Exhibits 4 and 5** attached hereto.

By the express terms of the First Lease Agreement and the Second Lease Agreement, it is clear that any and all claims to previous agreements, understandings, discussions, whether written or oral, are terminated and of no further force of effect between Plaintiff and Defendant. Plaintiff's claims to specific performance of the unexecuted "purchase agreement" drafted in December of 2020 is contrary to the express terms of the subsequent lease agreements, which were negotiated, agreed to and executed by the Plaintiff and Defendant. Plaintiff's claims of specific performance of the unexecuted "purchase agreement" are not warranted, and this Court should deny Plaintiff's motion for specific performance.

F. <u>Equity does not demand Specific Performance – Plaintiff is overreaching and seeking a windfall to Defendant's detriment of over a $1,000,000 loss</u>

Plaintiff argues that equity favors Plaintiff in this case. Plaintiff is wrong for equity favors Defendant in this case, not Plaintiff. Here, Defendant purchased the Property for $1,900,000 and stands to lose over $1,000,000 dollars based upon Plaintiff's claim for specific performance at the Plaintiff's "new" purchase price. Defendant did not agree to such a purchase price, nor did Defendant execute any written instructions from a title company, nor execute any purchase agreement with Plaintiff other than the original contract in 2016, which has since terminated due to Plaintiff's breaches of said agreement. In this case, Defendant stands to lose more than Plaintiff, and equity favors Defendant in denying Plaintiff's motion for specific performance.

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III. CONCLUSION

For the foregoing reasons, Defendant requests this Court to deny Plaintiff's motion for specific performance.

Dated this 8th day of June 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Black & Wadhams, and that on the 8th day of June, 2021, I served the above and foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

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EXHS

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DISTRICT COURT

CLARK COUNTY, NEVADA

AAL-JAY, INC., a Nevada corporation, Plaintiff, v. PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, Defendants.	Case No. A-21-832379-C Dept. No.: 24 **EXHIBITS 1 THROUGH 5 TO: DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT**
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Pursuant to NRCP 5(b), I hereby certify that I am an employee of Black & Wadhams, and that on the 8th day of June 2021, I served the above and foregoing **EXHIBIT 1 THROUGH 5 OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

Ogonna Brown, Esq.
LEWIS ROCA ROTHERGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Ste. 600
Las Vegas, NV 89169
OBrown@lewisroca.com

/s/ Marsha Stallsworth
An Employee of Black & Wadhams

10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT 1

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

DECLARATION OF CASSANDRA MARINO

I, Cassandra Marino, hereby declare as follows:

1. That I am over the age of eighteen and currently reside in the State of California.

2. That I am the daughter of Richard Scott, Esq.

3. That my father, Richard Scott, was a practicing attorney in the State of California and represented Dr. Philip Fagan from 1971 to early 2019.

4. In January of 2019, my father was diagnosed with a neurological condition that compromised his ability to practice law, and at this time, my father reduced and restricted his practice of law.

5. That on or around November of 2019, due to the neurologic condition that continually affected my father's memory, my father, Richard Scott, retired from the practice of law and closed his office and discontinued his working telephone number.

6. That since November of 2019, my father, Richard Scott, has not practiced law on behalf of any former clients, including Dr. Philip Fagan.

7. That on or around December of 2019, my father checked into the Brookdale Ocean House assisted living facility in Santa Monica, California.

8. That on or around May of 2020, due to the worsening of my father's neurological condition, and the ultimate and formal diagnosis of *Louie Body Dementia*, our family checked my father, Richard Scott, into the Gables of Ojai 24-hour memory assisted living and senior care facility, in Ojai, California.

9. That since May of 2020, my father, Richard Scott, has lived and continues to live in the Gables of Ojai facility, and is restricted to the property.

10. That since May of 2020, my father, Richard Scott, has had limited access in

communicating with any person, other than family, outside of the Gables of Ojai facility.

11. That since May of 2020, my father, Richard Scott, has had no office phone or email address in which to communicate to anyone in a professional capacity.

12. That it is my belief, based upon my personal knowledge of my father's neurological condition and living arrangements, he did not communicate with any person associated with Dr. Fagan or his tenants at Dr. Fagan's residence at 1 Grand Anacapri, in Henderson, Nevada, in November of 2020.

13. That my father, Richard Scott, has not mentioned to me of him speaking to anyone or acting in his professional legal capacity on behalf of any former client since November of 2019.

I declare under penalty of perjury of the State of Nevada that the foregoing is true and correct.

EXECUTED this 3rd day of June, 2021

Cassandra Marino

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT 2

DECLARATION OF PHILLIP J. FAGAN, JR.

I, Phillip J. Fagan, Jr., hereby declare as follows:

1. That I am over the age of eighteen and currently reside in the State of Nevada.

2. That I am the trustee of the Phillip J. Fagan, Jr. 2001 Trust, a Nevada revocable trust.

3. That on May 9, 2006, I purchased the real property at 1 Grand Anacapri, Henderson, Nevada (the "Property") for the sum of One Million Nine Hundred Thousand Dollars ($1,900,000).

4. I am the current owner of the Property, through my trust.

5. That in November 2016, my attorney, Richard Scott, prepared a purchase agreement for the purchase and sale of the Property (the "2016 Agreement"), by and between me, as the seller, and AAL-JAY, Inc., a Nevada corporation, as the buyer (hereinafter, "Plaintiff").

6. That on or around December 8, 2016, I executed the 2016 Agreement to sell the Property to Plaintiff.

6. That the 2016 Agreement was an installment contract and required Plaintiff to make monthly payments against the purchase price, wherein a portion of the monthly payments would be interest and the remaining portion as a credit to the principal balance of the purchase, with a balloon payment (the remaining principal balance) due on or before October 31, 2019.

7. That the Plaintiff breached the 2016 Agreement numerous times in failing to make the monthly payments.

8. That the Plaintiff breached the 2016 Agreement by failing to pay the remaining principal balance on or before October 31, 2019.

9. That the 2016 Agreement, due to Plaintiff's breaches, is terminated and of no

further force or effect.

10. That Richard Scott has not acted or been authorized to act as my legal counsel since 2019.

11. That Richard Scott has been in a nursing home facility since 2019 due to a neurological condition affecting his memory.

12. That since 2019, I have retained and used different legal counsel for my legal affairs.

13. That in December 2020, I received correspondence from First American Title Company regarding Plaintiff's renewed desire to purchase the Property.

14. That I did not instruct nor authorize First American Title to open an escrow, nor prepare any documentation with respect to the purchase and sale of the Property.

15. That I did not execute or agree to any instructions or documentation from First American Title Company to sell the Property.

16. That I was made aware that certain representatives of Plaintiff have declared to this Court that Plaintiff spoke with my former attorney, Richard Scott, in November 2020, about the purchase and sale of the Property and that Plaintiff opened and established a purchase escrow with First American Title Company as a result of these alleged conversations with Richard Scott.

17. That it is my belief that no conversation regarding the purchase and sale of the Property occurred between Richard Scott and Plaintiff in November 2020.

18. That, in the highly unlikely event that Plaintiff actually spoke with Richard Scott in November 2020, such conversation, and any terms or conditions discussed with respect to the Property, was done so without my authorization.

19. That in December 2020, following notification from First American Title Company that Plaintiff had opened an escrow account for the purpose of purchasing the Property, I began to

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negotiate with Plaintiff the terms and conditions of such purchase and sale of the Property.

20. That I have made no specific offer to Plaintiff for the purchase and sale of the Property.

21. That to date, Plaintiff and I have not agreed to the terms and conditions of a renewed purchase and sale of the Property, which includes a closing date and a purchase price.

22. That I have not executed nor agreed to any purchase agreement with respect to the purchase and sale of the Property, other than the 2016 Agreement that is terminated and of no further force or effect due to Plaintiff's breaches.

23. That in January 2021, Plaintiff and I negotiated a lease for the Property for Plaintiff to remain in possession of the Property.

24. That it was the intent of the lease agreement that Plaintiff could remain in possession of the Property conditioned on the payment of monthly rent.

25. That the lease agreement would control our relationship going forward and terminate any and all previous agreements, whether written or oral, between I and the Plaintiff.

26. That the Plaintiff executed two (2) lease agreements and made to me rent payments for the months of February, March and April, 2021, in accordance to the lease agreements.

27. That Plaintiff remains in possession of the Property as of today, and since May 1, 2021, remains in possession without agreement and without my permission.

I declare under penalty of perjury of the State of Nevada that the foregoing is true and correct.

EXECUTED this 7rd day of June, 2021.

Phillip J. Fagan, Jr.

EXHIBIT 3

DOUGLAS CRAWFORD LAW

DOUGLAS C. CRAWFORD ESQ. | PRINCIPAL
GARY M. SEGAL ESQ. ASSOCIATE ATTORNEY

May 8, 2021

Sent Via E-mail to: customercare@chubb.com & USPS Certified Mail

CHUBB Insurance Company
Linn T. Hodge & Sons
11845 W. Olympic Blvd., #1045W
Los Angeles, California 90064

Article #: # 7015 3010 0001 1618 7861

Chubb Personal Risk Services
P.O. Box 1600
Whitehouse Station, New Jersey 08889-1600

Article #: # 7015 3010 0001 1618 7878

Philip J. Fagan Jr.
637 Lucas Avenue, Room 606
Los Angeles, CA 90017

Article #: # 7015 3010 0001 1618 7885

Re: Remediation of water damage to 1 Grand Anacapri, Henderson NV 89011
Chubb Masterpiece Policy No.: 10198230-02;
Date of Loss: Spring, 2019
Your Claim Number: 047519011085

DEMAND FOR PAYMENT

Dear Chubb Insurance Company, Linn T. Hodge & Sons, and Philip J. Fagan:

Please be advised that we represent real party-in-interest, Lail Leonard, sole shareholder of Aal-Jay, Inc. in regard to the property located at 1 Grand Anacapri Drive, Henderson Nevada 89011 (herein after referred to as "the property") and the above referenced claim. Please direct all future correspondence and communications concerning this matter to this office.

Christiano DeCarlo originally leased the subject property from the Philip J. Fagan Jr 2011 Trust in April, 2011. In November, 2016, Aal-Jay, Inc. (of which the sole shareholder is Lail Leonard) entered into a CONTRACT FOR DEED with the Philip J. Fagan Jr 2011Trust for the purchase of the property. Aal-Jay, Inc. allowed for the continued tenancy of Christiano DeCarlo. Mr. DeCarlo is the President and CEO of Santini Corp USA (a Class A Unlimited Licensed General Contractor).

Premiums originating from the Chubb Masterpiece Insurance Policy have been invoiced to Aal-Jay, Inc. by the Philip J. Fagan Jr 2011 Trust. Aal-Jay, Inc. has remitted payment of insurance premium payments to the Philip J. Fagan Jr 2011 Trust for the premiums on the Chubb Masterpiece Insurance Policy that covered the damage that occurred. Aal-Jay, Inc.

The property suffered significant water damage in the Spring of 2019 due to defective KITECH plumbing. The water damage ranged as high as 6 to 8 inches in some rooms and adjacent rooms suffered significant damage as well.

Following the flood resulting from the defective plumbing, Chubb assigned their preferred vendor Unique Restoration to assess the claim. Unique Restoration noted that the property had become infested with mold due to the water damage and began the remediation process. It is assumed that Unique Restoration, Chubb's preferred remediation specialist who was first on the scene provided pictures of the damage to the property from the flooding.

Substantial work was required to restore and remediate the property not only to habitability, but to its original condition. Ms. Leonard and Mr. DeCarlo who was responsible for care of the property directly suffered all traumatic effects of the damage done to the property as well as the financial damages described more fully herein below.

After the 2019 flooding of the property, you then assigned General Adjuster David Roman, PTC, of US Property and Casualty, Western Region—Southwest District, through Crawford & Company, to adjust the claim. Unfortunately, although Chubb initially sent Unique Restoration to "repair" the home, conflicts arising out of Unique Restoration's blatant attempt to pad the bill with inexcusable failures to perform timely repairs, discrepancies over parties responsible for payment, and prolonged delays in resolution of scheduling conflicts resulted in the termination of this contractor.

Specifically, following completion of the mold remediation, Unique Restoration refused to compromise on the dates requested for the additional necessary repair work forcing prolonged absence from the home by the tenant. Unique Restoration then ceased all work leaving the residence with demolition of walls down to the framing studs and foundation (from the kitchen, sunken living room, laundry room, and garage) still sealed from the remediation by plastic with zippered doors. The property then sat in that condition for several weeks—with open walls, uninhabitable rooms and without determination that the full remediation of the mold had been completed. No restoration was performed by Unique Restoration. Please see the pictures of the condition that the home was left in by Unique attached as Exhibit "1".

Mr. DeCarlo, (the tenant of the property) became increasingly frustrated by the prolonged delays, loss of use, the expense resulting from being forced to pay for alternative housing and the unfinished remediation of the damaged property. He then utilized his position as President and CEO of Santini Corp USA (a Class A Unlimited License General Contractor) to facilitate subcontracting the services necessary to restore the home to habitability. This process was monitored by a third party (chosen by Philip J. Fagan Jr), licensed residential contractor Gary Gross, who's services were also utilized and paid for by Santini Corp USA as the property was being restored to its original condition.

Santini Corp USA generated an invoice in the amount of $75,415.56 on September 17th, 2019 and provided it to Philip J. Fagan Jr, and to Lail S. Leonard (Aal-Jay, Inc.) for payment of the costs

necessary to restore the property to habitability and its original condition. Nearly all charges contained in the invoice were "passed through" (i.e. performed at Santini Corp USA's cost) as evidenced by the invoices for the restoration work attached as Exhibit "2". Proof of payments for such invoices is attached as Exhibit "3".

Lail S. Leonard (Aal-Jay, Inc.) submitted the invoices to CHUBB Insurance Company, and to Chubb Personal Risk Services requesting payment. Although the invoices for said work have been submitted to you for payment, to date no such reimbursement payments have been made.

To date, it is believed that Chubb has paid to Dr. Fagan, the following reimbursement amounts for the services performed for mold remediation and to restore the home to habitability and its original condition: $13,177.41 and $22,294.96 for a total of $35,472.37. Yet, AFTER NEARLY TWO YEARS no funds have been paid to Santini Corp USA, the party who paid the costs for labor and materials to the subcontractors responsible for performance of the restoration of the property.

Had it been left to Fagan, Chubb and Mr. Roman, the property would still be unfinished and no doubt in worse disrepair, two (2) years later. But for Mr. DeCarlo (by and through Santini Corp.) and Ms. Leonard, the necessary remediation and habitability may never have been completed.

As stated above (and it bears repeating) Unique Restoration, an alleged preferred contractor of Chubb, did not complete the work on the property. Unique Restoration left the property in an uninhabitable condition. Further, had the property remained in disrepair waiting for someone to accept accountability of costs, the property could have easily experienced additional damage from neglect of owner and the owner's insurance provider, possibly resulting in a need for the entire structure needing to be demolished and rebuilt today. Save and except for Ms. Leonard and Mr. DeCarlo's actions through Santini Corp USA completing the restoration work, the entire home could have been a total loss with replacement costs surpassing $2,000.000.00 using current costs of materials. Demand is hereby made in the amount of $75,415.56 for the restoration and repair services provided by Santini Corporation to return the property to habitability and its pre-damage condition.

Attached as Exhibit "4" are photographs of the condition of the property after the work performed by Santini Corp USA and its subcontractors. David Roman, an adjuster retained by Chubb conducted a walk-through of the home with Philip J. Fagan Jr and Mr. DeCarlo to review the condition of the residence after all repairs had been completed. This occurred over a year ago following the third request by Santini Corp USA for payment of its invoices for said repairs. Mr. Roman and Dr. Fagan expressed thorough satisfaction with the job's completion. The only objection submitted by Mr. Roman was a lack of sufficient photographs detailing the water damage the property had suffered. Mr. DeCarlo explained the obligation to photograph the damage was the responsibility of Mr. Roman or Chubb's preferred vendor, Unique Restoration – the first contractor on the scene in this matter who performed the demolition at Chubb's direction. Should there be a question of fact regarding the integrity of the claim, testimony from multiple sources (including, but not limited to, Dr. Fagan, Mr. DeCarlo, assigns of Unique Restoration, Mr. Gross and Mr. Roman) will clearly attest to the initial damage and the performance of remediation and restoration services.

It is important to note that a subsequent additional flood occurred during March, 2021 on the east portion of the home, again due to defective KITECH plumbing. Although Mr. DeCarlo had requested to replace ALL defective KITECH plumbing at the time of he coordinated the repairs and restoration of the property following the 2019 flood, such request was denied by Chubb and Dr. Fagan. After notifying Philip J. Fagan Jr was notified of this 2021 flood, the undersigned believes that Dr. Fagan recently filed another claim with Chubb, although no communication has occurred between Chubb and Mr. DeCarlo or Ms. Leonard confirming such fact. Repairs from the March 2021 flood are reported to be nearly complete.

Please submit payment of $75,415.56 (based upon the invoices provided herewith) along with an attorney's fees payment of $7,500.00 incurred by Ms. Leonard for having to retain the undersigned to protect her rights and submit this present demand. Therefore, payment of $82,915.56 should be made payable to "Douglas Crawford Law in Trust for Lail Leonard" and sent to: 501 S. 7th St., Las Vegas, NV 89101.

We have calendared to expect your remittance by Please provide such payment or respond to this letter indicating your position in this matter by May 14, 2021. Rest assured, that Ms. Leonard intends to use all available legal remedies to obtain reimbursement for the services performed by Santini Corp USA and/or its subcontractors.

Yours,

DOUGLAS CRAWFORD LAW

Douglas C. Crawford, Esq.
Gary Segal, Esq.

DCC:gms

Attachments: as indicated

Cc: Lail Leonard

EXHIBIT 4

RESIDENTIAL LEASE AGREEMENT

I. THE PARTIES. This Residential Lease Agreement ("Agreement") made this 22nd day of January, 2021, is by and between:

Landlord: Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, Jr. 2001 Trust ("Landlord"), and

Tenant: AAL-JAY, Inc., a Nevada corporation ("Tenant"). Landlord and Tenant are each referred to herein as a "Party" and, collectively, as the "Parties".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, the Tenant agrees to lease the Premises from the Landlord under the following terms and conditions:

II. LEASE TYPE. This Agreement shall be considered a Fixed Lease, and supersedes and terminates all previous agreements, whether written or not written, between the Parties. The Tenant shall be allowed to occupy the Premises, in accordance to this Agreement only, starting on February 1, 2021 and ending on February 28, 2021 ("Lease Term"). At the end of the Lease Term the Tenant shall vacate the Premises.

III. OCCUPANT(S). The Premises is to be occupied strictly as a residential dwelling with only those individuals related to, or affiliated with, the Tenant.

IV. THE PROPERTY. The Landlord agrees to lease the described property below to the Tenant:

1 Grand Anacapri, Henderson, Nevada 89011

The aforementioned property shall be leased wholly by the Tenant ("Premises").

V. PURPOSE. The Tenant may only use the Premises as a residential dwelling.

VI. FURNISHINGS. The Premises is fully furnished. Tenant hereby acknowledges and agrees that such furnishings are in an acceptable condition and takes such furnishings "as-is".

VII. APPLIANCES. The Premises contains appliances. Tenant hereby acknowledges and agrees that such appliances are in an acceptable condition and takes such appliances "as-is".

VIII. RENT. The Tenant shall pay the Landlord the amount of $7,000 ("Rent") for the Lease Term on or before January 31, 2021 ("Due Date").

IX. LATE FEE. If Rent is not paid on or before the Due Date, there shall be a penalty of $75 for every Day Rent is Late. Rent is considered late for when it has not been paid by the Due Date.

X. POSSESSION. The Parties acknowledge that Tenant is currently in possession of the Premises, and therefore, Tenant has examined the condition of the Premises and acknowledges that Tenant has accepted the Premises in good order, "as-is", and in its current condition.

XI. SECURITY DEPOSIT. Landlord does not require a payment of a "Security Deposit" in connection with this Agreement.

XII. UTILITIES. Any and all utilities and/or services are the responsibility of the Tenant.

XIII. PETS AND CHILDREN. The Tenant shall have the right to have pets on the Premises. The tenant shall have the right to have children on the Premises.

XIV. NOTICES. Any notice to be sent by the Landlord or the Tenant to each other shall use the following addresses:

Landlord:

_____.

Tenant:

_____.

XV. ACCESS. If not already delivered, Landlord agrees to give access to the Tenant in the form of keys, fobs, cards, or any type of keyless security entry as needed to enter the Premises. Duplicate copies of the access provided may only be authorized under the consent of the Landlord and, if any replacements are needed, the Landlord may provide them for a fee. At the end of this Agreement all access provided to the Tenant shall be returned to the Landlord.

XVI. SUBLETTING. The Tenant shall not be able to sublet the Premises without the written consent from the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one subtenant shall not be deemed to be consent to any subsequent subtenant.

XVII. ABANDONMENT. If the Tenant vacates or abandons the Premises for a time-period that is the minimum set by Nevada law or five (5) days, whichever is less, the Landlord shall have the right to terminate this Agreement immediately and remove all belongings including any personal property off of the Premises. If the Tenant vacates or abandons the Premises, the Landlord shall immediately have the right to terminate this Agreement.

XIX. ASSIGNMENT. Tenant shall not assign this Lease without the prior written consent of the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one assignment shall not be deemed to be consent to any subsequent assignment.

XX. RIGHT OF ENTRY. The Landlord shall have the right to enter the Premises during normal working hours by providing at least twenty-four (24) hours notice in order for inspection, make necessary repairs, alterations or improvements, to supply services as agreed or for any reasonable purpose. The Landlord may exhibit the Premises to prospective purchasers, mortgagees, or lessees upon reasonable notice.

XXI. MAINTENANCE, REPAIRS, OR ALTERATIONS. The Tenant shall, at its own expense and at all times, maintain premises in a clean and sanitary manner, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. The Tenant may not make any alterations to the leased premises without the consent in writing of the Landlord. The Landlord shall be responsible for repairs to the interior and exterior of the building.

XXII. NOISE/WASTE. The Tenant agrees not to commit waste on the premises, maintain, or permit to be maintained, a nuisance thereon, or use, or permit the premises to be used, in an unlawful manner. The Tenant further agrees to abide by any and all local, county, and state noise ordinances.

XXIII. OCCUPANTS AND GUESTS. Occupants of the Premises shall be limited to 6 persons and shall be used solely for housing accommodations and for no other purpose. Guests of the Tenant are allowed for periods not lasting for more than 48 hours unless otherwise approved by the Landlord in writing.

XXIV. COMPLIANCE WITH LAW. The Tenant agrees that during the term of the Agreement, to promptly comply with any present and future laws, ordinances, orders, rules, regulations, and requirements of the Federal, State, County, City, and Municipal government or any of its departments, bureaus, boards, commissions and officials thereof with respect to the premises, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against the Tenant, the Landlord, or both.

XXV. DEFAULT. If the Tenant fails to comply with any of the financial or material provisions of this Agreement, or materially fails to comply with any duties imposed on the Tenant by statute or state laws, within the time period after delivery of written notice by the Landlord specifying the non-compliance and indicating the intention of the Landlord to terminate the Agreement by reason thereof, the Landlord may terminate this Agreement. If the Tenant fails to pay rent when due, the Landlord may, at its option, declare rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to the Landlord at law or in equity and may immediately terminate this Agreement.

The Tenant will be in default if: (a) Tenant does not pay rent or other amounts that are owed; (b) Tenant, its guests, violate this Agreement, rules, or fire, safety, health, or criminal laws, regardless of whether arrest or conviction occurs; (c) Tenant abandons the Premises; (d) Tenant, or any person related to or affiliated of Tenant, is arrested, convicted, or given deferred adjudication for a criminal offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, or drug paraphernalia under state statute; (e) any illegal drugs or paraphernalia are found in the Premises or on the person of the Tenant or guests while on the Premises and/or; (f) as otherwise allowed by law.

XXVI. DISPUTES. If a dispute arises during or after the term of this Agreement between the Landlord and Tenant, they shall agree to hold negotiations amongst themselves, in "good faith", before any litigation.

XXVII. SEVERABILITY. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

XXVIII. SURRENDER OF PREMISES. Upon the expiration of the Lease Term hereof, the Tenant shall surrender the Premise in better or equal condition as it were at the commencement of this Agreement, reasonable use, wear and tear thereof, and damages by the elements excepted.

XXIX. WAIVER. A Waiver by the Landlord for a breach of any covenant or duty by the Tenant, under this Agreement is not a waiver for a breach of any other covenant or duty by the Tenant, or of any subsequent breach of the same covenant or duty. No provision of this Agreement shall be considered waived unless such a waiver shall be expressed in writing as a formal amendment to this Agreement and executed by the Tenant and Landlord.

XXX. EQUAL HOUSING. If the Tenant possesses any mental or physical impairment, the Landlord shall provide reasonable modifications to the Premises unless the modifications would be too difficult or expensive for the Landlord to provide. Any impairment(s) of the Tenant are encouraged to be provided and presented to the Landlord in writing in order to seek the most appropriate route for providing the modifications to the Premises.

XXXI. HAZARDOUS MATERIALS. The Tenant agrees to not possess any type of personal property that could be considered a fire hazard such as a substance having flammable or explosive characteristics on the Premises. Items that are prohibited to be brought into the Premises, other than for everyday cooking or the need of an appliance, includes but is not limited to gas (compressed), gasoline, fuel, propane, kerosene, motor oil, fireworks, or any other related content in the form of a liquid, solid, or gas.

XXXII. INDEMNIFICATION. The Landlord shall not be liable for any damage or injury to the Tenant, or any other person, or to any property, occurring on the Premises, or any part thereof, or in common areas thereof, and the Tenant agrees to hold the Landlord harmless from any claims or damages unless caused solely by the Landlord's negligence. It is recommended that renter's insurance be purchased at the Tenant's expense.

XXXIII. COVENANTS. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this Agreement.

XXXIV. RIGHT TO RAISE FLAG. The Landlord allows the Tenant the right to raise the American flag in accordance with NRS 118A.325.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 118A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada.

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease Term.

Landlord's Signature _____ Date: _____

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust

Tenant's Signature Lail Leonard Date: 1-28-2021

Name: Lail Leonard, President of AAL-JA, Inc.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 118A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease Term.

Landlord's Signature _____ Date: 1/29/2021

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust

Tenant's Signature Lail Leonard Date: 1-28-2021

Name: Lail Leonard, President of AAL-JA, Inc.

EXHIBIT 5

RESIDENTIAL LEASE AGREEMENT

I. THE PARTIES. This Residential Lease Agreement ("Agreement") made this 2nd day of March, 2021, is by and between:

Landlord: Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, Jr. 2001 Trust ("Landlord"), and

Tenant: AAL-JAY, Inc., a Nevada corporation ("Tenant"). Landlord and Tenant are each referred to herein as a "Party" and, collectively, as the "Parties".

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, the Tenant agrees to lease the Premises from the Landlord under the following terms and conditions:

II. LEASE TYPE. This Agreement shall be considered a Fixed Lease, and supersedes and terminates all previous agreements, whether written or not written, between the Parties. The Tenant shall be allowed to occupy the Premises, in accordance to this Agreement only, starting on March 1, 2021 and ending on April 30, 2021 ("Lease Term"). At the end of the Lease Term the Tenant shall vacate the Premises.

III. OCCUPANT(S). The Premises is to be occupied strictly as a residential dwelling with only those individuals related to, or affiliated with, the Tenant.

IV. THE PROPERTY. The Landlord agrees to lease the described property below to the Tenant:

1 Grand Anacapri, Henderson, Nevada 89011

The aforementioned property shall be leased wholly by the Tenant ("Premises").

V. PURPOSE. The Tenant may only use the Premises as a residential dwelling.

N/A

~~**VI. FURNISHINGS**. The Premises is fully furnished. Tenant hereby acknowledges and agrees that such furnishings are in an acceptable condition and takes such furnishings "as-is".~~

VII. APPLIANCES. The Premises contains appliances. Tenant hereby acknowledges and agrees that such appliances are in an acceptable condition and takes such appliances "as-is".

VIII. RENT. The Tenant shall pay the Landlord the amount of $6,800 ("Rent") per each month or the Lease Term. Payment of the entire amount of Rent in the amount of $13,600 shall be due and payable on or before March 4, 2021 ("Due Date").

IX. LATE FEE. If Rent is not paid on or before the Due Date, there shall be a penalty of $75 for every Day Rent is Late. Rent is considered late for when it has not been paid by the Due Date.

X. POSSESSION. The Parties acknowledge that Tenant is currently in possession of the Premises, and therefore, Tenant has examined the condition of the Premises and acknowledges that Tenant has accepted the Premises in good order, "as-is", and in its current condition.

XI. SECURITY DEPOSIT. Landlord does not require a payment of a "Security Deposit" in connection with this Agreement.

XII. UTILITIES. Any and all utilities and/or services are the responsibility of the Tenant.

XIII. PETS AND CHILDREN. The Tenant shall have the right to have pets on the Premises. The tenant shall have the right to have children on the Premises.

XIV. NOTICES. Any notice to be sent by the Landlord or the Tenant to each other shall use the following addresses:

Landlord:

24 Siena, Henderson NV 89011.

Tenant:

1673 Golden Horizon DR. Las Vegas, NV 89123.

XV. ACCESS. If not already delivered, Landlord agrees to give access to the Tenant in the form of keys, fobs, cards, or any type of keyless security entry as needed to enter the Premises. Duplicate copies of the access provided may only be authorized under the consent of the Landlord and, if any replacements are needed, the Landlord may provide them for a fee. At the end of this Agreement all access provided to the Tenant shall be returned to the Landlord.

XVI. SUBLETTING. The Tenant shall not be able to sublet the Premises without the written consent from the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one subtenant shall not be deemed to be consent to any subsequent subtenant.

XVIII. ABANDONMENT. If the Tenant vacates or abandons the Premises for a time-period that is the minimum set by Nevada law or five (5) days, whichever is less, the Landlord shall have the right to terminate this Agreement immediately and remove all belongings including any personal property off of the Premises. If the Tenant vacates or abandons the Premises, the Landlord shall immediately have the right to terminate this Agreement.

XIX. ASSIGNMENT. Tenant shall not assign this Lease without the prior written consent of the Landlord, which may be withheld at Landlord's sole and absolute discretion for any reason, or no reason. The consent by the Landlord to one assignment shall not be deemed to be consent to any subsequent assignment.

XX. RIGHT OF ENTRY. The Landlord shall have the right to enter the Premises during normal working hours by providing at least twenty-four (24) hours notice in order for inspection, make necessary repairs, alterations or improvements, to supply services as agreed or for any reasonable purpose. The Landlord may exhibit the Premises to prospective purchasers, mortgagees, or lessees upon reasonable notice.

XXI. MAINTENANCE, REPAIRS, OR ALTERATIONS. The Tenant shall, at its own expense and at all times, maintain premises in a clean and sanitary manner, and shall surrender the same at termination hereof, in as good condition as received, normal wear and tear excepted. The Tenant may not make any alterations to the leased premises without the consent in writing of the Landlord. The Landlord shall be responsible for repairs to the interior and exterior of the building.

XXII. NOISE/WASTE. The Tenant agrees not to commit waste on the premises, maintain, or permit to be maintained, a nuisance thereon, or use, or permit the premises to be used, in an unlawful manner. The Tenant further agrees to abide by any and all local, county, and state noise ordinances.

XXIII. OCCUPANTS AND GUESTS. Occupants of the Premises shall be limited to 6 persons and shall be used solely for housing accommodations and for no other purpose. Guests of the Tenant are allowed for periods not lasting for more than 48 hours unless otherwise approved by the Landlord in writing.

XXIV. COMPLIANCE WITH LAW. The Tenant agrees that during the term of the Agreement, to promptly comply with any present and future laws, ordinances, orders, rules, regulations, and requirements of the Federal, State, County, City, and Municipal government or any of its departments, bureaus, boards, commissions and officials thereof with respect to the premises, or the use or occupancy thereof, whether said compliance shall be ordered or directed to or against the Tenant, the Landlord, or both.

XXV. DEFAULT. If the Tenant fails to comply with any of the financial or material provisions of this Agreement, or materially fails to comply with any duties imposed on the Tenant by statute or state laws, within the time period after delivery of written notice by the Landlord specifying the non-compliance and indicating the intention of the Landlord to terminate the Agreement by reason thereof, the Landlord may terminate this Agreement. If the Tenant fails to pay rent when due, the Landlord may, at its option, declare rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to the Landlord at law or in equity and may immediately terminate this Agreement.

The Tenant will be in default if: (a) Tenant does not pay rent or other amounts that are owed; (b) Tenant, its guests, violate this Agreement, rules, or fire, safety, health, or criminal laws, regardless of whether arrest or conviction occurs; (c) Tenant abandons the Premises; (d) Tenant, or any person related to or affiliated of Tenant, is arrested, convicted, or given deferred adjudication for a criminal offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, or drug paraphernalia under state statute; (e) any illegal drugs or paraphernalia are found in the Premises or on the person of the Tenant or guests while on the Premises and/or; (f) as otherwise allowed by law.

XXVI. DISPUTES. If a dispute arises during or after the term of this Agreement between the Landlord and Tenant, they shall agree to hold negotiations amongst themselves, in "good faith", before any litigation.

XXVII. SEVERABILITY. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

XXVIII. SURRENDER OF PREMISES. Upon the expiration of the Lease Term hereof, the Tenant shall surrender the Premise in better or equal condition as it were at the commencement of this Agreement, reasonable use, wear and tear thereof, and damages by the elements excepted.

XXIX. WAIVER. A Waiver by the Landlord for a breach of any covenant or duty by the Tenant, under this Agreement is not a waiver for a breach of any other covenant or duty by the Tenant, or of any subsequent breach of the same covenant or duty. No provision of this Agreement shall be considered waived unless such a waiver shall be expressed in writing as a formal amendment to this Agreement and executed by the Tenant and Landlord.

XXX. EQUAL HOUSING. If the Tenant possesses any mental or physical impairment, the Landlord shall provide reasonable modifications to the Premises unless the modifications would be too difficult or expensive for the Landlord to provide. Any impairment(s) of the Tenant are encouraged to be provided and presented to the Landlord in writing in order to seek the most appropriate route for providing the modifications to the Premises.

XXXI. HAZARDOUS MATERIALS. The Tenant agrees to not possess any type of personal property that could be considered a fire hazard such as a substance having flammable or explosive characteristics on the Premises. Items that are prohibited to be brought into the Premises, other than for everyday cooking or the need of an appliance, includes but is not limited to gas (compressed), gasoline, fuel, propane, kerosene, motor oil, fireworks, or any other related content in the form of a liquid, solid, or gas.

XXXII. INDEMNIFICATION. The Landlord shall not be liable for any damage or injury to the Tenant, or any other person, or to any property, occurring on the Premises, or any part thereof, or in common areas thereof, and the Tenant agrees to hold the Landlord harmless from any claims or damages unless caused solely by the Landlord's negligence. It is recommended that renter's insurance be purchased at the Tenant's expense.

XXXIII. COVENANTS. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, and assigns of the parties hereto, and all covenants are to be construed as conditions of this Agreement.

XXXIV. RIGHT TO RAISE FLAG. The Landlord allows the Tenant the right to raise the American flag in accordance with NRS 118A.325.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 118A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada.

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements, and as such all previous discussions, understandings, and oral agreements are void and of no further force or effect. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease Term.

Landlord's Signature _____ Date: _____

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust

Tenant's Signature Lail Leonard Date: 3-15-2021

Name: Lail Leonard, President of AAL-JA, Inc.

XXXV. MOVE-IN CHECKLIST. The Landlord and Tenant acknowledge that Tenant has been in possession of the Premises and has inspected the inventory and condition of the Property in accordance with NRS 118A.200(k).

XXXVI. GOVERNING LAW. This Agreement is to be governed under the laws located in the state and local jurisdiction of where the Premises is located in Clark County, Henderson, Nevada.

XXXVII. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements, and as such all previous discussions, understandings, and oral agreements are void and of no further force or effect. The Landlord and Tenant agree to the terms and conditions and shall be bound until the end of the Lease Term.

Landlord's Signature _____ Date: 3/17/21

Name: Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, Jr. 2011 Trust

Tenant's Signature Lail Leonard Date: 3-15-2021

Name: Lail Leonard, President of AAL-JA, Inc.

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Attorneys for Plaintiff AAL-JAY, Inc.

IN THE EIGHTH JUDICIAL DISTRICT COURT

FOR THE COUNTY OF CLARK, STATE OF NEVADA

AAL-JAY, INC., a Nevada Corporation. Plaintiff, v. PHILIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST; DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No. A-21-832379-B Dept. No. 24 **REPLY IN SUPPORT OF EMERGENCY MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN ORDER SHORTENING TIME** Hearing Date: June 22, 2021 Hearing Time: 9:00 am

Plaintiff AAL-JAY, INC. ("Plaintiff" or "AAL-JAY"), by and through its attorneys, Ogonna M. Brown, Esq. of the law firm Lewis Roca LLP ("Lewis Roca"), hereby files this Reply In Support of Emergency Motion for Specific Performance of Purchase Agreement, On An Order Shortening Time ("Reply to Emergency Motion"). The Emergency Motion seeks specific performance of Plaintiff's purchase of the real property parcel located at the address 1 Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property").

This Reply is based upon the following Memorandum of Points and Authorities; the Declaration of Christiano DeCarlo in Support of Emergency Motion ("DeCarlo Decl.") attached to the Emergency Motion as **Exhibit "A"**, the Director of AAL-JAY; the Declaration of Lail Leonard in Support of Emergency Motion ("Leonard Decl.") attached to the Emergency Motion as **Exhibit**

"B", the President of AAL-JAY, and the papers and pleadings on file in this action; and any such oral argument as this Court may entertain at hearing on this Emergency Motion.

Dated: June 15, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: _____

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Attorneys for Plaintiff AAL-JAY, Inc.

I. INTRODUCTION

Plaintiff seeks this Court's intervention for specific performance of the Residential Purchase Agreement ("Purchase Agreement") for purchase of the real property parcel located at the address 1 Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property"). Defendant alleges that Purchase Agreement was never agreed to, nor executed by Defendant, the owner of the real property. Defendant therefore contends there is no written contract between the Parties. However, Defendant conveniently disregards its inconsistent actions, and is not forthcoming with this Court. Indeed, Defendant, through counsel, drafted the Purchase Agreement, and ultimately sent Plaintiff the Purchase Agreement, and then after Defendant tried to renege on the Purchase Agreement, Defendant affirmatively attempted to void the Purchase Agreement by way of a subsequent writing expressly acknowledging the existence and validity of the Purchase Agreement. Clearly, Defendant's conduct demonstrates that Defendant believed the Purchase Agreement was binding upon it.

The Purchase Agreement was offered by Defendant Mr. Fagan as Trustee of the Fagan Trust through counsel, who in turn submitted the Purchase Agreement for $800,0000 to an Escrow Officer at Defendants' title company, First American Title Insurance Company ("First American"). Plaintiff accepted the offer of $800,000 as evidenced by the Purchase Agreement drafted and prepared by Defendants, as evidenced by the executed Purchase Agreement for $800,000, signed on January 21, 2021 by Lail Leonard as President of Plaintiff, AAL-Jay, Inc. ("Ms. Leonard").

In addition to executing the Purchase Agreement, Plaintiff has also made payments toward the Purchase Price and funded an Earnest Money Deposit ("EMD") in the total amount of $170,000. Under the terms of the Promissory Note, Mr. Chrisitiano DeCarlo, the Director of AAL-JAY, Inc., and Ms. Leonard, the President of AAL-Jay, made 16 consecutive weekly payments of $20,685.00 beginning January 30, 2019, totaling $330,960 of which $30,000 was to be applied to the purchase price of the home. This Court should grant specific performance and required Defendant to honor the Purchase Agreement and close the sale of the Property through the escrow that remains open, to prevent Defendant's ongoing eviction efforts and post-Purchase Agreement payments to Defendant.

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II. APPLICABLE LAW

A. Specific Performance of the Purchase Agreement Should Be Granted

"Specific performance is available only when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the appellant has tendered performance; and (4) the court is willing to order it." *Serpa v. Darling*, 107 Nev. 299, 304, 810 P.2d 778, 782 (1991); *see also Carcione v. Clark*, 96 Nev. 808,811,618 P.2d 346, 348 (1980).

The Supreme Court has found specific performance appropriate when the record demonstrates there is "no dispute" that the purchaser of real property offered to tender the purchase price. *See Mayfield v. Koroghli*, 124 Nev. 343, 351-52, 184 P.3d 362, 367-68 (2008); *cf Ford v. Ame/co Properties, Inc*., 126 Nev. 711, 367 P.3d 769 (Tbl.), 2010 WL 3385551 (2010) (unpublished disposition finding specific performance inappropriate where the record demonstrated a reasonable dispute whether purchasers had demonstrated they were ready, willing, and able to tender the purchase price).

Here, specific performance is warranted. The record demonstrates not only that Plaintiff was ready, willing, and able to tender the purchase price of $800,000 but also evinces that Plaintiff's Lender, Nevada State Bank has confirmed proof of funds in escrow and by way of pre-approved lending totaling in excess of the Purchase Price. It is Defendants' – not Plaintiff's – actions that are preventing the close of the Plaintiff's purchase of the Property.

1. The Terms of the Purchase Agreement Are Definite and Certain.

Defendants allege there is no valid contract. However, the terms of the purchase agreement are definite and certain. If the parties provide a practicable method for determining compensation there is no indefiniteness or uncertainty that will prevent the agreement from being an enforceable contract. *See May v. Sessums & Mason, P.A.*, 700 So.2d 22, 27 (Fla. 2d DCA 1997) (quoting 1 Corbin on Contracts, § 4.3, at 567 (Joseph M. Perillo, Rev. ed.1993)); *See also Fisch v. Radoff*, 353 So.2d 160, 162 (Fla. 3d DCA 1977) ("The fact that the details of the sale might be difficult or even impossible to work out between the seller and ultimate buyer does not, as a matter of law, necessarily preclude the viability of a contract which merely grants a broker

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the right to a commission if and when he is able to produce a purchaser...."); *Real Estate World Fla. Commercial, Inc. v. Gurkin*, 943 So. 2d 270, 271–72 (Fla. Dist. Ct. App. 2006).

Here, under the first element of specific performance, the terms of the Purchase Agreement are definite and certain. Pursuant to the Purchase Agreement that was prepared by the Defendants' attorneys and remitted to Defendants' escrow company, First American by the Defendants' attorney, Defendants agreed to sell the Property to the Plaintiff for the New Purchase Price of $800,000.00, with a stipulation for $5,000 to be placed in escrow as EMD. *See* **Ex. "14"** to the DeCarlo Decl. The New Purchase Price reflected the (35) prior payments made by Plaintiff under the terms of the original Contract and Addendum (defined *supra*). The Purchase Agreement was forwarded by the First American Escrow Officer, who was acting as a representative of the Defendant, to Ms. Leonard on January 6, 2021, which Purchase Agreement Ms. Leonard executed on January 21, 2021 and subsequently transmitted via electronic correspondence to the First American Escrow Officer. *See* **Ex. "14"** to the DeCarlo Decl.

2. Defendant's Actions are Consistent With the Existence of a Contract

Contract formation requires mutual consent of the parties. In re Bishay, No. ADV 8:10-AP-01142-ES, 2012 WL 5236169, at *7 (B.A.P. 9th Cir. Oct. 24, 2012). Such mutual consent may be determined based on the reasonable meaning of the words and actions of the parties. *Id.* The contract's terms must be certain in material respects, but the existence of minor areas of disagreement will not render the contract void and entirely unenforceable. Id.; See also Sunset-Sternau Food Co. v. Am. Almond Prod. Co., 259 F.2d 93, 96 (9th Cir. 1958) (noting that subsequent actions are consistent with its acceptance of agreement); See *Dynamics Corp. of Am. v. United States*, 389 F.2d 424, 430 (Ct. Cl. 1968) ("[T]he practical interpretation of a contract, as shown by the conduct of the parties, is of great weight in interpreting the contract.").

Defendant reliance on *Kern v. Kern*, 107 Nev. 988, 823 P.2d 275 (1991) is misplaced. In Kern, the Nevada Supreme Court expressed that specific performance under a contractual obligation to convey real property was not appropriate because the "agreement was not signed by the party to be bound." *Id.* at 991. In *Kern*, the Court also determined material terms, including price were missing. Here, all material terms are present. Further, Defendant's conduct is consistent

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with the existence of the Purchase Agreement. Indeed, Defendant, through counsel, presented Plaintiff with an agreement that sought to void the Purchase Agreement. Defendants cannot contend there was no meeting of minds when Defendant took steps to unwind the transaction. Clearly, Defendant believed the agreement was enforceable. Accordingly, the Purchase Agreement is a valid and enforceable contract.

3. Remedy at Law is Inadequate Because the Property Is a Unique Parcel of Land with Characteristics and Inherent Attributes That Cannot Be Replicated by Money Damages.

Defendant further alleges, that the remedy at law is adequate. However, Defendant ignores the unique aspects of the Property. Where subject matter of sales contract was real property, and thus unique, specific performance is available to purchasers. *Stoltz v. Grimm*, 100 Nev. 529, 689 P.2d 927 (1984). Nevada will enforce contractual obligations through the remedy of specific performance where appropriate, particularly in real estate transactions because real property is unique, and damages therefore may be an inadequate remedy. *Baroi v. Platinum Condo. Dev., LLC*, 874 F. Supp. 2d 980 (D. Nev. 2012).

Here, any remedy at law is inadequate because the Property is a singular parcel of real property having unique characteristics and because under the Parties' contractual agreements, including the Contract, Addendum, and the Purchase Agreement, Defendants agreed to sell the Property to the Plaintiff. If the Plaintiff is not able to complete the purchase of the Property at the agreed-upon price of $800,000 as contemplated by the Purchase Agreement, the Defendants will be unjustly enriched by the funds that Plaintiff has previously paid to the Defendants, and which funds were paid for the express purpose of the purchase of the Property. As a result, Defendants will unjustly reap Plaintiff's equity in the Property and capitalize upon the same by improperly denying Plaintiff its purchase transaction.

Further, if Defendants are permitted to renege on their agreement to sell the Property to the Plaintiff at the $800,000 Purchase Price, Plaintiff will never be able to recoup the benefit for which it expressly bargained with Defendants years ago: owning and living in the Property, maintaining the Property and purchasing the Property. Because the Property possesses specific and unique

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characteristics, a monetary compensation by way of returned funds to the Plaintiff would not be an adequate remedy in this circumstance.

Absent specific performance, Plaintiff risks losing the Property where Mr. Christiano DeCarlo currently resides with his family, including a minor child. In the event specific performance is not ordered by this Court, the prior payments Plaintiff has made over the years toward the goal of purchasing the Property will be completely lost, resulting in an inequitable windfall to Defendant, notwithstanding the Purchase Agreement drafted by Defendant's counsel and remitted to Plaintiff by Defendant's counsel, which Plaintiff accepted. Plaintiff is facing threat of eviction a second time now in the last thirty (30) days because the Defendants refuse to honor the Purchase Agreement for $800,000, notwithstanding that Plaintiff is prepared to immediately close pursuant to the Purchase Agreement previously prepared by and submitted by the Defendants. Absent relief from this Court, Plaintiff will be forced to forfeit the funds that have already been invested over the years to Defendants towards the purchase of the Property. Under the circumstance, this Court should compel Defendants to allow the sale of the Property to close for the previously agreed upon Purchase Price of $800,000. Plaintiff urges the Court to grant specific performance of the Purchase Agreement and order that Defendants honor the terms of the Purchase Agreement and to sell the Property to the Plaintiff for $800,000.

B. Equity favors granting specific performance and ordering Defendants to complete the sale of the Property to Plaintiff.

Defendant contends that Defendant purchased the Property for $1,900,000 and stands to lose over $1,000,000 dollars based upon Plaintiff's claim for specific performance at the Plaintiff's "new" purchase price. Defendant essentially admits it seeks to renege on the deal so it may take advantage of the real estate market to Plaintiff's determent.

Equity regards as done what in good conscience ought to be done. *Woods v. Bromley*, 69 Nev. 96 at 107, 241 P.2d 1103. In the present case, specific performance is warranted and appropriate because Plaintiff performed its responsibilities under the Parties' contractual agreements by making (35) payments towards the purchase of the Property over the course of several years, by funding an EMD in the amount of $50,000, increasing the EMD to $170,000, and

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by securing pre-approved funds in the amount of $680,000 from its Lender, Nevada State Bank, which in the aggregate, is more than sufficient to fund the purchase of the Property at the previously agreed upon purchase price of $800,000. Lender is only waiting for the completely executed Purchase Agreement to proceed with funding the balance of the loan to the Plaintiff for purchase of the Property. However, Defendants reneged on the $800,000 Purchase Agreement in bad faith, and fraudulently coerced Plaintiff to attempt to void the Purchase Agreement based upon misrepresentations to Plaintiff that a reconciliation of past payments would be forthcoming and adjusted accordingly in connection with the purchase of the Property. However, after the lease extensions were executed, Defendants did not negotiate with Plaintiff in good faith and cut off all communications with Plaintiff regarding the purchase of the Property, in direct contravention of the representations Defendants made to induce Plaintiff to "negotiate" the final purchase of the Property.

Under the specific circumstances of this case, equity should be exercised by this Court to ensure that Defendants do not profit from Plaintiff's funds that have previously been paid to the Defendants towards the purchase of the Property. Defendants have made multiple misrepresentations to Plaintiff and failed to engage in good faith in the Parties' contractual negotiations, and as a result Defendants continue to unjustly benefit from Plaintiff's prior Property payments and continues to demand future lease payments, when the Property should have been sold to Plaintiff for $800,000 in January 2021 based upon the Purchase Agreement drafted and presented by Defendants, through their counsel. In particular, if the Plaintiff cannot complete the purchase transaction of the Property, Defendants will be inequitably rewarded with Plaintiff's funds, as well as retention of ownership of the Property.

Defendants' deceptive actions and unfair dealings have prevented Plaintiff from purchasing the Property, which unjustly places Defendants in the position of reaping Plaintiff's equity in the Property. Defendants' refusal to now sell the Property to the Plaintiff at the previously agreed-upon Purchase Price of $800,000, based upon a Purchase Agreement drafted by Defendants' counsel and submitted to the title company, is wholly inequitable and should be remedied by this Court by ordering specific performance.

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IV. CONCLUSION

For the forgoing reasons, Plaintiff AAL-JAY, INC. requests that this Court issue an order directing Defendants to specifically perform the Purchase Agreement by immediately executing the Purchase Agreement for the Purchase Price of $800,000; by accepting Plaintiff's tender of the loan funds secured through Plaintiff's Lender, Nevada State Bank; and by closing on Plaintiff's purchase of the real property parcel located at the address 1 Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 in the amount of $800,000. Plaintiff is ready, willing and able to close, as evidenced by the loan approval and the $170,000 that remains in escrow.

DATED: June 15, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: _____

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Attorneys for Plaintiff AAL-JAY, Inc.

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on June 15, 2021, I served a copy of **REPLY IN SUPPORT OF EMERGENCY MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN ORDER SHORTENING TIME** on all parties as follows:

☒ Electronic Service – By serving a copy thereof through the Court's electronic service system via the Odyssey Court e-file system;

Attorneys for Defendant Philip Fagan JR, Philip J. Fagan Jr. 2001 Trust and The Trustee for Philip J. Fagan Jr. 2001 Trust
Jerri Hunsaker jhunsaker@blackwadhams.law
Diane Meeter dmeeter@blackwadhams.law
Chris V. Yergensen cyergensen@blackwadhams.law

☐ E-mail – By serving a copy thereof at the email addresses listed below; and

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/ Kennya Jackson
An employee of Lewis Roca Rothgerber Christie LLP

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Attorneys for Defendants/Counterclaimants

DISTRICT COURT

CLARK COUNTY, NEVADA

AAL-JAY, INC., a Nevada corporation, Plaintiff, v. PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, Defendants.	Case No. A-21-832379-C Dept. No.: 24 **DEMAND FOR JURY TRIAL**
PHILLIP J. FAGAN, JR., as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, Counterclaimant, v. AAL-JAY, INC., a Nevada corporation; CHRISTIANO DE CARLO, an individual; and LAIL LEONARD, an individual, Counter-Defendants.	

Defendant/Counterclaimant, PHILLIP J. FAGAN, JR., an individual, and as Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST, by and through their counsel of record Christopher V.

Yergensen, Esq., of the law firm of Black & Wadhams, hereby demands a jury trial for all claims triable by a jury as alleged in Plaintiff's Complaint and Defendants' Counterclaims.

Dated this 30th day of June 2021.

BLACK & WADHAMS

By: _____
Christopher V. Yergensen, Esq.
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135

Attorneys for Defendants/Counterclaimants

BLACK & WADHAMS
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am employee of Black & Wadhams, and that on the 30th day of June 2021, I served the above and foregoing DEMAND FOR JURY TRIAL on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

Oganna Brown, Esq.
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OBrown@lewisroca.com

/s/ Diane Meeter
An Employee of Black & Wadhams

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