

Case No. 83442

IN THE SUPREME COURT FOR THE STATE OF NEVADA

**PHILLIP J. FAGAN, JR. AN INDIVIDUAL AND AS TRUSTEE OF THE
PHILLIP J. FAGAN, JR. 2001 TRUST**

Petitioner,

vs.

**THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR, THE COUNTY OF CLARK, AND THE
HONORABLE ERIKA BALLOU, DISTRICT JUDGE**

Respondent,

and

AAL-JAY, INC., a Nevada Corporation

Real Party in Interest.

Petition from the Eighth Judicial District Court, Clark County, Nevada
District Court Case No. A-21-832379-C

The Honorable Erika Ballou

**REAL PARTY IN INTEREST AAL-JAY, INC.'S
SUPPLEMENTAL APPENDIX**

OGONNA M. BROWN (SBN 7589)
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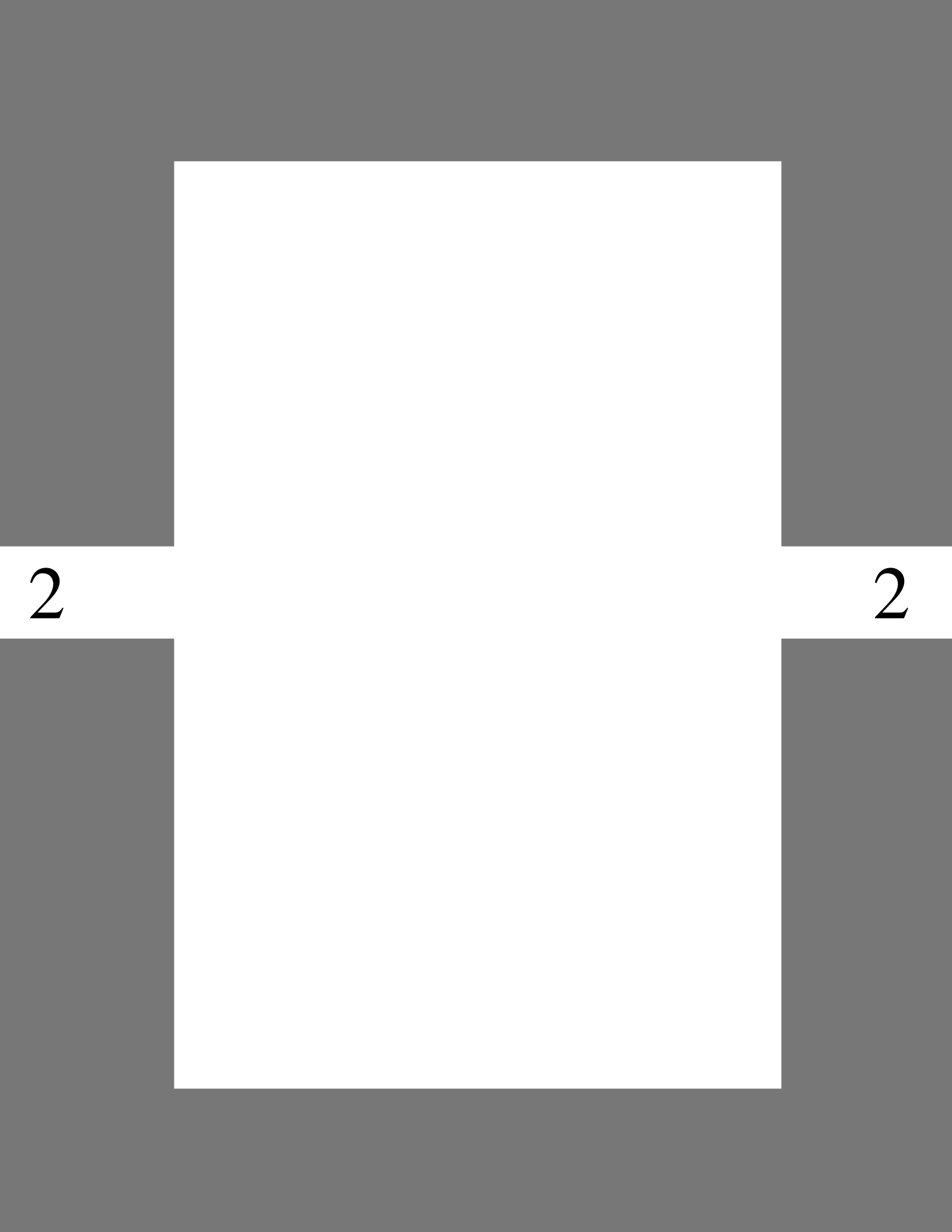
Tab	Document	Date	Pages
2	Residential Purchase Agreement, signed by the Clerk of the Court on behalf of seller, Phillip J. Fagan Jr. as Trustee, in September 2021 per the August 26, 2021, state court Order Granting Emergency Motion for Specific Performance of Purchase Agreement, on an Order Shortening Time	12/14/20	150–156

CERTIFICATE OF SERVICE

I certify that on September 28, 2021, I submitted the foregoing “Real Party in Interest AAL-JAY Inc.’s Supplemental Appendix” for filing *via* the Court’s eFlex elec-tronic filing system. Electronic notification will be sent to the following:

BLACK & WADHAMS
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Attorneys for Petitioner

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



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RESIDENTIAL PURCHASE AGREEMENT

This Residential Purchase Agreement ("Agreement") is entered into on this 14th day of December, 2020, ("Effective Date") by and between the Philip J. Fagan, Jr., as Trustee for the Philip J. Fagan, JR. 2001 Trust ("Buyer") and AAL-JAY, Inc., a Nevada corporation ("Seller"). Buyer and Seller may collectively be referred to herein as Parties.

RECITALS

WHEREAS, Seller owns the residential real property located 1 Grand Anacapri, Henderson, Nevada 89011, assessor parcel number 162-22-810-011, (the "Property");

WHEREAS, on or around November 2016, Seller and Buyer entered into that certain Contract for Deed (the "Previous Contract"), wherein Seller agreed to sell, and Buyer agreed to Buy, the Property;

WHEREAS, the Previous Contract provided that the purchase price was to be \$1,050,000, in which Buyer was to pay to Seller approximately thirty five (35) monthly payments of principal and interest, with the remaining balance of principal and interest of the purchase price to be paid on or before October 31, 2019;

WHEREAS, Buyer has made monthly payments, but has failed to pay the remaining principal balance, with accrued interest thereon, on or before October 31, 2019;

WHEREAS, Seller is willing to give to Buyer credit for the principal portion of the monthly payments made to Seller in establishing the Purchase Price (as defined below) of this Agreement;

WHEREAS, based upon the terms and conditions set forth below, Buyer wishes to purchase all of Seller's right, title, and interest in and to the Property, and Seller wishes to sell all of Seller's right, title, and interest in and to the Property.

AGREEMENT

NOW THEREFORE, for good cause and valuable consideration, the receipt and sufficiency of which is hereby agreed upon, the Parties agree as follows:

1. The Previous Contract is hereby terminated, and all terms and conditions expressed therein are of no longer force or effect on either Party.
2. Purchase Price:
 - a. The Purchase Price for the Property shall be Eight Hundred Thousand and NO/100ths Dollars (\$800,000.00) ("Purchase Price").

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

- b. The Purchase Price shall be paid by Buyer in Good Funds on or before the Close of Escrow. The Purchase Price does not include closing costs, prorations, or other fees and costs associated with the purchase of the Seller's Property Interest. Closing costs, prorations and all fees and costs associated with the purchase of Seller's Property Interest shall be paid for as set forth in Section 7 of this Agreement.
- c. Upon the opening of escrow, Buyer shall deposit the sum of Five Thousand and No/100ths Dollars (\$5,000.00) as and for its Earnest Money Deposit ("EMD"). The EMD shall be credited toward the Purchase Price at Close of Escrow, as defined below, or delivered to Seller in the event of Buyer's default as set forth herein.

3. **FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred to Buyer, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All fixtures, fittings and furniture including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s) and furniture remaining at the Property upon COE.

4. **ESCROW:**

- a. **OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at First American Title Company ("Escrow Company" or "Escrow Holder") with Michele Eaton ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. Escrow Holder is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.
- b. **CLOSE OF ESCROW:** Close of Escrow shall be on or before 5:00 pm PST on Thursday, December 17, 2020 ("COE").
- c. **IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all Escrow Holders to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the Escrow Holder. Seller is also made aware that Escrow Holder is required by federal law to provide

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Buyer's Initials:

Seller's Initials:

this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

5. **PRELIMINARY TITLE REPORT:** The Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected prior to Close of Escrow (the "Title Review Period"). If Buyer does not object to the PTR prior to Close of Escrow, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions." Buyer and Seller agree that the Deed of Trust recorded on May 09, 2006, in Book 20060509, as Instrument No. 04291, to secure an original indebtedness of \$1,400,000, is NOT a Permitted Exception, and Seller agrees to remove such exception to title of the Property at Close of Escrow.

6. Intentionally deleted.

7. **TITLE INSURANCE:** This Purchase Agreement is contingent upon the Buyer's ability to receive, good and marketable title to Seller's Property Interest on COE as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 3. Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 7.

8. **FEES, AND PRORATIONS:** The fees and costs associated with the closing shall be paid by the Parties as follows:

Loan Costs	Paid by Buyer
Escrow Company Fees:	Paid by Buyer
Title Policy:	Paid by Buyer
Real Property Transfer Tax:	Paid by Seller

PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed.

ATTORNEYS FEES: Each Party shall pay its own attorneys' fees associated with and respect to this transaction.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: _____

Seller's Initials:

9. **TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) any obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. **COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller is required to provide at Buyer's expense the CIC documents as required by NRS 116.4109 (collectively, the "Resale Package"). Buyer waives any rights to CIC documents, to the extent such apply, as Buyer has been in possession of the Property and should be aware of the status of the CIC. To the extent there are CIC Capital Contributions or CIC Transfer Fees related to the Property in connection with the transaction contemplated by this Agreement, those contributions and transfer fees shall be paid by Seller.

11. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and title or bill of sale related to any other item listed under Section 2 above, upon COE, if requested by Buyer.

12. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

13. **ASSIGNMENT OF THIS AGREEMENT:** This Agreement is non-assignable unless agreed upon in writing by the Parties.

14. **DEFAULT:**

a. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through a mediator mutually agreed upon by the parties, except in the case of a claim of specific performance. Mediation fees, if any, shall be divided equally among the Parties. Each party has consulted with an independent lawyer of their choice to review this mediation provision and this Agreement before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: XX / _____ SELLER(S) INITIALS: _____ / _____

b. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer may, at Buyer's option, (i) terminate this Agreement and receive the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials: XX

Seller's Initials: XX

EMD, or (ii) take legal action for specific performance, including the claim for attorneys' fees and costs in taking such action of specific performance.

c. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, Seller may retain, as liquidated damages, the EMD and shall keep title to the Property. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default.

15. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with Section 5, neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law) and both Parties shall be obligated to pay, equally, any costs set forth herein associated with this transaction and such cancellation.

16. ESCROW INSTRUCTIONS: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold Escrow Holder free and harmless from any loss or expense, except losses or expenses as may arise from Escrow Holder's negligence or willful misconduct.

17. BROKER'S COMPENSATION/FEEs: Buyer and Seller agree that the sale of the Property is not subject to any Broker's fees.

18. DEFINITIONS: "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners' associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Escrow Holder" means the neutral party that will handle the closing. "Good Funds" means an acceptable form of payment determined by Escrow Holder in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "N/A" means not

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Buyer's Initials: LL

Seller's Initials: SL

applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement.

19. SIGNATURES, DELIVERY, AND NOTICES:

- a. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.
- b. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

20. MISCELLANEOUS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

(signatures follow on next page)

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum of counteroffer.

Buyer's Initials:

Seller's Initials:

IN WITNESS WHEREOF, each of the persons executing this Agreement has authority on behalf of the respective party to do so and has had the opportunity to review this Agreement with counsel of their choosing and based upon their review and understanding of this Agreement, agrees to the terms and conditions set forth herein as of the Effective Date set forth above.

Dated this 14th day of December, 2020.

SELLER

Philip J. Fagan, JR. 2011 Trust


By: 
Philip J. Fagan, Jr., its Trustee

BUYER

AAL-JAY, Inc.
a Nevada corporation

By: 
Lail Leonard, its President

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Buyer's Initials: 

Seller's Initials: 