

1 **CASE NO. 84699**  
2 **IN THE SUPREME COURT FOR THE STATE OF NEVADA**

3 **PHILLIP J. FAGAN, JR. an individual and as Trustee of the PHILLIP**  
4 **J. FAGAN, FR. 2001 TRUST**

5 Appellant,  
6

Electronically Filed  
Dec 21 2022 12:00 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

7 vs.

8 **AAL-JAY, INC., a Nevada corporation**

9 Respondent.  
10

11 **Appellant's Appendix, Vol. 1**

12 Appeal from the Eighth Judicial District Court, Clark County, Nevada  
13 District Court Case No. A-21-832379-C  
14 The Honorable Erika Ballou

15 **BLACK & WADHAMS**

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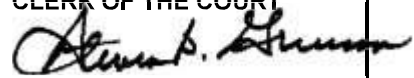
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### CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2022, that I served a copy of the foregoing document upon all counsel of record electronically via the Court's eflex-eFile and e-serve system:

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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-C

Dept. No. 24

**FIRST AMENDED COMPLAINT**

(EXEMPT FROM ARBITRATION  
UNDER N.A.R. 3(A): ACTION  
CONCERNING TITLE TO REAL  
PROPERTY, SPECIFIC PERFORMANCE,  
INJUNCTIVE RELIEF;  
EXTRAORDINARY RELIEF  
REQUESTED)

AAL-JAY, INC. ("Plaintiff" or alternatively "AAL-JAY"), a Nevada corporation, by and through its undersigned counsel of record, hereby alleges and complains in this First Amended Complaint ("Complaint") against Defendants PHILIP J. FAGAN, JR., an individual ("Fagan"), and as TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001 TRUST ("Fagan Trust") (collectively, "Defendants") as follows:

**PARTIES**

1. Plaintiff is and was, at all relevant times to this action, a Nevada corporation authorized to conduct business in the State of Nevada, County of Clark.

2. Upon information and belief, Defendant Fagan is the trustee of the Trust, and at all relevant time to this action, is a resident of the State of Nevada, Clark County, and conducts business in Clark County, Nevada.

3. Upon information and belief, Defendant the Trust is a Nevada trust formed in the State of Nevada, Clark County, and conducts business in Clark County, Nevada.

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1           4.     The true names and capacities, whether individual, corporate, associate, or  
2 otherwise of Defendants herein designated as Does I through XX and Roe Corporations I through  
3 XX, inclusive, are not known to Plaintiff at this time and are therefore named as fictitious  
4 defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of  
5 Does I through XX and Roe Corporations I through XX when and as ascertained.

6           **GENERAL ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

7           5.     Plaintiff incorporates by reference Paragraphs 1 through 4 of this Complaint as  
8 though fully set forth herein.

9           **CONTRACT FOR DEED AND ADDENDUM**

10          6.     Between August 2014 and November 2016, Plaintiff leased the Property from the  
11 owner, the Defendants.

12          7.     On December 8, 2016, Plaintiff and Defendants (collectively, the “Parties”) entered  
13 into a Contract for Deed (“Contract”). The Contract was signed by Dr. Fagan as Seller and Lail  
14 Leonard (“Ms. Leonard”) as President of AAL-JAY as Purchaser. A true and correct copy of the  
15 Contract is attached hereto as **Exhibit “1”**.

16          8.     Pursuant to the terms of the Contract, Defendants agreed to sell the Property to the  
17 Plaintiff for the purchase price of \$1,050,000.00 (“Purchase Price”).

18          9.     The Purchase Price was to be paid on a schedule agreed by and between the Parties,  
19 as set forth in the Contract.

20          10.    Specifically, upon execution of the Contract, Plaintiff paid a lump sum of \$50,000  
21 (“Down Payment”) to the Defendants.

22          11.    The balance of \$1,000,000 was to be due and payable as follows:

23               Balance payable, together with interest on the whole sum that shall be from  
24 time to time unpaid at the rate of 3.25 per cent, per annum, payable in the  
25 amount of Five Thousand Six Hundred Seventy-one and 96/100 dollars  
26 (\$5,671.96) per month beginning on the 1st day of December, 2016, and  
27 continuing on the same day of each month thereafter until the 31st day of  
28 October, 2019, when all remaining principal and interest shall be paid.  
Interest shall be computed monthly and deducted from payment and the  
balance of payment shall be applied on principal.

Attached hereto as **Exhibit “2”** is a reconciliation schedule spreadsheet (“Reconciliation”) setting forth the Tenant’s payments for the Property beginning in December 2016.

12. The interest rate was set at 3.25% for the term of the Contract, and was not variable.

13. In addition to the Purchase Price, the first year’s Property taxes were to be paid by the Defendants and then added to the Purchase Price. After the first year, Plaintiff would assume responsibility for the Property taxes for each subsequent year.

14. Despite this provision in the executed Contract, Defendants failed to add the 2017 Property taxes to the Purchase Price until March 2021.

15. Each party to the Contract agreed to insure their own contents of the Property.

16. Under the terms of the Contract, Plaintiff also assumed responsibility for liability and hazard insurance for the duration of the Contract. Defendants agreed to purchase fire, hazard and windstorm insurance but Plaintiff was to “repay the amount so paid by Seller within ten (10) days of demand for same by Seller.”

17. In January 2018, the Parties entered into Addendum No. 1 to the Contract (“Addendum”). The Addendum was signed by Dr. Fagan on behalf of the Defendants and Ms. Leonard on behalf of the Plaintiff. A true and correct copy of the Addendum is attached hereto as **Exhibit “3”**.

18. Under the terms of the Addendum, Plaintiff agreed to cure defaults for January, February and March 2018.

19. Specifically, Plaintiff agreed to pay Defendants \$12,340.97 on or before February 2, 2018, but ultimately paid \$12,437.75.

20. Pursuant to the Addendum, the Parties further agreed that Plaintiff would pay to Defendants on or before February 20, 2018, the monthly payments due under the Contract for April and May 2018.

21. Thereafter, the Plaintiff would make each monthly payment due on the first day of each month under the Contract and continue said monthly payments four (4) months in advance until the amount due under the Contract was paid in full.

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22. Plaintiff was also required to remain current on the payments due under the Contract for the insurance and property taxes.

23. The Addendum further set forth provisions for future defaults: “In the event Purchaser fails to timely make payment of the Deferred Amount to Seller or any of the payments due under Section 4 and 5 of this Addendum or Purchaser otherwise defaults under the terms of the Contract in the future, Purchaser agrees to immediately vacate the Property, deliver possession of the Property to Seller and cooperate with Seller in terminating the Contract.”

**TENANT MAKES PAYMENTS FOR ARREARS**

24. On February 12, 2018, after the Parties executed the Addendum, Christiano DeCarlo (“Mr. DeCarlo”), Director for Plaintiff and the resident tenant of the Property, contacted Defendants’ accountant, Michael Noll at Lorenzen & Noll, CPAs (“Mr. Noll”) to request documentation for the insurance amounts in arrears as well as the amounts billed in advance pursuant to the agreed terms of the Addendum, including statements of all premiums paid for 2017 and 2018. Mr. Noll provided the requested information (copies of insurance policies, invoices and receipts for payment) on February 21, 2018.

25. On March 9, 2018, Mr. Noll emailed Ms. Leonard advising that “[u]pon receipt of the balance due of \$12,437.75, this will bring Mr. Decarlo [*sic*] fully paid up through June 30, 2018.”

26. In his March 9, 2018 email, Mr. Noll further stated that in order “[t]o stay 3+ months ahead, Mr. Decarlo [*sic*] is required to pay the July loan payment of \$5,671.96 on April 1, 2018.”

27. On March 10, 2018, Plaintiff paid Defendants \$12,437.75, the total amount of the outstanding arrears pursuant to the Addendum.

28. Plaintiff also paid the 2018 Property taxes totaling \$6,677.52.

29. Beginning in June 2018, Defendants increased the interest rate on the payments from 3.25% to 4.85%, however, this rate increase was never fully explained to the Tenant until August 2020, at which time Landlord retroactively assessed the higher interest rate. At that time, Dr. Fagan claimed that the increased interest rate was not a variable rate, but a “sliding scale” and “is what it is.” Neither the Contract nor the Addendum included provisions for changes to the interest rate.

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1           30.     On January 22, 2019, a Promissory Note in the amount of \$330,000 was executed  
2 by Ms. Leonard, as Trustee of the Lail Leonard Trust dated January 26, 2005 and Mr. DeCarlo as  
3 Maker and Defendants as Payee.

4           31.     Under the terms of the Promissory Note, Ms. Leonard and Mr. DeCarlo made 16  
5 consecutive weekly payments of \$20,685.00 beginning January 30, 2019.

6           32.     However, based on a verbal agreement between the Parties, the manner in which the  
7 payments under the January 2019 Promissory Note were to be applied to the outstanding balance  
8 on the Property payments was disputed by the Parties.

9           33.     The Tenant maintains that \$30,000 of these payments were to be applied to the  
10 principal balance in addition to the \$28,000 that was also to be applied pursuant to the two previous  
11 promissory notes.

12           34.     According to the Landlord, \$30,000 of these payments represented three mortgage  
13 payments, not including taxes and insurance. Consequently, the \$30,000 represents a value applied  
14 to the principal of only \$13,366.50 (calculated as [\$5,671.96 monthly payment - \$660.00 tax  
15 payment – \$556.46 interest payment = \$4,455.5] x 3 payments).

16           35.     As of the date of this Complaint, the Parties have not resolved this discrepancy in  
17 the application of the funds.

18     **PROPERTY DAMAGE AND INSURANCE CLAIM**

19           36.     In 2019, the Property sustained significant water damage as a result of a pipe burst.

20           37.     In connection with the water damage, a claim was filed against the Property  
21 insurance carrier, Chubb, under policy number 1019823002.

22           38.     On May 28, 2020, Chubb approved the claim in the amount of approximately  
23 \$33,000, and withheld the \$10,000 deductible from the claim payments. Ultimately, the contractors  
24 were paid approximately \$77,000 to make the necessary repairs to make the Property habitable.

25           39.     Beginning in July 2020, Landlord again increased the interest rate on the payments  
26 from 4.85% to 5.125%. Again, this rate increase was never fully explained to the Tenant until  
27 August 2020, at which time Landlord retroactively assessed the higher interest rate. At that time,  
28 Dr. Fagan claimed that the increased interest rate was not a variable rate, but a “sliding scale” and

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1 “is what it is.” Neither the Contract nor the Addendum included provisions for changes to the  
2 interest rate.

3 40. On July 2, 2020, Dr. Fagan’s bookkeeper, Kendrah Hardin (“Ms. Hardin”) sent the  
4 breakdown of the principal and interest payments for the Property to Ms. Leonard.

5 41. On July 16, 2020, Ms. Hardin sent a summary of the 2020 payments to Ms. Leonard.

6 42. On August 11, 2020, Ms. Hardin sent an email to Ms. Leonard regarding past due  
7 payments from April 2020 through August 2020.

8 43. In response, on August 15, 2020, Ms. Leonard sent an email to Ms. Hardin  
9 explaining that the prior advance payments had been applied to the rent for February, March and  
10 April 2020. Ms. Leonard further stated that the payment for May 2020 was being sent.

11 44. Ms. Leonard also requested an update on the status of the Chubb insurance payments  
12 for the water damage claim, to which no response was provided by Ms. Hardin or Dr. Fagan.

13 **NEW PURCHASE AGREEMENT**

14 45. Plaintiff paid the Landlord Check No. 3231 dated January 2, 2021 in the amount of  
15 503.34 to pay the real property taxes, Check No. 3230 dated January 2, 2021, in the amount of  
16 \$5,671.08, and for insurance as evidence by Check No. 3232 dated January \$607.66

17 46. In January 2021, Mr. DeCarlo engaged in discussions with Dr. Fagan’s attorney,  
18 Richard Scott, Esq. (“Attorney Scott”) on behalf of the Tenant regarding the existing terms of the  
19 Property purchase.

20 47. As a result of these conversations, on January 6, 2021, an Escrow Officer at First  
21 American Title Insurance Company (“First American”) sent a Residential Purchase Agreement  
22 (“Purchase Agreement”) to Ms. Leonard.

23 48. According to the terms of the Purchase Agreement, the new Purchase Price for the  
24 Property was \$800,000.00 (“New Purchase Price”), with a stipulation for \$5,000 to be placed in  
25 escrow as Earnest Money Deposit (“EMD”). The New Purchase Price reflected the (35) prior  
26 payments made under the terms of the original Contract and Addendum.

27 . . .

28 . . .

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49. On January 11, 2021, Ms. Leonard sent the signed Purchase Agreement to the First American Escrow Officer. A true and correct copy of the January 11, 2021 email and attachments is attached hereto as **Exhibit “4”**.

50. On January 12, 2021, Plaintiff wired \$50,000 into an escrow account. A true and correct copy of the January 12, 2021 U.S. Bank General Wire Transfer Request is attached hereto as **Exhibit “5”**.

**LANDLORD RESCINDS EXISTING OFFER AND DRAFTS REVISED PURCHASE AGREEMENT**

51. On January 12, 2021, Dr. Fagan contacted Ms. Leonard to dispute the New Purchase Price, and formally withdrew the offer to sell the Property at the New Purchase Price of \$800,000.

52. On January 13, 2021, the First American Escrow Officer presented Plaintiff with a revised Residential Purchase Agreement (“Revised Purchase Agreement”) with a new Purchase Price of \$895,000 instead of the previously agreed-upon Purchase Price of \$800,000.

53. As a result of the retroactive interest rate increases, the revised Purchase Price was overvalued at \$871,560.01 as opposed to \$848,304.44, which would have been the price as of December 31, 2020 had the rate interest rate remained at the contractual rate of 3.25% This represented an increase to the original contract purchase price of \$36,695.56.

54. The Revised Purchase Agreement also required a \$50,000 EMD.

55. On January 15, 2021, Ms. Leonard rejected the Defendants’ Revised Purchase Agreement on behalf of the Plaintiff.

56. On January 22, 2021, Defendants presented a second revised Residential Purchase Agreement (“Second Revised Purchase Agreement”) with a new purchase price of \$885,000 (“Modified Purchase Price”).

57. Under the proposed terms of the Second Revised Purchase Agreement, the Modified Purchase Price was to be funded as follows:

The Purchase Price shall be paid as follows: (i) Buyer shall deliver to Seller a promissory note in the amount of \$70,000, secured by a second deed of trust against the Property (hereinafter referred to as the "Note" and "Second Deed of Trust"), wherein only an amount of \$60,000 of such Note shall be credited against the Purchase Price; and (ii) the remaining amount of the Purchase Price of \$825,000 (\$885,000 - \$60,000) to 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, shall be paid for in addition to the Purchase Price and as set forth in Section 8 of this Agreement.

58. To permit time to negotiate the terms of the Second Revised Purchase Agreement and the Modified Purchase Price, the Defendants agreed to lease the Property to the Plaintiff for the month of February 2021.

59. Dr. Fagan demanded a payment of \$7,000 in rent for February 2021, but Ms. Leonard refused on the basis that the increased was never agreed upon.

60. To that end, the Parties entered into a Residential Lease Agreement dated January 22, 2021, for the term of February 2021 for the agreed rent amount of \$5,671.08 for the month of February 2021 (Check No. 3252 dated February 1, 2021), and \$602.89 (Check No. 3253 dated February 1, 2021) for real property taxes and \$697.08 (Check No. 3254 dated February 1, 2021) for insurance on the property ("First Lease Agreement").

61. On February 23, 2021, at Plaintiff's request, Ms. Hardin sent to Plaintiff the amortization schedule for the Property payments ("Amortization Schedule") which included the increased interest rate.

62. Plaintiff was current on the payments due and owing under the Amortization Schedule through March 2021, based upon the credit of the \$30,000 payment made under the Promissory Note.

63. On March 12, 2021, Defendants filed a Five-Day Notice to Quit for Tenancy At Will.

64. On March 15, 2021, the Parties conferred regarding the updated amortization schedule.

65. During this discussion, Defendants agreed to have Dr. Fagan's staff itemize all payments.

66. Around this time, Ms. Leonard engaged in several discussions with Dr. Fagan regarding the purchase of the Property, and Dr. Fagan sent a number of text messages to Ms. Leonard regarding the amounts to be paid while the purchase agreement was being finalized.



1           67.     In February 2021, Darlene Partney, the administrator for AAL-Jay, met with Dr.  
2 Fagan for about three (3) hours regarding the reconciliation, at the conclusion of which Dr. Fagan  
3 confirmed that he

4           68.     Throughout these conversations, Dr. Fagan never asked Ms. Leonard whether she  
5 or Plaintiff had counsel to represent their interests, nor told Ms. Leonard that she or Plaintiff should  
6 retain counsel to engage in the Property negotiations.

7           69.     Pursuant to these conversations, Dr. Fagan led Ms. Leonard to believe that if she  
8 signed the Second Lease Agreement and paid rent for March and April, then Defendants would  
9 continue to negotiate the finalized Purchase Agreement once the reconciliation of past payments  
10 was verified.

11           70.     Dr. Fagan delivered the Second Lease Agreement to Ms. Leonard via Federal  
12 Express, which Ms. Leonard executed and delivered to Dr. Fagan by way of Darlene with the two  
13 checks.

14           71.     Ms. Leonard, acting on Plaintiff's behalf and relying upon Dr. Fagan's  
15 representations, agreed to enter into another lease agreement for the months of March and April  
16 under the false understanding that discussions regarding the purchase of the Property would  
17 continue.

18           72.     On March 9, 2021, Defendants presented a second lease agreement which was dated  
19 March 2, 2021 ("Second Lease Agreement").

20           73.     Defendants also sent an unsigned Letter of Agreement attached to the March 9, 2021  
21 email. The Letter of Agreement stated that, upon execution of the March Lease Agreement that  
22 "all other agreements are terminated and of no further force or effect." There were also additional  
23 provisions based on proposed closing dates.

24           74.     Under the terms of the Second Lease Agreement, Plaintiff would make (2) monthly  
25 payments in the amount of \$6,800 for the months of March and April 2021, of which \$3,000 of the  
26 payment amount would be applied to the Modified Purchase Price.

27           75.     Accordingly, Plaintiff submitted two checks to Defendants, each in the amount of  
28 \$6,800, representing payment for the March and April 2021 rent.

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1           76.     After submission of the March and April rent payments, Plaintiff signed the March  
2     2021 lease.

3           77.     Once the Second Lease Agreement was executed by the Plaintiff, the Defendants  
4     agreed to not pursue the March 12, 2021 Five-Day Notice to Quit for Tenancy at Will. Defendants  
5     further agreed that a new Purchase Agreement which would correctly reflect and apply all prior  
6     Property payments would be completed and submitted expeditiously (“Third Revised Purchase  
7     Agreement”).

8           78.     However, shortly thereafter, Plaintiff was informed by Defendants that the Third  
9     Revised Purchase Agreement would not be executed until the end of the lease term.

10          79.     After Plaintiff had entered into the Second Lease Agreements which was executed  
11     under the understanding that Defendants would continue to negotiate the purchase of the Property  
12     in good faith, Defendants then refused to negotiate with either Ms. Leonard or Mr. DeCarlo.

13          80.     On March 17, 2021, as a result of this new information, Plaintiff decided to put a  
14     stop payment order on the checks for the March and April rent payments (check numbers 3276 and  
15     3277).

16          81.     Plaintiff had been fraudulently induced into signing the Second Lease Agreement  
17     under false circumstances. Defendants had no intention of honoring the original \$800,000 Purchase  
18     Price and the original Purchase Agreement which had been executed by Ms. Leonard on January  
19     11, 2021. *See* **Ex. “4”**.

20          82.     On March 26, 2021, Plaintiff was served with the Landlord’s Seven (7) Day Notice  
21     To Pay Or Quit pursuant to NRS § 40.253 (“Notice”).

22          83.     As of the date of this Complaint, Plaintiff has paid \$283,598.00 in payments for the  
23     Property, current through April 2021, of which \$155,149.17 has been applied to the interest and  
24     \$128,439.48 has been applied to the principal.

25          84.     In addition to the Property payments, Plaintiff has also paid \$23,661.06 in insurance  
26     payments.

27          85.     Plaintiff has also paid \$20,393.36 in tax payments for the years 2017 through  
28     January 2021.

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86. Plaintiff has also funded \$50,000 for the Earnest Money Deposit in escrow for the purchase of the Property.

87. Plaintiff is ready, willing and able to fund the purchase of the Property at the agreed upon New Purchase Price of \$800,000.

88. Plaintiff is immediately ready to close the purchase of the Property as of the date of the filing of this Complaint, but has been prevented from doing so because the Defendants have refused to sign the Purchase Agreement.

**LANDLORD RE-INITIATES EVICTION PROCEEDING**

89. On March 26, 2021, Plaintiff was served with a Seven (7) Day Notice To Pay Or Quit pursuant to NRS § 40.253 (“Seven-Day Notice”) from Defendant. Service was effectuated by posting a copy of the Seven-Day Notice on the Property.

90. On April 6, 2021, Plaintiff filed an Affidavit in Henderson Justice Court (“Justice Court”) in opposition to the Seven-Day Notice, initiating case number 21EH000680.

91. On April 14, 2021, a hearing regarding the Seven-Day Notice was held before Judge Bateman in Justice Court at which time the Court denied the Defendant’s request for summary eviction and permitted the District Court to maintain jurisdiction over the Parties’ dispute.

**PLAINTIFF PAYS RENT ARREARS TO DEFENDANT**

92. On April 23, 2021, Plaintiff delivered a cashier’s check in the amount of \$17,575.00 to the Defendant (“Cashier’s Check”), representing payment of rent for March and April 2021, inclusive of late fees in accordance with the Second Lease Agreement, made under reservation of rights to avoid further eviction proceedings while Tenant pursues its rights under the Purchase Agreement for \$800,000. A true and correct copy of the Cashier’s Check is attached hereto as **Exhibit “6”**.

93. On April 26, 2021, the Landlord remitted an invoice for May 2021 (“Invoice”), even though the Landlord should have signed the \$800,000 Purchase Agreement, and as a result, the Tenant has been forced to pay rent for February, March and April 2021. A true and correct copy of Invoice No. 1059 for May 2021 is attached hereto as **Exhibit “7”**.

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1           94.     The Landlord has refused to negotiate with the Tenant in good faith has refused to  
2 agree to the \$800,000 Purchase Price and has refused to discuss any terms with the Tenant.

3           95.     The Landlord is proceeding in bad faith and induced the Tenant to waive its rights  
4 under the original \$800,000 Purchase Agreement to trick the Tenant, and all the while the Landlord  
5 continues to charge rent instead of allowing the Tenant to purchase the Property at the previously  
6 negotiated \$800,000 purchase price, which was submitted by the Landlord's attorney.

7           96.     Landlord reneged on the Purchase Agreement and is proceeding in bad faith, and  
8 should be compelled to proceed with the \$800,000 Purchase Agreement.

9           97.     Tenant is ready, willing and able to close on the purchase of the Property for  
10 \$800,000, as evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-  
11 approved lending in the amount of up to \$680,000 from Zions Bancorporation, N.A. dba Nevada  
12 State Bank ("Lender"), which is more than enough for the Tenant to close on the Purchase of the  
13 Property. A true and correct copy of the email dated April 24, 2021, from Heather Weger, from  
14 First American Title, confirming the total receipt of \$170,000 deposited in its escrow account for  
15 the real property located at 1 Grand Anacapi Drive, in the amount of \$170,000 is attached hereto  
16 as **Exhibit "8"**; a true and correct copy of the Conditional Approval and Pre-Qualification Letter  
17 dated April 14, 2021, from the Lender is attached hereto as **Exhibit "9"**.

18           98.     The Lender will not fund the loan for the Tenant's purchase of the Property until  
19 the Lender receives a fully executed Purchase Agreement.

20           99.     Defendants refuse to honor the \$800,000 Purchase Agreement drafted by  
21 Defendants' counsel and submitted to Plaintiff, which agreement was executed by Plaintiff, and  
22 then immediately breached by Defendants in bad faith.

23           100.    Defendants thereafter tricked Plaintiff in an effort to void the valid and binding  
24 Purchase Agreement for \$800,000, be inducing Plaintiff into believing that Defendants would  
25 negotiate in good faith for the sale of the Property, and then ceasing all communications with  
26 Plaintiff to negotiate for the purchase of the Property.

27     ...

**FIRST CLAIM FOR RELIEF**  
**(Injunctive Relief)**

101. Plaintiff incorporates by reference Paragraphs 1 through 100 of this Complaint as if fully set forth.

102. Plaintiff has a probability of success on the merits of its underlying claims for relief.

103. In the absence of injunctive relief preventing Defendants from selling the Property and dissipating or diverting Plaintiff's prior Property payments and earnest money deposit, Plaintiff will suffer irreparable harm for which compensatory damages are inadequate.

104. Public interest weighs in favor of stopping any further harms of the kinds described herein.

105. The balance of hardships tips in Plaintiff's favor and weighs in favor of issuing the injunctive relief sought herein because issuance of an injunction preventing Defendants from undertaking further bad acts will preserve the status quo, preserve Plaintiff's interest in the Property, and dissipating or diverting Plaintiff's prior Property payments and earnest money deposit, Plaintiff will suffer irreparable harm for which compensatory damages are inadequate.

106. As a direct, actual, and proximate result of the aforementioned conduct of Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs associated herewith from Defendants.

**SECOND CLAIM FOR RELIEF**  
**(Conversion)**

107. Plaintiff incorporates by reference Paragraphs 1 through 106 of this Complaint as if fully set forth.

108. By wrongfully purporting to own, retain, and control Plaintiff's prior Property payments and earnest money deposit, Defendants wrongfully exert, and have and continue to wrongfully exert, a distinct act of dominion over Plaintiff's prior Property payments and earnest money deposit.

...

109. Defendants' wrongful acts of dominion over Plaintiff's prior Property payments and earnest money deposit are in derogation of Plaintiff's title to, and rights in Plaintiff's prior Property payments and earnest money deposit.

110. Defendants' wrongful acts of dominion over Plaintiff's prior Property payments and earnest money deposit are in defiance of Plaintiff's title to, and rights in Plaintiff's prior Property payments and earnest money deposit.

111. Defendants' wrongful acts of dominion over Plaintiff's prior Property payments and earnest money deposit are to the exclusion of Plaintiff's rightful exercise of her actual title to, and rights in Plaintiff's prior Property payments and earnest money deposit.

112. As a direct and proximate result of Defendants' aforementioned conduct, Plaintiff has been damaged in a substantial sum to exceed Plaintiff's prior Property payments and earnest money deposit, the exact amount of which to be set forth at the time of trial in this matter.

113. The actions of Defendants herein described were willful, fraudulent, and malicious, and Plaintiff is thus entitled to an award of punitive and exemplary damages to exceed Fifteen Thousand Dollars (\$15,000.00), the exact amount of which will be set forth at the time of trial in this matter.

114. As a direct, actual, and proximate result of the aforementioned conduct of Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs associated herewith from Defendants.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Contract)**

115. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 114 as though fully set forth herein.

116. The Purchase Agreement is a valid contract and was executed by Plaintiff and Defendants.

117. Defendants waived the closing deadline by expressly stating in writing and representing to Plaintiff that closing was expected to occur the week of November 20, 2017.

118. Defendants' instruction to the title company to reissue a new version of the Purchase Agreement is a breach of the Purchase Agreement executed by Plaintiff.

119. Defendants' frustration of Plaintiff's efforts to close the purchase of the Property is a breach of the Purchase Agreement.

120. Defendants' efforts to keep Plaintiff's prior Property payments and earnest money deposit is a breach of the Purchase Agreement.

121. As a direct and proximate result of each of Defendants' multiple breaches of the Purchase Agreement, Plaintiff has been damaged in an amount to exceed Fifteen Thousand Dollars (\$15,000.00), the exact amount of which to be set forth at the time of trial in this matter.

122. As a direct, actual, and proximate result of the aforementioned conduct of Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs associated herewith from Defendants.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Covenant of Good Faith and Fair Dealing)**

123. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 122 as though fully set forth herein.

124. The Purchase Agreement, as an agreement entered into in Nevada, contains an implied covenant that the parties will act in good faith, and with fair dealing, and that one party will not conduct itself in a manner that would prevent the other party from achieving the benefit of its bargain.

125. Plaintiff has complied with the terms of the Purchase Agreement.

126. Defendants breached the covenant of good faith and fair dealing, by, *inter alia*, frustrating Plaintiff's efforts to close on the sale of the Property, rescinding the original purchase agreement and changing the terms of the purchase agreement, including the purchase price, multiple times, and attempting to keep Plaintiff's prior Property payments and earnest money deposit notwithstanding Plaintiff's ability and efforts to transfer funds to close the sale of the Property on November 21, 2017.

127. Defendants' conduct herein described was unfaithful to the purpose of the Purchase Agreement.

128. Plaintiff's justified expectations under the Purchase Agreement were denied by reason of Defendants' conduct described herein.

129. Defendants' conduct described herein has prevented Plaintiff from achieving the benefit of its bargain under the Purchase Agreement.

130. As a direct and proximate result of each of Defendants' multiple breaches of the covenant of good faith and fair dealing, Plaintiff has been damaged in an amount to exceed Fifteen Thousand Dollars (\$15,000.00), the exact amount of which to be set forth at the time of trial in this matter.

131. As a direct, actual, and proximate result of the aforementioned conduct of Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs associated herewith from Defendants.

**FIFTH CLAIM FOR RELIEF**  
**(Unjust Enrichment)**

132. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 131 as though fully set forth herein.

133. Through Defendants' wrongful retention of Plaintiff's prior Property payments and earnest money deposit and improper termination of the Purchase Agreement resulting in Defendants' retention of Plaintiff's equity in the Property, Defendants are additionally unjustly enriched by reaping the financial benefits of Plaintiff's prior Property payments and earnest money deposit and the equity in the Property to which Plaintiff is entitled.

134. Defendants purport to unjustly retain Plaintiff's prior Property payments and earnest money deposit and Plaintiff's equity in the Property, and Defendants purport to improperly reap all financial benefits therefrom through Defendants' wrongful actions described herein.

135. Defendants' unjust retention of the benefit of Plaintiff's prior Property payments and earnest money deposit and Plaintiff's equity in the Property is to Plaintiff's loss and detriment.



1           136. Defendants' unjust retention of the benefit of prior Property payments and earnest  
2 money deposit and Plaintiff's equity in the Property is against the fundamental principles of justice  
3 or equity and good conscience.

4           137. Defendants' unjust retention of the benefit of Plaintiff's prior Property payments  
5 and earnest money deposit and Plaintiff's equity in the Property is conferred on Defendants by  
6 Plaintiff, though unwillingly so.

7           138. Defendants' unjust retention of Plaintiff's prior Property payments and earnest  
8 money deposit and Plaintiff's equity in the Property is improperly and unjustly appreciated and  
9 realized by Defendants.

10          139. Defendants have accepted and retained the benefit of Plaintiff's prior Property  
11 payments and earnest money deposit and Plaintiff's equity in the Property.

12          102. Defendants have refused to allow Plaintiff to apply its prior Property payments and  
13 earnest money deposit toward the purchase of the Property.

14          140. Defendants' retention of the Plaintiff's prior Property payments and earnest money  
15 deposit and Plaintiff's equity in the Property to Defendants' benefit, is against the fundamental  
16 principles of justice, because Defendants are not entitled to the deposit or the equity in the Property,  
17 given Defendants' waiver of the closing deadline, and Defendants improperly seek to confer upon  
18 themselves these benefits.

19          141. Plaintiff did not agree to allow Defendants to keep Plaintiff's prior Property  
20 payments and earnest money deposit and Plaintiff's equity in the Property, because Defendants  
21 asked Plaintiff to close the week of November 20, 2017, which Plaintiff was prepared to complete.

22          142. Defendants have wrongfully accepted and retained these benefits because  
23 Defendants are wrongfully refusing to allow the proceeds from Plaintiff's prior Property payments  
24 and earnest money deposit to be applied toward the closing of the sale and purport to keep the  
25 deposit, preventing Plaintiff from realizing any financial benefit from the equity in the Property or  
26 other benefit therefrom.

27          143. As a direct and proximate result of Defendants' aforementioned conduct, Plaintiff  
28 has been damaged in a substantial sum to exceed Plaintiff's prior Property payments and earnest

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1 money deposit and Plaintiff's equity in the Property, the exact amount of which to be set forth at  
2 the time of trial in this matter.

3 144. As a direct, actual, and proximate result of the aforementioned conduct of  
4 Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend  
5 and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs  
6 associated herewith from Defendants.

7 **SIXTH CLAIM FOR RELIEF**  
8 **(Negligent Misrepresentation)**

9 145. Plaintiff realleges and incorporates by reference the allegations set forth in  
10 Paragraphs 1 through 144 as though fully set forth herein.

11 146. Defendants made representations to Plaintiff that it would be permitted to purchase  
12 the Property to induce Plaintiff to make payments to Plaintiffs and payments for taxes, insurance  
13 and in connection with the Property and to the direct benefit of Defendants.

14 147. Defendants made these representations to Plaintiff for the purpose of inducing  
15 Plaintiff to enter into the Purchase Agreement to buy the Property to make these payments which  
16 inured a benefit upon Defendants, directly and indirectly, including the tax and insurance payments  
17 and the substantial payments made under the Purchase Agreement over the years.

18 148. Dr. Fagan's attorney, Attorney Scott, on behalf of the Tenant regarding the existing  
19 terms of the Property purchase and as the Defendant's agent, caused the Purchase Agreement to be  
20 submitted to First American, and in turn, on January 6, 2021, an Escrow Officer at First American  
21 sent the Purchase Agreement to Ms. Leonard.

22 149. Plaintiff relied upon representations made by Defendants, including by their agent  
23 Attorney Scott, and on January 11, 2021, Ms. Leonard sent the signed Purchase Agreement to the  
24 First American Escrow Officer.

25 150. Plaintiff relied upon representations made by Defendants, including by their agent  
26 Attorney Scott, and on January 12, 2021, Plaintiff wired \$50,000 into an escrow account.

27 151. Defendants have failed to exercise reasonable care and competence by reneging on  
28 the Purchase Agreement.

152. Plaintiff justifiably relied upon the information provided by Defendants in that it entered into the Purchase Agreement with the expectation that Plaintiff would be permitted to purchase the Property as promised.

153. As a result of Plaintiff's reliance upon the representations made by Defendants to induce Plaintiff to make payments in connection with the Property, including property taxes and insurance, and payments directly to Defendants, and in reliance of Defendants' agents, Attorney Scott, Plaintiff sustained damages in that it made an escrow deposit and years of payments in connection with the Property.

154. As a direct and proximate result of Defendants' aforementioned conduct, Plaintiff has been damaged in an amount to exceed Fifteen Thousand Dollars (\$15,000.00), the exact amount of which to be set forth at the time of trial in this matter.

155. As a direct, actual, and proximate result of the aforementioned conduct of Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs associated herewith from Defendants.

**SEVENTH CLAIM FOR RELIEF**  
**(Declaratory Relief)**

156. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 155 as though fully set forth herein

157. A justifiable controversy exists between Plaintiff and Defendants regarding their respective rights pursuant to the Purchase Agreement.

158. Plaintiff asserts a claim of a legally protected right, in that Plaintiff is entitled to immediately close on the purchase of the Property without interference from Defendants.

159. Plaintiff asserts a claim of a legally protected right, in that Defendants are not entitled to retain Plaintiff's prior Property payments and earnest money deposit intended for the purchase of the Property.

160. The issue is ripe for judicial determination.

...

1 161. Plaintiff asks the court to determine the parties' relative rights under the Purchase  
2 Agreement.

3 **EIGHTH CLAIM FOR RELIEF**  
4 **(Specific Performance)**

5 162. Plaintiff realleges and incorporates by reference the allegations set forth in  
6 Paragraphs 1 through 161 as though fully set forth herein.

7 163. In accord with the provisions of the Purchase Agreement, Plaintiff made substantial  
8 prior Property payments as well as an earnest money deposit.

9 164. Plaintiff maintains its offer to pay the balance of the purchase price, and applying  
10 the prior Property payments and earnest money deposit to complete the closing of the sale of the  
11 Property to Plaintiff.

12 165. There is no plain, adequate or speedy remedy at law for the enforcement of the term  
13 of the Purchase Agreement or to compensate Plaintiff for the damage caused to him by Defendants'  
14 refusal to allow Plaintiff to close on the purchase of the Property.

15 166. Plaintiff demands that Defendants be required specifically to perform the Purchase  
16 Agreement and to be ordered to sell the Property to Plaintiff.

17 **NINTH CLAIM FOR RELIEF**  
18 **(Fraud)**

19 167. Plaintiff realleges and incorporates by reference the allegations set forth in  
20 Paragraphs 1 through 166 as though fully set forth herein.

21 168. The misrepresentations of the Defendants, through Dr. Fagan to Ms. Leonard,  
22 misled Plaintiff into executing the Second Lease Agreement for March and April 2021.

23 169. Defendants' fraudulent negotiations with Plaintiff regarding the Purchase  
24 Agreement, Purchase Price and Second Lease Agreement frustrated Plaintiff's efforts to close on  
25 the sale of the Property.

26 170. Defendants rescinded the original Purchase Agreement and changed the terms of the  
27 purchase agreement, including the purchase price, multiple times.

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171. Defendants' calculated fraudulent dealings induced Plaintiff to sign the Second Lease Agreement for the months of March and April under the false understanding that discussions regarding the purchase of the Property would continue.

172. After Plaintiff had entered into the two Lease Agreements, which were executed under the understanding that Defendants would continue to negotiate the purchase of the Property, Defendants then refused to negotiate with either Ms. Leonard or Mr. DeCarlo.

173. Defendants had no intention of honoring the original \$800,000 Purchase Price and the original Purchase Agreement which had been executed by Ms. Leonard on January 11, 2021.

174. As a direct and proximate result of Defendants' aforementioned conduct, Plaintiff has been damaged in an amount to exceed Fifteen Thousand Dollars (\$15,000.00), the exact amount of which to be set forth at the time of trial in this matter.

175. As a direct, actual, and proximate result of the aforementioned conduct of Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs associated herewith from Defendants.

**TENTH CLAIM FOR RELIEF**  
**(Fraudulent Misrepresentation)**

176. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 175 as though fully set forth herein.

177. Plaintiff was fraudulently induced by Defendants to sign the Second Lease Agreement for March and April, and in doing so, Defendants subsequently attempted to rescind the terms of the original Purchase Agreement and Purchase Price.

178. In early 2021, Ms. Leonard, on behalf of the Plaintiff, engaged in several discussions with Dr. Fagan, acting on behalf of the Defendant, regarding the purchase and lease of the Property.

179. Throughout these conversations, Dr. Fagan never asked Ms. Leonard whether she or Plaintiff had counsel to represent their interests, nor told Ms. Leonard that she or Plaintiff should retain counsel to engage in the Property negotiations.

1           180. Pursuant to these conversations, Dr. Fagan, as a representative of the Defendant, led  
2 Ms. Leonard to believe that if she signed the Second Lease Agreement, then Defendants would  
3 continue to negotiate the Purchase Agreement.

4           181. Ms. Leonard, acting on Plaintiff's behalf, relied upon Dr. Fagan's representations,  
5 and accordingly agreed to enter into another lease agreement for the months of March and April  
6 under the false understanding that discussions regarding the purchase of the Property would  
7 continue.

8           182. After Plaintiff had entered into the two Lease Agreements, which were executed  
9 under the understanding that Defendants would continue to negotiate the purchase of the Property,  
10 Defendants then refused to negotiate with either Ms. Leonard or Mr. DeCarlo.

11           183. Plaintiff was informed by Defendants that the Third Revised Purchase Agreement  
12 would not be executed until the end of the lease term Second Lease Agreement.

13           184. Plaintiff had been fraudulently induced into signing the Second Lease Agreement  
14 under false representations made by Defendants, including Dr. Fagan. Defendants had no intention  
15 of honoring the original \$800,000 Purchase Price and the original Purchase Agreement which had  
16 been executed by Ms. Leonard on January 11, 2021.

17           185. Plaintiff justifiably relied upon the information provided by Defendants in that it  
18 entered into the Lease Agreements with the expectation that Plaintiff would be permitted to  
19 purchase the Property as promised.

20           186. As a direct and proximate result of Defendants' aforementioned conduct, Plaintiff  
21 has been damaged in an amount to exceed Fifteen Thousand Dollars (\$15,000.00), the exact amount  
22 of which to be set forth at the time of trial in this matter.

23           187. As a direct, actual, and proximate result of the aforementioned conduct of  
24 Defendants, Plaintiff has been forced to retain the services of the undersigned counsel to defend  
25 and prosecute this matter and is thus entitled to an award of reasonable attorney fees and costs  
26 associated herewith from Defendants.

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**ELEVENTH CLAIM FOR RELIEF**

**(Rescission)**

188. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 187 as though fully set forth herein.

189. Plaintiff justifiably relied upon the information provided by Defendants in that it entered into the Lease Agreements with the expectation that Plaintiff would be permitted to purchase the Property as promised.

190. As a proximate cause of Defendants' misrepresentations and unfair dealings, Plaintiff was induced into entering into the Second Lease Agreement under false circumstances.

191. Plaintiff seeks that the Court nullify the Defendants' terms set forth in the March 9, 2021 Letter of Agreement that "all other agreements are terminated and of no further force or effect."

192. Defendants were not engaging in good faith negotiations when they induced Plaintiff to sign the March Lease Agreement with the intention of changing the Purchase Price.

193. Defendants therefore seek that the Court rescind the terms of the Letter of Agreement and force Plaintiff to honor the terms set forth in the original Purchase Agreement.

**DEMAND**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. With respect to the First Claim for Relief (Injunctive Relief), judgment in an amount in excess of \$15,000.00;

2. With respect to the Second Claim for Relief (Conversion), judgment in an amount in excess of \$15,000.00;

3. With respect to the Third Claim for Relief (Breach of Contract), judgment in an amount in excess of \$15,000.00;

4. With respect to the Third Claim for Relief (Breach of Covenant of Good Faith and Fair Dealing), judgment in an amount in excess of \$15,000.00;

5. With respect to the Fifth Claim for Relief (Unjust Enrichment), judgment in an amount in excess of \$15,000.00;

6. With respect to the Sixth Claim for Relief (Negligent Misrepresentation), judgment in an amount in excess of \$15,000.00;

7. With respect to the Seventh Claim for Relief (Declaratory Relief), judgment in an amount in excess of \$15,000.00;

8. With respect to the Eighth Claim for Relief (Specific Performance), judgment in an amount in excess of \$15,000.00;

9. With respect to the Ninth Claim for Relief (Fraud), judgment in an amount in excess of \$15,000.00;

10. With respect to the Tenth Claim for Relief (Fraudulent Misrepresentation), judgment in an amount in excess of \$15,000.00;

11. With respect to the Eleventh Claim for Relief (Rescission), judgment in an amount in excess of \$15,000.00;

12. For attorneys' fees and costs incurred by Plaintiff incurred in bringing this action; and

13. For such other and further relief as the Court may deem just and proper.

DATED this 3rd day of May, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown

Ogonna Brown, Bar No. 7589  
OBrown@lewisroca.com  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel.: 702.949.8200  
Fax: 702.949.8398

*Attorneys for Plaintiff AAL-JAY, Inc.*

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**VERIFICATION**

I, **CHRISTIANO DECARLO**, being duly sworn, on oath, depose and say that I am the Director of the above-named Plaintiff, a party to this action; that I sign the foregoing **VERIFIED FIRST AMENDED COMPLAINT**, I further state that I know the contents thereof and that the same are true to the best of my knowledge, except as to the matters therein set forth upon information and belief, and as to those matters, I believe them to be true.

DATED: May 3, 2021.

/s/ Christiano DeCarlo  
AAL-Jay, Inc.

STATE OF NEVADA       )  
  ) ss:  
COUNTY OF CLARK     )

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by \_\_\_\_\_, proved to me on the basis of satisfactory  
evidence to be the person who appeared before me.

\_\_\_\_\_  
Notary Public in and for the said County and State  
My Commission Expires on:



**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on May 3, 2021, I served a copy of **VERIFIED FIRST AMENDED COMPLAINT** 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;

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

Tisha R. Black, Esq  
tblack@blackwadhams.law

Chris Yergensen, Esq.  
cyergensen@blackwadhams.law

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

Philip J. Fagan Jr.  
2 Via Sienna Place  
Henderson, NV 89011

Philip J. Fagan Jr. Trust 2  
Via Sienna Place  
Henderson, NV 89011

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

# EXHIBIT “1”

TELEPHONE  
(310) 456-5373

RICHARD N. SCOTT, INC.  
A PROFESSIONAL LAW CORPORATION  
24088 PACIFIC COAST HIGHWAY  
MALIBU, CALIFORNIA 90265

FACSIMILE  
(310) 456-9788

December 15, 2016

Ms. Lail Leonard, President  
AAL-JAY, Inc.  
1873 Golden Horizon Drive  
Las Vegas, NV 89123

VIA FEDERAL EXPRESS

Re: 1 Grand Ana Capri

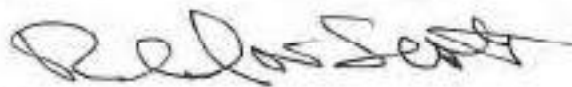
Dear Ms. Leonard:

I am enclosing herewith a fully executed copy of the Contract For Deed for your records. If you have any questions regarding the foregoing, please give me a call.

Yours very truly,

RICHARD N. SCOTT, INC.

By:



RICHARD N. SCOTT  
President

RNS:sd  
Encl.

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## CONTRACT FOR DEED

THIS AGREEMENT ("Agreement") is entered into by and between PHILIP J. PAGAN, JR., Trustee of the Philip J. Pagan, JR 2011 Trust hereinafter referred to as "SELLER" and AAL-JAY, INC., LAIL LEONARD, PRESIDENT hereinafter referred to as "PURCHASER", on the terms and conditions and for the purposes hereinafter set forth:

1.

### SALE OF PROPERTY

For and in consideration of TEN DOLLARS (\$10.00) and other good and valuable considerations the receipt and sufficiency of which is hereby acknowledged, Seller does hereby agree to convey, sell, assign, transfer and set over unto Purchaser, the following property situated in Clark County, State of Nevada, said property being described as 1 Grand Anscapri, Henderson, NV 89011 and more particularly described as Lot Fourteen (14) of AMENDED CAPRI (also known as "LAKE LAS VEGAS-PARCEL 30"), as shown by map thereof on file in Book 57 of Plats, Page 88, in the office of the County Recorder of Clark County, Nevada, together with an easement for ingress and egress over those areas shown as "Private Drives" and "Common Areas" on the map of said land (the "Property"). Together with all rights of ownership associated with the property, including, but not limited to, all easements and rights benefiting the premises, whether or not such easements and rights are of record, and all tenements, hereditaments, improvements and appurtenances, including all lighting fixtures, plumbing fixtures, shades, venetian blinds, curtain rods, storm windows, storm doors, screens, awnings, if any, now on the premises.

SUBJECT TO all recorded easements, rights-of-way, conditions, encumbrances and limitations and to all applicable building and use restrictions, zoning laws and ordinances, if any, affecting the property.

2.

### PURCHASE PRICE AND TERMS

The purchase price of the property shall be One Million Fifty Thousand Dollars (\$1,050,000.00). The Purchaser does hereby agree to pay to the order of the Seller the sum of Fifty Thousand Dollars (\$50,000) upon execution of this Agreement, with the balance of One Million Dollars (\$1,000,000) being due and payable as follows:

Balance payable, together with interest on the whole sum that shall be from time to time unpaid at the rate of 3.25 per cent. per annum, payable in the amount of Five Thousand Six Hundred Seventy-one and 96/100 dollars (\$5,671.96) per month beginning on the 1<sup>st</sup> day of December, 2016, and continuing on the same day of each month thereafter until the 31<sup>st</sup> day of October, 2019, when all remaining principal and interest shall be paid. Interest shall be computed monthly and deducted from payment and the balance of payment shall be applied on principal.

Purchaser hereby acknowledges that the Property is encumbered with a First Trust Deed Note in favor of Wells Fargo Home Mortgage in the approximate amount of \$1,400,000 (the "Wells Fargo Note"). During the terms of this contract and prior to payment in full of the purchase price by Buyer, Seller hereby covenants and agrees to maintain the Wells Fargo Note in good standing and upon payment of the purchase price of \$1,050,000 by Buyer, Seller shall pay to Wells Fargo Home Mortgage the then difference of the amount owed on the Wells Fargo Note and the purchase price. In the event Buyer pays the purchase price set forth in this Section 2 within twelve months of the date of full execution hereof by the parties, Seller shall grant a credit of \$50,000 to the Buyer upon full payment of the purchase price. In the event Buyer pays the balance of the purchase price between the first and second anniversary of the date of execution hereof, Seller shall give Buyer a credit of \$25,000

pg 2



against the purchase price.

3.

### TIME OF THE ESSENCE

Time is of the essence in the performance of each and every term and provision in this agreement by Purchaser.

4.

### SECURITY

This contract shall stand as security of the payment of the obligations of Purchaser.

5.

### MAINTENANCE OF IMPROVEMENTS

All improvements on the property, including, but not limited to, buildings, trees or other improvements now on the premises, or hereafter made or placed thereon, shall be a part of the security for the performance of this contract and shall not be removed therefrom. Purchaser shall not commit, or suffer any other person to commit, any waste or damage to said premises or the appurtenances and shall keep the premises and all improvements in as good condition as they are now.

6.

### CONDITION OF IMPROVEMENTS

Purchaser agrees that the Seller has not made, nor makes any representations or warranties as to the condition of the premises, the condition of the buildings, appurtenances and fixtures locate thereon, and/or the location of the boundaries. Purchaser accepts the property in its "as-is, where is, with all faults" condition without warranty of any kind.

7.

### POSSESSION OF PROPERTY

Purchaser shall take possession of the property and all improvements thereon upon execution of this contract and shall continue in the peaceful enjoyment of the property so long as all payments due under the terms of this contract are timely made. Purchaser agrees to keep the property in a good state of repair and in the event of termination of this contract, Purchaser agrees to return the property to Seller in substantially the same condition as it now exists, ordinary wear and tear excepted. Seller reserves the right to inspect the property at any time with or without notice to Purchaser.

8.

### TAXES, INSURANCE AND ASSESSMENTS

**Taxes and Assessments:** SELLER hereby covenants and agrees to pay the real property taxes for a one-year period commencing on the date of execution hereof by both parties. The real property taxes paid by SELLER shall be added to the purchase price.

Thereafter BUYER shall pay the real property taxes.

**Content Insurance:** Purchaser shall be solely responsible for obtaining insurance of the contents, insuring contents owned by Purchaser. Seller shall be solely responsible for obtaining insurance on all contents owned by Seller.

**Liability and Hazard Insurance:** Liability insurance shall be maintained by Purchaser during the term of this contract naming Seller as an additional insured, in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

**Fire, Hazard and Windstorm insurance:** Fire, hazard and windstorm insurance shall be maintained as follows:

Seller shall obtain and pay for hazard, fire and windstorm insurance in an amount not less than \$1,000,000, and Purchaser shall repay the amount so paid by Seller within ten (10) days of demand for same by Seller.

In case of any damage as a result of which said insurance proceeds are available, the Purchaser may, within sixty (60) days of said loss or damage, give to the Seller written notice of Purchaser's election to repair or rebuild the damaged parts of the premises, in which event said insurance proceeds shall be used for such purpose. The balance of said proceeds, if any, which remain after completion of said repairing or rebuilding, or all of said insurance proceeds if the Purchaser elects not to repair or rebuild, shall be applied first toward the

pg 3

satisfaction of any existing defaults under the terms of this contract, and then as a prepayment upon the principal balance owing. No such prepayment shall defer the time for payment of any remaining payments required by said contract. Any surplus of said proceeds in excess of the balance owing hereon shall be paid to the Purchaser.

9.

#### DEFAULT

If the Purchaser shall fail to perform any of the covenants or conditions contained in this contract on or before the date on which the performance is required, the Seller shall give Purchaser notice of default or performance, stating the Purchaser is allowed fourteen (14) days from the date of the Notice to cure the default or performance. In the event the default or failure of performance is not cured within the 14-day time period, then Seller shall have any of the following remedies, in the discretion of Seller:

(a) give the Purchaser a written notice specifying the failure to cure the default and informing the Purchaser that if the default continues for a period of an additional fifteen (15) days after service of the notice of failure to cure, that without further notice, this contract shall stand cancelled and Seller may regain possession of the property as provided herein; or

(b) give the Purchaser a written notice specifying the failure to cure the default and informing the Purchaser that if the default continues for a period of an additional fifteen (15) days after service of the notice of failure to cure, that without further notice, the entire principal balance and unpaid interest shall be immediately due and payable and Seller may take appropriate action against Purchaser for collection of same according to the laws of the State of Nevada.

In the event of default in any of the terms and conditions or installments due and payable under the terms of this contract and Seller elects 9(a), Seller shall be entitled to immediate possession of the property.

In the event of default and termination of the contract by Seller, Purchaser shall forfeit any and all payments made under the terms of this contract including taxes and assessments as liquidated damages, Seller shall be entitled to recover such other damages as they may be due which are caused by the acts or negligence of Purchaser.

The parties expressly agree that in the event of default not cured by the Purchaser and termination of this agreement, and Purchaser fails to vacate the premises, Seller shall have the right to obtain possession by appropriate court action.

10.

#### DEED AND EVIDENCE OF TITLE

Upon total payment of the purchase price and any and all late charges, and other amounts due Seller, Seller agrees to deliver to Purchaser a Warranty Deed to the subject property, at Seller's expense, free and clear of any liens or encumbrances other than taxes and assessments for the current year and covenants, easements and conditions of record.

11.

#### NOTICES

All notices required hereunder shall be deemed to have been made when deposited in the U. S. Mail, postage prepaid, certified, return receipt requested, to the Purchaser or Seller at the addresses listed below. All notices required hereunder may be sent to:

Seller:

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

Purchaser:

AAL-JAY, INC.  
by Lail Leonard, President  
1873 Golden Horizon Drive  
Las Vegas, Nevada 89123

and when mailed, postage prepaid, certified mail, return receipt requested or delivered by a

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recognized overnight carrier to said address, shall be binding and conclusively presumed to be served upon said parties respectively.

12.

#### ASSIGNMENT OR SALE

Purchaser shall not sell, assign, transfer or convey any interest in the subject property or this agreement, without first securing the written consent of the Seller which the Seller may withhold in his sole and absolute discretion.

13.

#### PREPAYMENT

Purchaser has the right to prepay, without penalty, the whole or any part of the balance remaining unpaid on this contract at any time before the due date.

14.

#### ATTORNEY FEES

In the event of default, Purchaser shall pay to Seller, Seller's reasonable attorneys' fees and expenses incurred by Seller in enforcement of any rights of Seller. All attorney fees shall be payable prior to Purchaser's being deemed to have corrected any such default.

15.

#### LATE PAYMENT CHARGES

If Purchaser shall fail to pay, within ten (10) days after due date, any installment due hereunder, or any other monetary obligations, Purchaser shall be required to pay an additional charge of five (5%) percent of the amount past due. Such charge shall be paid to Seller at the time of payment of the past due amount.

16.

#### CONVEYANCE OR MORTGAGE BY SELLER

If the Seller's interest is now or hereafter encumbered by mortgage, the Seller covenants that Seller will meet the payments of principal and interest thereon as they mature and produce evidence thereof to the Purchaser upon demand. In the event the Seller shall default upon any such mortgage or land contract, the Purchaser shall have the right to do the acts or make the payments necessary to cure such default and shall be reimbursed for so doing by receiving, automatically, credit to this contract to apply on the payments due or to become due hereon.

The Seller reserves the right to convey, his or her interest in the above described land and such conveyance hereof shall not be a cause for rescission but such conveyance shall be subject to the terms of this agreement.

The Seller may, during the lifetime of this contract, place a mortgage on the premises above described, which shall be a lien on the premises, superior to the rights of the Purchaser herein, or may continue and renew any existing mortgage thereon.

17.

#### ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein. All prior or contemporaneous agreements, understandings, representations, oral or written, are merged into this Agreement.

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AMENDMENT - WAIVERS

This Agreement shall not be modified, or amended except by an instrument in writing signed by all parties.

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid

against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

SEVERABILITY

If any one or more of the provisions contained in this Agreement shall be held illegal or unenforceable by a court, no other provisions shall be affected by this holding. The parties intend that in the event one or more provisions of this agreement are declared invalid or unenforceable, the remaining provisions shall remain enforceable and this agreement shall be interpreted by a Court in favor of survival of all remaining provisions.

HEADINGS

Section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

PRONOUNS

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require. As used in this agreement: (1) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender, (2) words in the singular shall mean and include the plural and vice versa, and (3) the word "may" gives sole discretion without any obligation to take any action.

PURCHASER'S RIGHT TO REINSTATE AFTER ACCELERATION

If Purchaser defaults and the full amount due under Contract is accelerated, then Purchaser shall have the right of reinstatement as allowed under the laws of the State of Nevada, provided that Purchaser: (a) pays Seller all sums which then would be due under this agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; and (c) pays all expenses incurred in enforcing this agreement, including, but not limited to, reasonable attorneys' fees, and other fees incurred for the purpose of protecting Seller's interest in the Property and rights under this agreement. Seller may require that Purchaser pay such reinstatement sums and expenses in one or more of the following forms, as selected by Seller: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity or (d) Electronic Funds Transfer. Upon reinstatement by Purchaser, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred.



HEIRS AND ASSIGNS

This contract shall be binding upon and to the benefit of the heirs, administrators, executors, and assigns of the Purchaser and Seller, respectively. However, nothing herein shall authorize a transfer in violation of paragraph (12).

OTHER PROVISIONS

This Agreement may be executed in counterparts by the parties hereto and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute an Agreement binding upon all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Each of the parties hereto shall sign a sufficient number of counterparts so that each party will receive a fully executed original of this Agreement.

The parties hereto agree that this Agreement shall be binding on a party upon delivery by that party of a facsimile signature. In delivering such a facsimile signature, each such party covenants and agrees to forthwith deliver by regular mail, the original of the signature to all other parties.

The parties hereto hereby agree to execute such other documents and to take such other action as may reasonably be necessary to further the purposes of this Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective spouses, representatives, successors and assigns.

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

No provision in this Agreement is to be interpreted for or against either party because that party or his legal representative drafted such provision.

The parties hereto, and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any of the parties hereto or by any person representing them or any of them.

The parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof and that they sign the same freely and voluntarily.

All claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the then current rules of the American Arbitration Association unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed in writing with the other

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party to this Agreement and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable laws in any court having jurisdiction thereof. All claims which are related to or dependent upon each other, shall be heard by the same arbitrator or arbitrators even though the parties are not the same unless a specific contract prohibits such consolidation. The arbitrator or arbitrators shall award costs of arbitration and attorneys' fees in accordance with the terms of this Agreement. Both parties reserve the right to take discovery by all methods established under California law and specifically including California Code of Civil Procedure, Section 1283.05.

WITNESS THE SIGNATURES of the Parties this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

SELLER:

*Philip J. Fagan, Jr.*

PHILIP J. FAGAN, JR., Trustee  
of the Philip J. Fagan, Jr. 2011 Trust

PURCHASER:

*Lail Leonard*

AAL-JAY, INC  
By Lail Leonard, President

STATE OF ~~NEVADA~~ CALIFORNIA

COUNTY OF ~~CLARK~~ LOS ANGELES

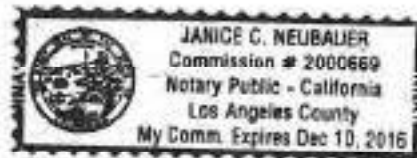
On DECEMBER 8, 2016 before me JANICE C. NEUBAUER (here  
insert Notary Public

name and title of the officer), personally appeared PHILIP J. FAGAN, JR., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

*Janice C. Neubauer*



Affix Notary Seal Here

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STATE OF NEVADA

COUNTY OF CLARK

On Nov 30, 2016 before me Charles E. Jones, notary (here  
insert

name and title of the officer, personally appeared LAIL LEONARD, PRESIDENT; who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Charles E Jones



Affix Notary Seal Here

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# EXHIBIT “2”



# EXHIBIT “3”

**ADDENDUM NO. 1 TO  
CONTRACT FOR DEED**

**THIS ADDENDUM** ("Addendum") is entered into this \_\_\_\_ day of January, 2018 by and between Philip J. Fagan Jr., Trustee of the Philip J. Fagan Jr., 2011 Trust ("Seller") and AAL-JAY, INC. ("Purchaser").

**RECITALS**

Seller and Purchaser entered into a Contract For Deed dated December 8, 2016 (the "Contract") for the purchase and sale of property commonly known as 1 Grand Ana Capri, Henderson, NV 89011 (the "Property").

Purchaser is in default under the terms of the Contract by reason of failing to make timely payments of amounts due under the terms of the Contract and for real property taxes and insurance. Purchaser desires to cure the Purchaser's default under the Contract in accordance with the terms of this Addendum, and Seller is willing to accept said cure of the default in accordance with the terms of this Addendum.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The Recitals set forth above are incorporated herein by this reference.
2. The parties hereby agree that there is due and owing the amounts set forth in Exhibit A, attached hereto and for the time periods set forth in said Exhibit A, and that Purchaser has paid Seller \$28,000 of said amount by a principal of Purchaser signing Promissory Notes payable to Seller and that \$12,340.97 is still due and owing to Seller.
3. Purchaser hereby agrees to pay Seller the \$12,340.97 (the "Deferred Amount") on or before February 2, 2018. The parties hereto agree that the Deferred Amount includes monthly payments due under the Contract for January, February and March 2018.
4. The parties further agree that on or before February 20, 2018, Purchaser shall pay Seller the monthly payments due under the Contract for April and May 2018. Thereafter Purchaser will make the monthly payment due on the first day of each month under the Contract, and continue said monthly payments four (4) months in advance until the amount due under the Contract is paid in full.
5. In addition to the amounts paid as set forth above, Purchaser shall remain current on the payments due under the Contract for insurance and property taxes.
6. In the event Purchaser fails to timely make payment of the Deferred Amount to Seller or any of the payments due under Section 4 and 5 of this Addendum or Purchaser otherwise defaults under the the terms of the Contract in the future, Purchaser agrees to



immediately vacate the Property, deliver possession of the Property to Seller and cooperate with Seller in terminating the Contract.

7. This Agreement may be executed in counterparts by the parties hereto and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute an Agreement binding upon all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart. Each of the parties hereto shall sign a sufficient number of counterparts so that each party will receive a fully executed original of this Agreement.

8. The parties hereto agree that this Agreement shall be binding on a party upon delivery by that party of a facsimile signature. In delivering such a facsimile signature, each such party covenants and agrees to forthwith deliver by regular mail, the original of the signature to all other parties.

9. Except as set forth in this Addendum the terms of the Contract shall control.

  
Philip J. Fagan, Jr., Trustee

  
Lail Leonard, President

# EXHIBIT “4”

**LAIL LEONARD**

1873 Golden Horizon drive  
Las Vegas, Nevada 89123

TELEPHONE: (702) 384-8650

CELL: (702) 332-8651

E-MAIL: [aunflail@cox.net](mailto:aunflail@cox.net)

FAX: (702) 384-8653

DATE: January 11, 2021

TO: MICHELLE

FIRST AMERICAN TITLE INSURANCE COMPANY,

E-MAIL: [mleonard@firstam.com](mailto:mleonard@firstam.com)

Attached please find Residential Purchase agreement signed,

Thank you for your assistance

Lail Leonard

AA00046

## RESIDENTIAL PURCHASE AGREEMENT

This Residential Purchase Agreement ("Agreement") is entered into on this 14<sup>th</sup> 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 Anacapi, 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

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 or counteroffer.

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 or counteroffer.

Buyer's Initials: XX Seller's Initials: \_\_\_\_\_



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

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:

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 14<sup>th</sup> 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  
Lail Leonard, its President

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 or counteroffer.

Buyer's Initials: LL

Seller's Initials: \_\_\_\_\_

# EXHIBIT “5”



## General Wire Transfer Request

Date: January 12, 2021

Type of Wire: Domestic

U.S. Bank

Wire Transfer Department

PO Box 64830

St. Paul, MN 55164-0830

### WIRE INFORMATION

Customer and Account Information

Account (as shown on the system)

AAL-JAY INC

LAIL LEONARD

XXXXXXXX7856

Wire PAR: 210112032312

Wire Amount (USD):

\$50,000.00

Wire Fee:

\$40.00

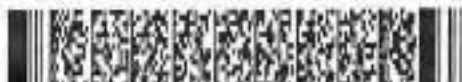
\*Beneficiary may receive less due to fees charged by the beneficiary's bank and foreign taxes.

Beneficiary Information:

XXXXXXXX0000

FIRST AMERICAN TITLE INSURANCE COMPANY

Address not provided



WIREXMR 110216

AA00055

# EXHIBIT “6”



<b>CASHIER'S CHECK</b> Pay to the order of <b>PHILIP FAGAN</b> RE: 1 GRAND ANIA CAPRI		SERIAL # [REDACTED] ACCOUNT # [REDACTED] April 23, 2021 <b>**\$17,575.00**</b> NON-NEGOTIABLE
Pay to the order of <b>PHILIP FAGAN</b> RE: 1 GRAND ANIA CAPRI <b>Seventeen Thousand Five Hundred Seventy-Five and 00/100 -US Dollars</b> NOTE TO PURCHASER: THIS INSTRUMENT IS VOID WITHOUT CERTIFICATE. YOU MAY REQUEST CANCELLATION AND REFUNDANCE AS A CONDITION TO CANCELLATION AND REFUNDANCE, WELL FIDELITY & COMPANY WILL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE.		April 23, 2021 <b>**\$17,575.00**</b> [Signature]
<b>Purchaser Copy</b>		
<b>CASHIER'S CHECK</b> Pay to the order of <b>PHILIP FAGAN</b> RE: 1 GRAND ANIA CAPRI <b>Seventeen Thousand Five Hundred Seventy-Five and 00/100 -US Dollars</b> NOTE TO PURCHASER: THIS INSTRUMENT IS VOID WITHOUT CERTIFICATE. YOU MAY REQUEST CANCELLATION AND REFUNDANCE AS A CONDITION TO CANCELLATION AND REFUNDANCE, WELL FIDELITY & COMPANY WILL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE.		April 23, 2021 <b>**\$17,575.00**</b> [Signature]



# EXHIBIT “7”

Philip J Fagan Jr MD  
637 Lucas Ave #606  
Los Angeles, CA 90017 US  
khardin.iimg@gmail.com

## INVOICE

### BILL TO

AAL-Jay, Inc.  
1873 Golden Horizon Drive  
Las Vegas, NV 89123

INVOICE # 1059

DATE 05/01/2021

DUE DATE 05/01/2021

TERMS Due on receipt

DESCRIPTION	QTY	RATE	AMOUNT
<b>Property Tax</b> Monthly Property Tax - Grand AnaCapri - October 2019	1	607.66	607.66
<b>Insurance Reimbursement</b> Monthly Insurance - Grand Anacapri	1	503.34	503.34
<b>AAL-Jay Note Principal</b> Payment # 35 Oct 2019	1	3,257.10	3,257.10
<b>AAL-Jay Note Interest</b> AAL-Jay Note Interest	1	2,414.86	2,414.86

Make check payable to:  
Philip J. Fagan, Jr.  
637 Lucas Ave. Room 606  
Los Angeles, CA 90017

BALANCE DUE

**\$6,782.96**

AA00059

# EXHIBIT “8”

---

**From:** Heather Weger <hweger@firstam.com>  
**Sent:** Friday, April 23, 2021 2:00 PM  
**To:** Brown, Ogonna  
**Cc:** Michele Eaton; Judy Goens  
**Subject:** Lail Leonard / 1 Grand Anacapri Drive

[EXTERNAL]

---

Hi,

We have received a total of \$170,000 deposited into our escrow account for property 1 Grand Anacapri Drive.

Please advise if you need anything additional from us at this time.

Thanks,

**Heather Weger**



**First American Title™**

2500 N. Buffalo Drive, Suite 120

Las Vegas, NV 89128

**Office:** 702-251-5000

**Direct:** 702-251-5077

**Fax:** 702-938-1822

**Email:** [hweger@firstam.com](mailto:hweger@firstam.com)



**First American Title™**

While our offices remain fully operational, we are currently working by appointment only. Additionally we request that only essential parties attend closings at this time.

As always, we appreciate the opportunity to serve you.

*At First American Title the health and safety of our employees and our clients are our top priority. With that in mind, and in order*

**\*\*Be aware! Online banking fraud is on the rise. If you receive an email containing WIRE TRANSFER INSTRUCTIONS call your e**

\*\*\*\*\*

This message may contain confidential or proprietary information intended only for the use of the addressee(s) named above or may contain information that is legally privileged.

If you are not the intended addressee, or the person responsible for delivering it to the intended addressee, you are

hereby notified that reading, disseminating, distributing or copying this message is strictly prohibited.  
If you have received this message by mistake, please immediately notify us by replying to the message and delete the original message and any copies immediately thereafter.

If you received this email as a commercial message and would like to opt out of future commercial messages, please let us know and we will remove you from our distribution list.

Thank you.

\*\*\*\*\*

FAFLD

# EXHIBIT “9”

**CONDITIONAL APPROVAL AND PRE-QUALIFICATION LETTER**

April 14, 2021

Lail Sharron Leonard  
1873 Golden Horizon Dr.  
Las Vegas, NV 89123  
Loan Number: 361221040136070

Dear Applicant,

We are pleased that you've considered Zions Bancorporation, N.A. dba Nevada State Bank to provide your mortgage loan. After review of your information, we would like to offer a conditional approval should you choose to proceed with the application process. Final loan approval will be subject to all necessary documentation pertaining to this transaction being submitted in a timely manner. This conditional approval is based upon the following loan terms:

Loan program: Portfolio 85% no MI 10/1 ARM CMT

Term: 360 Months

Loan Amount: \$ 680,000.00

Interest rate: 3.250%

*(If your interest rate has not been locked at this time, this conditional loan approval is subject to change in accordance with changes in the interest rate market)*

Loan-to-value: 85.000%

Property Address: TBD Las Vegas, NV 89011

*Your interest rate will be locked after a subject property has been identified and you wish to lock in your interest rate; the lender will issue a Loan Estimate (LE) and early disclosure packet upon receipt of a property address. Once the LE and early disclosures are issued, you will be required to provide additional documentation if you accept the LE and choose to proceed with the application process.*

This conditional approval and pre-qualification is based on a review of your credit report and credit scores. Zions Bancorporation, N.A. dba Nevada State Bank has not verified income, has not verified available cash for down payment and closing costs, and has not reviewed debts and other assets of the applicant. This conditional approval and pre-qualification is valid provided the applicant's creditworthiness and financial position do not materially change prior to closing, and provided the following additional conditions are fully satisfied:

1. Zions Bancorporation, N.A. dba Nevada State Bank is provided with a satisfactory appraisal of the subject property for an amount not less than \$800,000 and property's condition meets lender and investor requirements.
2. Acceptable title insurance coverage from an approved Title Company/Insurer.
3. The subject property is insured in accordance with requirements, including hazard and flood insurance as applicable.
4. Borrowers execute the loan documents as required and abides by the written closing instructions issued to the title company.
5. Any additional Investor requirements that determine the secondary market eligibility of the specific loan request.



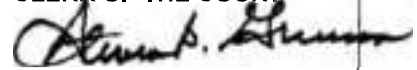
6. Zions Bancorporation, N.A. dba Nevada State Bank, its agents, or employees, cannot provide and have not provided you any promises, assurances or commitments that your loan application can or will receive final approval. You are advised that final loan application approval is contingent upon the actions and services being provided by numerous third parties over whom we have no control. These third parties include, but are not limited to, appraisers, title companies, credit reporting agencies, realtors, builders, sellers, private mortgage insurance companies, and pest inspectors. It will be necessary for us to verify the information in your loan application and, furthermore, it may be necessary to verify and/or clarify some of the information in the reports received from third parties with whom we will correspond in connection with your loan request.

This Pre-qualification expires on 06/13/2021.

Thank you for giving Zions Bancorporation, N.A. dba Nevada State Bank the opportunity to serve your real estate financing needs. Please feel free to call Hazeer Razack at 702-706-9599 should you have any questions.

Sincerely,

Hazeer Razack  
Loan Officer  
NMLS # 424934  
750 E Warm Springs Road 2nd Floor  
Las Vegas, NV 89119



AACC  
BLACK & WADHAMS  
Chris V. Yergensen, Esq.  
Nevada Bar No. 6183  
Mark Lounsbury, Esq.  
Nevada Bar No. 15271  
10777 West Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
Telephone: (702) 869-8801  
Facsimile: (702) 869-2669  
E-mail: cyergensen@blackwadhams.law  
*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

**ANSWER TO PLAINTIFF'S AMENDED  
COMPLAINT AND COUNTERCLAIM**

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.**

1 **Fagan**”), and PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001  
2 TRUST (hereinafter, the “**Fagan Trust**”), (Dr. Fagan and the Fagan Trust may hereinafter be  
3 collectively referred to as “**Defendants**”) by and through their attorney, Chris V. Yergensen, Esq.  
4 of the law firm of Black & Wadhams., and hereby answers Plaintiff’s Amended Complaint as  
5 follows:  
6

7 **PARTIES**

8 1. Answering Paragraph 1 of the Amended Complaint, Defendants are without  
9 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
10 basis deny said allegations in their entirety.

11 2. Answering Paragraph 2 of the Amended Complaint, Defendants admit the  
12 allegations therein.

13 3. Answering Paragraph 3 of the Amended Complaint, Defendants admit the  
14 allegations therein.

15 4. Answering Paragraph 4 of the Amended Complaint, Defendants are without  
16 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
17 basis deny said allegations in their entirety.

18 5. Answering Paragraph 5 of the Amended Complaint, Defendants are without  
19 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
20 basis deny said allegations in their entirety.

21 6. Answering Paragraph 6 of the Amended Complaint, Defendants admit the  
22 allegations therein.

23 7. Answering Paragraph 7 of the Amended Complaint, the document speaks for itself  
24 and requires no response from Defendants; to the extent a response is required, the allegations are  
25 denied.  
26  
27  
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1           8.       Answering Paragraph 8 of the Amended Complaint, the document speaks for itself  
2 and requires no response from Defendants; to the extent a response is required, the allegations are  
3 denied.

4           9.       Answering Paragraph 9 of the Amended Complaint, the document speaks for itself  
5 and requires no response from Defendants; to the extent a response is required, the allegations are  
6 denied.

7           10.      Answering Paragraph 10 of the Amended Complaint, Defendants admit the  
8 allegations therein.

9           11.      Answering Paragraph 11 of the Amended Complaint, the document speaks for itself  
10 and requires no response from Defendants; to the extent a response is required, the allegations are  
11 denied.

12           12.      Answering Paragraph 12 of the Amended Complaint, the document speaks for itself  
13 and requires no response from Defendants; to the extent a response is required, the allegations are  
14 denied.

15           13.      Answering Paragraph 13 of the Amended Complaint, the document speaks for itself  
16 and requires no response from Defendants; to the extent a response is required, the allegations are  
17 denied.

18           14.      Answering Paragraph 14 of the Amended Complaint, Defendants deny such  
19 allegations in their entirety.

20           15       Answering Paragraph 15 of the Amended Complaint, the document speaks for itself  
21 and requires no response from Defendants; to the extent a response is required, the allegations are  
22 denied.

23       ///

24       ///

1           16.     Answering Paragraph 16 of the Amended Complaint, the document speaks for itself  
2 and requires no response from Defendants; to the extent a response is required, the allegations are  
3 denied.

4           17.     Answering Paragraph 17 of the Amended Complaint, the document speaks for itself  
5 and requires no response from Defendants; to the extent a response is required, the allegations are  
6 denied.

7           18.     Answering Paragraph 18 of the Amended Complaint, the document speaks for itself  
8 and requires no response from Defendants; to the extent a response is required, the allegations are  
9 denied.

10          19.     Answering Paragraph 19 of the Amended Complaint, the document speaks for itself  
11 and requires no response from Defendants; to the extent a response is required, the allegations are  
12 denied.

13          20.     Answering Paragraph 20 of the Amended Complaint, the document speaks for itself  
14 and requires no response from Defendants; to the extent a response is required, the allegations are  
15 denied.

16          21.     Answering Paragraph 21 of the Amended Complaint, the document speaks for itself  
17 and requires no response from Defendants; to the extent a response is required, the allegations are  
18 denied.

19          22.     Answering Paragraph 22 of the Amended Complaint, the document speaks for itself  
20 and requires no response from Defendants; to the extent a response is required, the allegations are  
21 denied.

22          23.     Answering Paragraph 23 of the Amended Complaint, the document speaks for itself  
23 and requires no response from Defendants; to the extent a response is required, the allegations are  
24 denied.

25          24.     Answering Paragraph 24 of the Amended Complaint, the document speaks for itself  
26 and requires no response from Defendants; to the extent a response is required, the allegations are  
27 denied.  
28

1           24.     Answering Paragraph 24 of the Amended Complaint, Defendants are without  
2 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
3 basis deny said allegations in their entirety.

4           25.     Answering Paragraph 25 of the Amended Complaint, Defendants are without  
5 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
6 basis deny said allegations in their entirety.

7           26.     Answering Paragraph 26 of the Amended Complaint, Defendants are without  
8 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
9 basis deny said allegations in their entirety.

10          27.     Answering Paragraph 27 of the Amended Complaint, Defendants are without  
11 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
12 basis deny said allegations in their entirety.

13          28.     Answering Paragraph 28 of the Amended Complaint, Defendants are without  
14 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
15 basis deny said allegations in their entirety.

16          29.     Answering Paragraph 29 of the Amended Complaint, Defendants are without  
17 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
18 basis deny said allegations in their entirety.

19          30.     Answering Paragraph 30 of the Amended Complaint, the document speaks for itself  
20 and requires no response from Defendants; to the extent a response is required, the allegations are  
21 denied.

22          31.     Answering Paragraph 31 of the Amended Complaint, the document speaks for itself  
23 and requires no response from Defendants; to the extent a response is required, the allegations are  
24 denied.  
25  
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1           32.     Answering Paragraph 32 of the Amended Complaint, Defendants deny such  
2     allegations in their entirety.

3           33.     Answering Paragraph 33 of the Amended Complaint, Defendants deny such  
4     allegations in their entirety.

5           34.     Answering Paragraph 34 of the Amended Complaint, Defendants deny such  
6     allegations in their entirety.

7           35.     Answering Paragraph 35 of the Amended Complaint, Defendants deny such  
8     allegations in their entirety.

9           36.     Answering Paragraph 36 of the Amended Complaint, Defendants are without  
10    sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
11    basis deny said allegations in their entirety.

12           37.     Answering Paragraph 37 of the Amended Complaint, Defendants are without  
13    sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
14    basis deny said allegations in their entirety.

15           38.     Answering Paragraph 38 of the Amended Complaint, Defendants are without  
16    sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
17    basis deny said allegations in their entirety.

18           39.     Answering Paragraph 39 of the Amended Complaint, Defendants deny such  
19    allegations in their entirety.

20           40.     Answering Paragraph 40 of the Amended Complaint, the document speaks for itself  
21    and requires no response from Defendants; to the extent a response is required, the allegations are  
22    denied.

23     ///

24     ///



1           41.     Answering Paragraph 41 of the Amended Complaint, the document speaks for itself  
2 and requires no response from Defendants; to the extent a response is required, the allegations are  
3 denied.

4           42.     Answering Paragraph 42 of the Amended Complaint, the document speaks for itself  
5 and requires no response from Defendants; to the extent a response is required, the allegations are  
6 denied.

7           43.     Answering Paragraph 43 of the Amended Complaint, the document speaks for itself  
8 and requires no response from Defendants; to the extent a response is required, the allegations are  
9 denied.  
10

11           44.     Answering Paragraph 44 of the Amended Complaint, Defendants are without  
12 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
13 basis deny said allegations in their entirety.

14           45.     Answering Paragraph 45 of the Amended Complaint, Defendants are without  
15 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
16 basis deny said allegations in their entirety.

17           46.     Answering Paragraph 46 of the Amended Complaint, Defendants deny such  
18 allegations in their entirety.  
19

20           47.     Answering Paragraph 47 of the Amended Complaint, Defendants are without  
21 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
22 basis deny said allegations in their entirety.  
23

24           48.     Answering Paragraph 48 of the Amended Complaint, the document speaks for itself  
25 and requires no response from Defendants; to the extent a response is required, the allegations are  
26 denied.

27     ///  
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1           49.     Answering Paragraph 49 of the Amended Complaint, Defendants are without  
2 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
3 basis deny said allegations in their entirety.

4           50.     Answering Paragraph 50 of the Amended Complaint, Defendants are without  
5 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
6 basis deny said allegations in their entirety.

7           51.     Answering Paragraph 51 of the Amended Complaint, Defendants deny such  
8 allegations in their entirety.

9           52.     Answering Paragraph 52 of the Amended Complaint, Defendants are without  
10 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
11 basis deny said allegations in their entirety.

12           53.     Answering Paragraph 53 of the Amended Complaint, Defendants are without  
13 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
14 basis deny said allegations in their entirety.

15           54.     Answering Paragraph 54 of the Amended Complaint, the document speaks for itself  
16 and requires no response from Defendants; to the extent a response is required, the allegations are  
17 denied.

18           55.     Answering Paragraph 55 of the Amended Complaint, Defendants are without  
19 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
20 basis deny said allegations in their entirety.

21           56.     Answering Paragraph 56 of the Amended Complaint, Defendants are without  
22 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
23 basis deny said allegations in their entirety.

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1           57.     Answering Paragraph 57 of the Amended Complaint, the document speaks for itself  
2 and requires no response from Defendants; to the extent a response is required, the allegations are  
3 denied.

4           58.     Answering Paragraph 58 of the Amended Complaint, Defendants admit that  
5 Defendants agreed to lease the Property to the Plaintiff for the month of February 2021; all other  
6 allegations therein, Defendants deny in their entirety.

7           59.     Answering Paragraph 59 of the Amended Complaint, Defendants deny such  
8 allegations in their entirety.

9           60.     Answering Paragraph 60 of the Amended Complaint, Defendants admit that  
10 Defendants agreed to lease the Property to the Plaintiff for the month of February 2021; all other  
11 allegations therein, Defendants deny in their entirety.

12           61.     Answering Paragraph 61 of the Amended Complaint, Defendants are without  
13 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
14 basis deny said allegations in their entirety.

15           62.     Answering Paragraph 62 of the Amended Complaint, Defendants deny such  
16 allegations in their entirety.

17           63.     Answering Paragraph 63 of the Amended Complaint, Defendants admit the  
18 allegations therein.

19           64.     Answering Paragraph 64 of the Amended Complaint, Defendants are without  
20 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
21 basis deny said allegations in their entirety.

22           65.     Answering Paragraph 65 of the Amended Complaint, Defendants are without  
23 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
24 basis deny said allegations in their entirety.

1           66.     Answering Paragraph 66 of the Amended Complaint, Defendants are without  
2 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
3 basis deny said allegations in their entirety.

4           67.     Answering Paragraph 67 of the Amended Complaint, Defendants are without  
5 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
6 basis deny said allegations in their entirety.

7           68.     Answering Paragraph 68 of the Amended Complaint, Defendants are without  
8 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
9 basis deny said allegations in their entirety.

10          69.     Answering Paragraph 69 of the Amended Complaint, Defendants deny such  
11 allegations in their entirety.

12          70.     Answering Paragraph 70 of the Amended Complaint, Defendants deny such  
13 allegations in their entirety.

14          71.     Answering Paragraph 71 of the Amended Complaint, Defendants deny such  
15 allegations in their entirety.

16          72.     Answering Paragraph 72 of the Amended Complaint, the document speaks for itself  
17 and requires no response from Defendants; to the extent a response is required, the allegations are  
18 denied.

19          73.     Answering Paragraph 73 of the Amended Complaint, Defendants are without  
20 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
21 basis deny said allegations in their entirety.

22          74.     Answering Paragraph 74 of the Amended Complaint, the document speaks for itself  
23 and requires no response from Defendants; to the extent a response is required, the allegations are  
24 denied.

1           75.     Answering Paragraph 75 of the Amended Complaint, Defendants admit the  
2     allegations therein.

3           76.     Answering Paragraph 76 of the Amended Complaint, Defendants are without  
4     sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
5     basis deny said allegations in their entirety.

6           77.     Answering Paragraph 77 of the Amended Complaint, Defendants deny such  
7     allegations in their entirety.

8           78.     Answering Paragraph 78 of the Amended Complaint, Defendants are without  
9     sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
10    basis deny said allegations in their entirety.

11          79.     Answering Paragraph 79 of the Amended Complaint, Defendants deny such  
12    allegations in their entirety.

13          80.     Answering Paragraph 80 of the Amended Complaint, Defendants are without  
14    sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
15    basis deny said allegations in their entirety.

16          81.     Answering Paragraph 81 of the Amended Complaint, Defendants deny such  
17    allegations in their entirety.

18          82.     Answering Paragraph 82 of the Amended Complaint, Defendants admit the  
19    allegations therein.

20          83     Answering Paragraph 83 of the Amended Complaint, Defendants deny such  
21    allegations in their entirety.

22          84.     Answering Paragraph 84 of the Amended Complaint, Defendants are without  
23    sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
24    basis deny said allegations in their entirety.

1           85.     Answering Paragraph 85 of the Amended Complaint, Defendants are without  
2 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
3 basis deny said allegations in their entirety.

4           86.     Answering Paragraph 86 of the Amended Complaint, Defendants are without  
5 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
6 basis deny said allegations in their entirety.

7           87.     Answering Paragraph 87 of the Amended Complaint, Defendants deny such  
8 allegations in their entirety.

9           88.     Answering Paragraph 88 of the Amended Complaint, Defendants deny such  
10 allegations in their entirety.

11           89.     Answering Paragraph 89 of the Amended Complaint, the document speaks for itself  
12 and requires no response from Defendants; to the extent a response is required, the allegations are  
13 denied.

14           90.     Answering Paragraph 90 of the Amended Complaint, the document speaks for itself  
15 and requires no response from Defendants; to the extent a response is required, the allegations are  
16 denied.

17           91.     Answering Paragraph 91 of the Amended Complaint, Defendants admit that a  
18 hearing on the summary eviction complaint was heard on April 14, 2021, and Judge Bateman  
19 denied the request for summary eviction; all other allegations contained therein, Defendants deny  
20 such allegations in their entirety.

21           92.     Answering Paragraph 92 of the Amended Complaint, Defendants admit that  
22 Plaintiff paid rent for the months of March and April, 2021, in accordance to the lease agreement  
23 dated March 9, 2021 by and between Plaintiff and Defendants; all other allegations contained  
24 therein, Defendants deny such allegations in their entirety.



1           93.     Answering Paragraph 93 of the Amended Complaint, Defendants are without  
2 sufficient information to form a belief as to the truthfulness of the allegations therein, and on that  
3 basis deny said allegations in their entirety.

4           94.     Answering Paragraph 94 of the Amended Complaint, Defendants deny such  
5 allegations in their entirety.

6           95.     Answering Paragraph 95 of the Amended Complaint, Defendants deny such  
7 allegations in their entirety.

8           96.     Answering Paragraph 96 of the Amended Complaint, Defendants deny such  
9 allegations in their entirety.

10          97.     Answering Paragraph 97 of the Amended Complaint, Defendants deny such  
11 allegations in their entirety.

12          98.     Answering Paragraph 98 of the Amended Complaint, Defendants deny such  
13 allegations in their entirety.

14          99.     Answering Paragraph 99 of the Amended Complaint, Defendants deny such  
15 allegations in their entirety.

16          100.    Answering Paragraph 100 of the Amended Complaint, Defendants deny such  
17 allegations in their entirety.

18                               **FIRST CLAIM FOR RELIEF**  
19                               **(Injunctive Relief)**

20          101.    Answering Paragraph 101 of the Amended Complaint, Defendants deny such  
21 allegations in their entirety.

22          102.    Answering Paragraph 102 of the Amended Complaint, Defendants deny such  
23 allegations in their entirety.

24          103.    Answering Paragraph 103 of the Amended Complaint, Defendants deny such  
25 allegations in their entirety.



104. Answering Paragraph 104 of the Amended Complaint, Defendants deny such allegations in their entirety.

105. Answering Paragraph 105 of the Amended Complaint, Defendants deny such allegations in their entirety.

106. Answering Paragraph 106 of the Amended Complaint, Defendants deny such allegations in their entirety.

**SECOND CLAIM FOR RELIEF**  
**(Conversion)**

107. Answering Paragraph 107 of the Amended Complaint, Defendants deny such allegations in their entirety.

108. Answering Paragraph 108 of the Amended Complaint, Defendants deny such allegations in their entirety.

109. Answering Paragraph 109 of the Amended Complaint, Defendants deny such allegations in their entirety.

110. Answering Paragraph 110 of the Amended Complaint, Defendants deny such allegations in their entirety.

111. Answering Paragraph 111 of the Amended Complaint, Defendants deny such allegations in their entirety.

112. Answering Paragraph 112 of the Amended Complaint, Defendants deny such allegations in their entirety.

113. Answering Paragraph 113 of the Amended Complaint, Defendants deny such allegations in their entirety.

114. Answering Paragraph 114 of the Amended Complaint, Defendants deny such allegations in their entirety.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Contract)**

115. Answering Paragraph 115 of the Amended Complaint, Defendants deny such allegations in their entirety.

116. Answering Paragraph 116 of the Amended Complaint, Defendants deny such allegations in their entirety.

117. Answering Paragraph 117 of the Amended Complaint, Defendants deny such allegations in their entirety.

118. Answering Paragraph 118 of the Amended Complaint, Defendants deny such allegations in their entirety.

119. Answering Paragraph 119 of the Amended Complaint, Defendants deny such allegations in their entirety.

120. Answering Paragraph 120 of the Amended Complaint, Defendants deny such allegations in their entirety.

121. Answering Paragraph 121 of the Amended Complaint, Defendants deny such allegations in their entirety.

122. Answering Paragraph 122 of the Amended Complaint, Defendants deny such allegations in their entirety.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Covenant of Good Faith and Fair Dealing)**

123. Answering Paragraph 123 of the Amended Complaint, Defendants deny such allegations in their entirety.

124. Answering Paragraph 124 of the Amended Complaint, Defendants deny such allegations in their entirety.

125. Answering Paragraph 125 of the Amended Complaint, Defendants deny such allegations in their entirety.

126. Answering Paragraph 126 of the Amended Complaint, Defendants deny such allegations in their entirety.

127. Answering Paragraph 127 of the Amended Complaint, Defendants deny such allegations in their entirety.

128. Answering Paragraph 128 of the Amended Complaint, Defendants deny such allegations in their entirety.

129. Answering Paragraph 129 of the Amended Complaint, Defendants deny such allegations in their entirety.

130. Answering Paragraph 130 of the Amended Complaint, Defendants deny such allegations in their entirety.

131. Answering Paragraph 131 of the Amended Complaint, Defendants deny such allegations in their entirety.

**FIFTH CLAIM FOR RELIEF**  
**(Unjust Enrichment)**

132. Answering Paragraph 132 of the Amended Complaint, Defendants deny such allegations in their entirety.

133. Answering Paragraph 133 of the Amended Complaint, Defendants deny such allegations in their entirety.

134. Answering Paragraph 134 of the Amended Complaint, Defendants deny such allegations in their entirety.

135. Answering Paragraph 135 of the Amended Complaint, Defendants deny such allegations in their entirety.

136. Answering Paragraph 136 of the Amended Complaint, Defendants deny such allegations in their entirety.

137. Answering Paragraph 137 of the Amended Complaint, Defendants deny such allegations in their entirety.

138. Answering Paragraph 138 of the Amended Complaint, Defendants deny such allegations in their entirety.

139. Answering Paragraph 139 of the Amended Complaint, Defendants deny such allegations in their entirety.

102. Answering Paragraph 102 of the Amended Complaint, Defendants deny such allegations in their entirety.

140. Answering Paragraph 140 of the Amended Complaint, Defendants deny such allegations in their entirety.

141. Answering Paragraph 141 of the Amended Complaint, Defendants deny such allegations in their entirety.

142. Answering Paragraph 142 of the Amended Complaint, Defendants deny such allegations in their entirety.

143. Answering Paragraph 143 of the Amended Complaint, Defendants deny such allegations in their entirety.

144. Answering Paragraph 144 of the Amended Complaint, Defendants deny such allegations in their entirety.

**SIXTH CLAIM FOR RELIEF**  
**(Negligent Misrepresentation)**

145. Answering Paragraph 145 of the Amended Complaint, Defendants deny such allegations in their entirety.



157. Answering Paragraph 157 of the Amended Complaint, Defendants deny such allegations in their entirety.

158. Answering Paragraph 158 of the Amended Complaint, Defendants deny such allegations in their entirety.

159. Answering Paragraph 159 of the Amended Complaint, Defendants deny such allegations in their entirety.

160. Answering Paragraph 160 of the Amended Complaint, Defendants deny such allegations in their entirety.

161. Answering Paragraph 161 of the Amended Complaint, Defendants deny such allegations in their entirety.

**EIGHTH CLAIM FOR RELIEF**  
**(Specific Performance)**

162. Answering Paragraph 162 of the Amended Complaint, Defendants deny such allegations in their entirety.

163. Answering Paragraph 163 of the Amended Complaint, Defendants deny such allegations in their entirety.

164. Answering Paragraph 164 of the Amended Complaint, Defendants deny such allegations in their entirety.

165. Answering Paragraph 165 of the Amended Complaint, Defendants deny such allegations in their entirety.

166. Answering Paragraph 166 of the Amended Complaint, Defendants deny such allegations in their entirety.

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**NINTH CLAIM FOR RELIEF**  
**(Fraud)**

167. Answering Paragraph 167 of the Amended Complaint, Defendants deny such allegations in their entirety.

168. Answering Paragraph 168 of the Amended Complaint, Defendants deny such allegations in their entirety.

169. Answering Paragraph 169 of the Amended Complaint, Defendants deny such allegations in their entirety.

170. Answering Paragraph 170 of the Amended Complaint, Defendants deny such allegations in their entirety.

171. Answering Paragraph 171 of the Amended Complaint, Defendants deny such allegations in their entirety.

172. Answering Paragraph 172 of the Amended Complaint, Defendants deny such allegations in their entirety.

173. Answering Paragraph 173 of the Amended Complaint, Defendants deny such allegations in their entirety.

174. Answering Paragraph 174 of the Amended Complaint, Defendants deny such allegations in their entirety.

175. Answering Paragraph 175 of the Amended Complaint, Defendants deny such allegations in their entirety.

**TENTH CLAIM FOR RELIEF**  
**(Fraudulent Misrepresentation)**

176. Answering Paragraph 176 of the Amended Complaint, Defendants deny such allegations in their entirety.



1 177. Answering Paragraph 177 of the Amended Complaint, Defendants deny such  
2 allegations in their entirety.

3 178. Answering Paragraph 178 of the Amended Complaint, Defendants deny such  
4 allegations in their entirety.

5 179. Answering Paragraph 179 of the Amended Complaint, Defendants deny such  
6 allegations in their entirety.

7 180. Answering Paragraph 180 of the Amended Complaint, Defendants deny such  
8 allegations in their entirety.

9 181. Answering Paragraph 181 of the Amended Complaint, Defendants deny such  
10 allegations in their entirety.

11 182. Answering Paragraph 182 of the Amended Complaint, Defendants deny such  
12 allegations in their entirety.

13 183. Answering Paragraph 183 of the Amended Complaint, Defendants deny such  
14 allegations in their entirety.

15 184. Answering Paragraph 184 of the Amended Complaint, Defendants deny such  
16 allegations in their entirety.

17 185. Answering Paragraph 185 of the Amended Complaint, Defendants deny such  
18 allegations in their entirety.

19 186. Answering Paragraph 186 of the Amended Complaint, Defendants deny such  
20 allegations in their entirety.

21 187. Answering Paragraph 187 of the Amended Complaint, Defendants deny such  
22 allegations in their entirety.

23 ///

24 ///

**ELEVENTH CLAIM FOR RELIEF**  
**(Recission)**

188. Answering Paragraph 188 of the Amended Complaint, Defendants deny such allegations in their entirety.

189. Answering Paragraph 189 of the Amended Complaint, Defendants deny such allegations in their entirety.

190. Answering Paragraph 190 of the Amended Complaint, Defendants deny such allegations in their entirety.

191. Answering Paragraph 191 of the Amended Complaint, Defendants deny such allegations in their entirety.

192. Answering Paragraph 192 of the Amended Complaint, Defendants deny such allegations in their entirety.

193. Answering Paragraph 193 of the Amended Complaint, Defendants deny such allegations in their entirety.

**AFFIRMATIVE DEFENSES**

Defendants assert and allege the following non-exclusive list of defenses to this action. These defenses have been labeled as "Affirmative" defenses regardless of whether, as a matter of law, such defenses are truly affirmative defenses. Such designation should in no way be construed to constitute a concession on the part of Defendants that it bears the burden of proof to establish such defenses.

1. Defendants deny each and every allegation of Plaintiff's Amended Complaint not specifically admitted or otherwise pled too herein.

2. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

1           3. Defendants have, and at all times herein, acted reasonably and in good faith in  
2           discharging their obligations and duties, if any, to Plaintiff.

3           4. Defendants acted properly and in good faith, and in accordance with all duties  
4           imposed by law, without malice, either express or implied, and without oppression.

5           5. Upon information and belief, Defendants affirmatively allege Plaintiff failed to  
6           mitigate damages.

7           6. Any damages claimed by Plaintiff are speculative, are not supported by proof and  
8           are not compensable as a matter of law.

9           7. Plaintiff's claims are barred by the applicable statute of limitations, statute of  
10          frauds, and by the doctrine of laches.

11          8. Plaintiff's claims are barred by the doctrine of equitable estoppel.

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

13          10. Plaintiff's claims are barred because it did not incur any injury or damages  
14          cognizable at law.

15          11. Plaintiff is barred from obtaining any relief from any claim as a result of Plaintiff's  
16          own breach of any agreements at issue and Plaintiff's breach of the implied covenant of good faith  
17          and fair dealing.

18          12. Plaintiff is barred from obtaining any relief from any claim by the doctrine of  
19          unclean hands.

20          13. If Defendants failed to perform any obligation or duty owed to Plaintiff, which is  
21          expressly denied by Defendant, there existed a valid excuse and/or justification for such  
22          nonperformance including that such nonperformance was consented to by Plaintiff or excused as  
23          a result of Plaintiff's prior breach.  
24  
25  
26  
27  
28

1           14. By virtue of the acts, conduct, mismanagement and/or omissions to act of the  
2 Plaintiff under the circumstances, Defendants are released and discharged from any liability  
3 whatsoever to Plaintiff, which liability is expressly denied.

4           15. Plaintiff is not entitled to any award of attorney fees based upon the allegations of  
5 its Amended Complaint.

6           16. Defendants are entitled to an award of reasonable attorney fees as a result of  
7 Plaintiff's conduct.

8           17. Plaintiff fails to appropriately establish the elements of Plaintiff's claims and  
9 Plaintiff's claims are directly contradicted by the express provisions of any and all agreements.

10           18. Plaintiff's requests for punitive damages fail because Defendants did not have  
11 intent to deceive Plaintiff.

12           19. Plaintiff's Amended Complaint, and each cause of action alleged therein, fails to  
13 set forth facts sufficient to entitle Plaintiff to an award of punitive damages.

14           20. An award of punitive damages against Defendants would violate their  
15 Constitutional rights.

16           21. Plaintiff cannot establish by clear and convincing evidence that Defendants are  
17 guilty of oppression, fraud, or malice so as to entitle Plaintiff to punitive damages.

18           22. Defendants hereby incorporate those affirmative defenses enumerated in NRCP 8  
19 as if fully set forth herein. Such defenses are herein incorporated by reference for the specific  
20 purpose of not waiving any such defense.

21           23. Defendants are informed, believe, and thereon allege that if any contract, guarantee,  
22 obligation or amendment, as alleged in the Amended Complaint, has been entered into, any duty  
23 of performance of Defendants are excused by reason of frustration of purpose, breach of condition  
24  
25  
26  
27  
28

precedent by Plaintiff, breach of condition subsequent by Plaintiff, or breach of an implied condition by Plaintiff.

24. Defendants did not make false material representation of fact which was not true, or if such representation was made, which Defendants specifically deny, Defendants did not make the representation with the intent either to deceive or to induce Plaintiff to act in reliance.

25. Plaintiff did not justifiably rely, in any fashion whatsoever, upon any statement, representation, advice, or conduct of Defendants, and did not act upon any statement, representation, advice, or conduct to Plaintiff's damage.

26. Plaintiff's claims and allegations are barred by the Doctrine of Assumption of Risk.

27. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of their Answer to Amended Complaint. Therefore, Defendants reserve the right to amend its Answer, including adding affirmative defenses, based upon discovery, review of documents, and development of evidence in this case.

**WHEREFORE**, Defendants request judgment against Plaintiff as follows:

1. Plaintiff takes nothing by way of its Amended Complaint, and that Plaintiff's claims be dismissed with prejudice;

2. For an award of reasonable attorneys' fees and costs incurred in the defense of the Answer;

3. For judgment in Defendant's favor and against Plaintiff on all claims asserted by Plaintiff in its Amended Complaint; and

4. For such other and further relief as this Court may deem just and proper.

**COUNTERCLAIMS**

COMES NOW, PHILIP J. FAGAN, JR., as an individual and Trustee of THE PHILIP J.

1 FAGAN, JR. 2001 TRUST (hereinafter referred to as "Fagan") by and through his attorneys of  
2 record, Chris V. Yergensen, Esq. of the law firm of Black & Wadhams., hereby submits his  
3 counterclaims against AAL-JAY, INC., a Nevada corporation (hereinafter, "Counterdefendant"),  
4 and alleges as follows:

5  
6 **PARTIES, JURISDICTION, AND VENUE**

7 1. Fagan is an individual residing in the State of Nevada and trustee of the Philip J.  
8 Fagan, Jr. 2001 Trust, a Nevada revocable trust.

9 2. Counterdefendant is a Nevada corporation.

10 3. This Court has jurisdiction over the instant dispute, and venue is proper in this  
11 Court, because the dispute involves a written lease agreement executed in Clark County, Nevada,  
12 and the performance of which, along with its terms and conditions, was to be rendered and enforced  
13 in Clark County, Nevada.

14  
15 **GENERAL ALLEGATIONS**

16 4. On May 9, 2006, for the sum of ONE MILLION NINE HUNDRED THOUSAND  
17 DOLLARS and 00/100 CENTS (\$1,900,000.00), Fagan purchased and became the owner of that  
18 residential dwelling located at 1 Grand Anacapi, Henderson, Nevada 89011, assessor parcel  
19 number 161-22-810-011 (the "Premises"). A copy of the recorded conveyance deed of the  
20 Premises to Fagan is attached hereto as **Exhibit 1**.

21  
22 5. In 2014, Counterdefendant entered into a lease agreement with Fagan and obtained  
23 possession of the Premises pursuant to that agreement.

24 6. On or around December 8, 2016, Fagan and Counterdefendant entered into a  
25 purchase and sale agreement (the "Purchase Agreement") wherein Counterdefendant was to  
26 purchase the Premises for the sum of ONE MILLION FIFTY THOUSAND DOLLARS and  
27 00/100 CENTS (\$1,050,000.00) on or before October 31, 2019 (the "Closing Date"). The  
28



Purchase Agreement is hereby attached as **Exhibit 2** to this Counterclaim.

7. In consideration for Counterdefendant being permitted to maintain possession of the Premises up and to the Closing Date, the terms of the Purchase Agreement required Counterdefendant to make monthly payments, with a portion of each monthly payment to be a credit towards the purchase price only in the event that Counterdefendant actually purchased the Premises on or before the Closing Date.

8. Section 9 of the Purchase Contract makes clear that should Counterdefendant fail to make the payments when due, including the final payment of the remaining balance of the purchase price on or before the Closing Date, then Counterdefendant shall “**forfeit any and all payments made**” and Fagan “**shall be entitled to immediate possession of the property**” and Fagan “**shall have the right to obtain possession by appropriate court action.**”

9. In September 2017, Counterdefendant failed to make the timely monthly payment required under the terms of the Purchase Agreement and subsequently continued to fail to make timely payments for the proceeding months, resulting in Counterdefendant being approximately three (3) months in arrears by March of 2018.

10. In an effort to assist Counterdefendant with its financial distress, in December 2017, Fagan agreed to provide to Counterdefendant a short-term loan of a principal amount of TWO HUNDRED EIGHTY THOUSAND DOLLARS and 00/100 CENTS (\$280,000.00) (the “**First Loan**”), secured by a deed of trust against real property located at 1873 Golden Horizon Drive, Las Vegas, NV 89011 and owned by the President of Counterdefendant. A copy of the recorded deed of trust is hereby attached as **Exhibit 3** to this Counterclaim.

11. In March 2018, Fagan and Counterdefendant executed an addendum to the Purchase Agreement (the “**First Addendum**”) wherein Counterdefendant agreed (i) to make a payment necessary to become current under the Purchase Agreement, and (ii) due to



1 Counterdefendant's sporadic and delinquency in making the monthly payments, Counterdefendant  
2 would continue to pay "said monthly payment **four (4) months in advance** until the amount due  
3 under the [Purchase Agreement] is paid in full." The First Addendum is attached as **Exhibit 4** to  
4 this Counterclaim.

5  
6 12. However, Counterdefendant subsequently failed to make the monthly payments  
7 four months in advance as expressed in the First Addendum and, in January of 2019,  
8 Counterdefendant again expressed to Fagan that it was experiencing financial hardship.

9 13. On January 22, 2019, Fagan again agreed to provide to Counterdefendant a second  
10 short-term loan (the "**Second Loan**"), of a principal amount of THREE HUNDRED THIRTY  
11 THOUSAND DOLLARS and 00/100 Cents (\$330,000.00). A copy of the promissory note is  
12 hereby attached as **Exhibit 5** to this Counterclaim

13  
14 14. The Second Loan was extremely generous for Counterdefendant in that Fagan  
15 loaned \$330,000.00 to Counterdefendant and received back 16 weekly payments of \$20,685.00  
16 for a grand total of \$330,960.00, meaning Fagan made only \$960.00 in interest on a \$330,000.00  
17 principal loan, which over sixteen weeks is an interest rate of less than 1% per annum.

18 15. In August of 2019, Counterdefendant again expressed financial hardship and again  
19 failed to make any payments for August 2019 and September 2019. Counterdefendant failed to  
20 comply with the express terms of the Purchase Agreement and the First Addendum.

21  
22 16. On October 31, 2019, the Closing Date, Counterdefendant failed to purchase the  
23 Premises and wrongfully maintained possession of the Premises thereafter.

24 17. Following October 31, 2019, Counterdefendant made occasional payments to  
25 Fagan while continuing to maintain possession of the Premises.

26 21. Despite the Purchase Agreement, and as amended by the First Addendum, having  
27 been terminated due to Counterdefendant's breach and nonperformance, and there being no other  
28

1 agreements in effect by and between Fagan and Counterdefendant, in November of 2020,  
2 Counterdefendant unilaterally opened an escrow with First American Title Insurance Company  
3 (the "**Escrow**").

4 22. Counterdefendant dictated its own terms of the purchase and sale of the Premises  
5 to Escrow, including a purchase price of \$800,000 and a scheduled closing date of December 17,  
6 2020, in which Escrow prepared title reports, escrow instructions, and an estimated settlement  
7 statement. A copy of the estimated settlement statement is hereby attached as **Exhibit 6** to this  
8 Counterclaim.  
9

10 23. On December 2, 2020, Escrow sent out the title reports, escrow instructions and the  
11 settlement statement for Fagan's approval and signature. A copy of Escrow's email to Fagan is  
12 hereby attached as **Exhibit 7** to this Counterclaim.

13 24. Fagan did not execute nor agree to any instructions or settlement statements  
14 delivered from Escrow.  
15

16 25. On January 12, 2021, Escrow provided to Fagan a purchase and sale agreement,  
17 dated December 14, 2020, and executed by Counterdefendant on or around January 11, 2020 (the  
18 "**First Draft PSA**"). The First Draft PSA is hereby attached as **Exhibit 8** to this Counterclaim.

19 26. The First Draft PSA had been circulated for consideration of Fagan and  
20 Counterdefendant approximately four weeks prior, and was in reference to the instructions and  
21 settlement statement prepared by Escrow and dictated by Counterdefendant.  
22

23 27. Fagan never agreed to, nor executed, the First Draft PSA, nor had Counterdefendant  
24 timely agreed to and executed the First Draft PSA.

25 28. On January 13, 2021, Fagan expressed to Counterdefendant that the First Draft PSA  
26 had not been agreed to and had not been executed by Fagan, and the express terms of the First  
27 Draft PSA had long expired. The close of escrow of the First Draft PSA indicated a closing date  
28

of December 17, 2020, some twenty-five (25) days in the past.

29. On January 13, 2021, Fagan sent to Counterdefendant another unsigned draft of a purchase and sale agreement (the "**Second Draft PSA**") setting, among other things, a closing date of February 12, 2021, and a purchase price at \$895,000.00. A copy of the Second Draft PSA is hereby attached as **Exhibit 9** to this Counterclaim.

30. On January 22, 2021, Fagan and Counterdefendant again attempted to negotiate the purchase and sale of the Premises, wherein Fagan sent to Counterdefendant another draft of a purchase and sale agreement modifying the purchase price and setting a closing date of March 1, 2021 (the "**Third Draft PSA**"). A copy of the Third Draft PSA is hereby attached as **Exhibit 10**.

31. Given that no meeting of the minds between Fagan and Counterdefendant for the purchase and sale of the Premises had occurred, Fagan and Counterdefendant negotiated a residential lease agreement for the term of ONE (1) month for the month of February 2021 (the "**First Lease Agreement**"). A copy of the First Lease Agreement is hereby attached as **Exhibit 11** to this Counterclaim.

32. The First Lease Agreement provided that Counterdefendant would maintain possession of the Premises for a one (1) month term, beginning February 1, 2021, and ending February 28, 2021, in exchange for the payment of rent by Counterdefendant to Fagan in the amount of \$7,000.00.

33. At this time, Counterdefendant had maintained possession of the Premises without any written agreement between the Parties since the Purchase Agreement had been terminated due to Counterdefendant's nonperformance on October 31, 2019. Further, Counterdefendant continued to wrongly maintain possession of the Premises without making any payments to Fagan for approximately 7 months.

34. On February 1, 2021, Counterdefendant executed the First Lease Agreement and

1 delivered to Fagan the approximate sum of \$7,000.00 as rent for the month of February 2021.

2 40. Article II of the First Lease Agreement provides that the First Lease Agreement  
3 “supersedes and terminates all previous agreements, whether written or not written, between  
4 the Parties.”

5 41. Article XXXVII of the First Lease Agreement also provides:

6  
7 **This Agreement replaces all previous discussions, understandings,**  
8 **and oral agreements, and as such all previous discussions,**  
9 **understandings, and oral agreements are void and of no further force**  
10 **or effect.** The Landlord and Tenant agree to the terms and conditions and  
11 shall be bound until the end of the Lease Term.

12 42. On March 4, 2021, Fagan presented to Counterdefendant another residential lease  
13 agreement in order for Counterdefendant to remain in possession of the Premises (the “Second  
14 Lease Agreement”). A copy of the Second Lease Agreement is hereby attached as **Exhibit 12** to  
15 this Counterclaim.

16 43. The Second Lease Agreement was similar in form to the First Lease Agreement.

17 44. The Second Lease Agreement leased the Premises to Counterdefendant for a term  
18 of sixty (60) days beginning March 1, 2021 and ending April 30, 2021 (the “Tenancy”).

19 45. The amount of rent due for the Tenancy was THIRTEEN THOUSAND SIX  
20 HUNDRED DOLLARS and 00/100 CENTS (\$13,600.00), which is equivalent to SIX  
21 THOUSAND EIGHT HUNDRED DOLLARS and 00/100 CENTS (\$6,800.00) per month.

22 46. Fagan did not require Counterdefendant to make a security deposit in connection  
23 with the Second Lease Agreement.

24 47. Counterdefendant’s rent in the amount of THIRTEEN THOUSAND SIX  
25 HUNDRED DOLLARS and 00/100 CENTS (\$13,600.00) was due on March 4, 2021.

26 48. On March 15, 2021, Counterdefendant executed the Second Lease Agreement and  
27 delivered to Fagan two (2) checks in the amount of SIX THOUSAND EIGHT HUNDRED  
28

1 DOLLARS and 00/100 CENTS (\$6,800.00) each, for a total of THIRTEEN THOUSAND SIX  
2 HUNDRED DOLLARS and 00/100 CENTS (\$13,600.00).

3 49. On March 16, 2021, Counterdefendant placed a "stop payment" order on both  
4 checks, thereby prohibiting Fagan from collecting the funds from either check.

5 50. Therefore, rent in the amount of THIRTEEN THOUSAND SIX HUNDRED  
6 DOLLARS and 00/100 CENTS (\$13,600.00) became delinquent as of March 4, 2021 in  
7 accordance with the Second Lease Agreement.  
8

9 51. Article II of the Second Lease Agreement provides that the Second Lease  
10 Agreement "supersedes and terminates all previous agreements, whether written or not  
11 written, between the Parties."

12 52. Article XXXVII of the Second Lease Agreement also provides:

13 **This Agreement replaces all previous discussions, understandings,**  
14 **and oral agreements, and as such all previous discussions,**  
15 **understandings, and oral agreements are void and of no further force**  
16 **or effect.** The Landlord and Tenant agree to the terms and conditions and  
shall be bound until the end of the Lease Term.

17 53. On April 23, 2021, Counterdefendant delivered to Fagan a cashier's check for the  
18 rent for March and April, 2021, and included Fifty-Three (53) days of late fees at SEVENTY-  
19 FIVE DOLLARS and 00/100 CENTS (\$75.00) per day, in accordance to Article IX of the Second  
20 Lease Agreement.  
21

22 54. On April 24, 2021, Fagan accepted the cashier's check for Rent for the months of  
23 March 2021 and April 2021, pursuant to the Second Lease Agreement.

24 54. On April 30, 2021, the Second Lease Agreement expired by its terms.

25 55. On May 3, 2021, Counterdefendant was served with a written thirty-day notice to  
26 quit (the "**Eviction Notice**") in compliance with NRS 40.251. A copy of that Eviction Notice and  
27 proof of service from the licensed process server, along with a declaration from Fagan's attorney  
28



1 in support of the service of process of the Eviction Notice, is hereby attached as **Exhibit 13** to this  
2 Counterclaim.

3 56. At this time, Counterdefendant remains in possession of the Premises in breach of  
4 the Second Lease Agreement and without any further written agreement with Fagan, and does not  
5 have the permission, express or implied, of Fagan to remain in possession of the Premises.  
6

7 **FIRST COUNTERCLAIM FOR RELIEF**  
8 **(Breach of Contract)**

9 57. Counterclaimant hereby repeats and re-alleges paragraphs 1 through 56 of these  
10 Counterclaims and incorporates the same herein by reference.

11 58. That there was a valid contract between Counterdefendant and Fagan in the form  
12 of the Purchase Agreement and its addendums.

13 59. That, pursuant to the terms of the Purchase Agreement and its addendums,  
14 Counterdefendant was obligated to make monthly rental payments to Fagan in exchange for its  
15 possession of the Premises.

16 60. That Counterdefendant breached the Contract by failing to make timely monthly  
17 rental payments and/or failing to make all required monthly rental payments pursuant to the terms  
18 of the Purchase Agreement and its addendums.  
19

20 61. That all conditions precedent to Counterdefendant's duty to perform were fulfilled  
21 by Fagan or were excused.

22 62. That as a direct and proximate result of the Counterdefendant's breach of contract,  
23 Fagan has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), an  
24 exact amount to be proven at the time of trial.  
25

26 63. That Fagan has been forced to retain the services of the law firm of BLACK &  
27 WADHAMS to prosecute this action and obtain relief and, thus, is entitled to an award of  
28 reasonable attorney's fees and costs of suit.

**SECOND COUNTERCLAIM FOR RELIEF**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

64. Counterclaimant hereby repeats and re-alleges paragraphs 1 through 64 of these Counterclaims and incorporates the same herein by reference.

65. That there was a valid contract between Counterdefendant and Fagan in the form of the Purchase Agreement and its addendums.

66. That there exists in every Nevada contract an implied covenant to act in good faith in performance and enforcement of the contract.

67. That Fagan had a justifiable expectation to receive certain benefits consistent with the spirit of the Purchase Agreement and its addendums.

68. That the Counterdefendant deliberately performed in a manner that was in violation of or unfaithful to the spirit of the contract.

69. That as a direct and proximate result of the Counterdefendant's breach of the implied covenant, Fagan has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), an exact amount to be proven at the time of trial.

70. That Fagan has been forced to retain the services of the law firm of BLACK & WADHAMS to prosecute this action and obtain relief and, thus, is entitled to an award of reasonable attorney's fees and costs of suit.

**THIRD COUNTERCLAIM FOR RELIEF**  
**(Slander of Title)**

71. Counterclaimant hereby repeats and re-alleges paragraphs 1 through 70 of these Counterclaims and incorporates the same herein by reference.

72. That Counterdefendant has made false and malicious communications to Escrow and/or to other parties which disparages Fagan's rights to the Premises by asserting that Fagan is contractually obligated to sell the Premises to Counterdefendant and/or that Fagan does not have



1 the right to possession of the Premises.

2 73. That as a direct and proximate result of the Counterdefendant's slander of title,  
3 Fagan has been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), an  
4 exact amount to be proven at the time of trial.

5 74. That Fagan has been forced to retain the services of the law firm of BLACK &  
6 WADHAMS to prosecute this action and obtain relief and, thus, is entitled to an award of  
7 reasonable attorney's fees and costs of suit.  
8

9 **FOURTH COUNTERCLAIM FOR RELIEF**  
10 **(Fraud in the Inducement)**

11 75. Counterclaimant hereby repeats and re-alleges paragraphs 1 through 74 of these  
12 Counterclaims and incorporates the same herein by reference.

13 76. That Counterdefendant made false representations to Fagan when it asserted that it  
14 would continue to make the monthly payments required under the Purchase Agreement and would  
15 purchase the Premises from Fagan by the Closing Date if it was provided with the First Loan.

16 77. That Counterdefendant made false representations to Fagan when it asserted that it  
17 would continue to make the monthly payments required under the Purchase Agreement and would  
18 purchase the Premises from Fagan by the Closing Date if it was provided with the Second Loan.  
19

20 78. That Counterdefendant either had the knowledge and belief that these  
21 representations were false or had an insufficient basis for making the representations.

22 79. That Counterdefendant intended for these false representations to induce plaintiff  
23 to consent to formation of a contract.

24 80. That Fagan was justified in his reliance on the misrepresentations by  
25 Counterdefendant.  
26

27 81. That as a direct and proximate result of Fagan's reliance on the misrepresentations  
28 of Counterdefendant, Fagan has been damaged in an amount in excess of Fifteen Thousand Dollars

1 (\$15,000.00), an exact amount to be proven at the time of trial.

2 82. That Fagan has been forced to retain the services of the law firm of BLACK &  
3 WADHAMS to prosecute this action and obtain relief and, thus, is entitled to an award of  
4 reasonable attorney's fees and costs of suit.

5  
6 **FIFTH COUNTERCLAIM FOR RELIEF**  
7 **(Fraud – Promise without intent to Perform)**

8 83. Counterclaimant hereby repeats and re-alleges paragraphs 1 through 82 of these  
9 Counterclaims and incorporates the same herein by reference.

10 84. That Counterdefendant made a promise to Fagan as to a material matter when it  
11 asserted that, if provided with the First Loan and Second Loan, it would resume the required  
12 monthly payments and eventually purchase the Premises.

13 85. That at the time Counterdefendant made those promises, it did not have the intent  
14 to perform.

15 86. That Counterdefendant made those promises to Fagan with an intent to defraud and  
16 with an intent for Fagan to rely upon those promises by acting or refraining from taking action.

17 87. That Fagan was unaware of Counterdefendant's intention not to perform the  
18 promises.

19 88. That Fagan acted in reliance on the promises by making loans to the  
20 Counterdefendant and by not seeking to evict the Counterdefendant from the Premises at an earlier  
21 date.

22 89. That Fagan was justified in his reliance on the promises made by Counterdefendant.

23 90. That as a direct and proximate result of Fagan's reliance on the promises of  
24 Counterdefendant, Fagan has been damaged in an amount in excess of Fifteen Thousand Dollars  
25 (\$15,000.00), an exact amount to be proven at the time of trial.

26 91. That Fagan has been forced to retain the services of the law firm of BLACK &  
27  
28

1 WADHAMS to prosecute this action and obtain relief and, thus, is entitled to an award of  
2 reasonable attorney's fees and costs of suit.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Counterclaimant prays for relief against Counterdefendant as follows:

- 5 1. For general damages against Counterdefendant in an amount in excess of  
6 \$15,000.00;  
7  
8 2. For special damages against Counterdefendant in an amount in excess of  
9 \$15,000.00;  
10  
11 3. For reasonable attorney's fees;  
12  
13 4. For costs incurred in the pursuit of this action; and  
14  
15 5. For such other further relief as the court deems proper.

16 Dated this 18<sup>th</sup> day of May 2021.

17 **BLACK & WADHAMS**

18   
19 Chris V. Yergensen, Esq.  
20 Nevada Bar No. 6183  
21 10777 West Twain Avenue, 3<sup>rd</sup> Floor  
22 Las Vegas, Nevada 89135  
23 *Attorneys for Fagan*  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am employee of Black & Wadhams, and that on the 18th day of May 2021, I served the above and foregoing **ANSWER TO PLAINTIFF'S AMENDED COMPLAINT AND COUNTERCLAIM** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

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

/s/ Diane Meeter  
An Employee of Black & Wadhams

Ogonna M. Brown, Esq.  
Nevada Bar No. 7589  
**LEWIS ROCA ROTHGERBER CHRISTIE LLP**  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: 702.949.8200  
Fax: 702.949.8398  
Email: obrown@lewisroca.com

*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

**EMERGENCY MOTION FOR SPECIFIC**  
**PERFORMANCE OF PURCHASE**  
**AGREEMENT, ON AN ORDER**  
**SHORTENING TIME**

[EMERGENCY HEARING REQUESTED]

Plaintiff AAL-JAY, INC. ("Plaintiff" or "AAL-JAY"), by and through its attorneys, Ogonna M. Brown, Esq. of the law firm Lewis Roca Rothgerber Christie LLP ("Lewis Roca"), hereby files this Emergency Motion for Specific Performance of Purchase Agreement, On An Order Shortening Time ("Emergency Motion"). The Emergency Motion seeks specific performance of Plaintiff's purchase of the real property parcel located at the address 2 Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property").

This Emergency Motion is based upon the following Memorandum of Points and Authorities; the Declaration of Christiano DeCarlo in Support of Emergency Motion ("DeCarlo Decl.") attached hereto as **Exhibit "A"**, the Director of AAL-JAY; the Declaration of Lail Leonard in Support of Emergency Motion ("Leonard Decl.") attached hereto as **Exhibit "B"**, the President of AAL-JAY, and the Declaration of Ogonna M. Brown, Esq. In Support of Emergency Motion On

1 An Order Shortening Time (“Brown Decl.”), one of the attorneys for AAL-JAY; the papers and  
2 pleadings on file in this action; and any such oral argument as this Court may entertain at hearing  
3 on this Emergency Motion.

4 Dated this 7th day of May, 2021.

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP

7 

8 By: \_\_\_\_\_

9 Ogonna M. Brown, Esq. (NBN 7589)  
10 3993 Howard Hughes Parkway, Suite 600  
11 Las Vegas, NV 89169  
12 Tel.: 702.949.8200  
13 Fax: 702.949.8398  
14 Email: obrown@lewisroca.com

15 *Attorneys for Plaintiff AAL-JAY, Inc.*

**ORDER SHORTENING TIME**

It appearing to the satisfaction of the Court, and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on Plaintiff's EMERGENCY MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN ORDER SHORTENING TIME ("Emergency Motion") shall be heard on the 1st day of June, 2021, at the hour of 9 : 00 .m. in Department 24 of this Court;

IT IS FURTHER ORDERED THAT the Defendants shall file an opposition to the Emergency Motion, if any, on or before May 25, 2021, 2021, at 9:00am a.m./p.m., and shall serve electronically a copy of same on counsel for Plaintiff using the Court's E-Filing E-Service System on this same date;

~~IT IS FURTHER ORDERED THAT Plaintiff shall file a reply in support of their Emergency Motion, if any, on or before \_\_\_\_\_, 2021, at \_\_\_\_\_ a.m./p.m. and shall serve electronically a copy of same on counsel for Defendants using the Court's E-Filing E-Service System on this same date.~~

Dated this 18th day of May, 2021



Respectfully submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

**859 4D1 78B7 5039**  
**Erika Ballou**  
**District Court Judge**

By: 

Ogonna M. Brown, Esq. (NBN 7589)  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel.: 702.949.8200  
Fax: 702.949.8398  
Email: obrown@lewisroca.com

*Attorneys for Plaintiff AAL-JAY, Inc.*



**DECLARATION OF OGONNA M. BROWN, ESQ. IN SUPPORT OF EMERGENCY  
MOTION FOR SPECIFIC PERFORMANCE OF PURCHASE AGREEMENT, ON AN  
ORDER SHORTENING TIME**

I, Ogonna M. Brown, upon oath state the following:

1. I am over the age of 18 and am competent to testify regarding the matters asserted herein.

2. I have personal knowledge of the facts set forth in this Declaration except as to those matters based upon information and belief, and as to those matters, I believe them to be true and correct. If called as a witness to testify, I could and would truthfully testify to the facts set forth herein.

3. I am an attorney licensed to practice in all courts within the State of Nevada, and I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP ("Lewis Roca").

4. I am counsel for Plaintiff AAL-JAY, INC. ("Plaintiff") in the above-captioned lawsuit, and have been retained by Plaintiff to represent its interests in this action against Defendants Philip J. Fagan, Jr., an individual ("Mr. Fagan"), and as Trustee of the Philip J. Fagan, Jr. 2001 Trust ("Fagan Trust") (collectively, "Defendants").

5. I make this Declaration in support of Plaintiff's *Emergency Motion For Specific Performance of Purchase Agreement, on an Order Shortening Time* ("Emergency Motion").

6. The relief requested in this Emergency Motion is necessary because Plaintiff is entitled to specific performance of the Residential Purchase Agreement ("Purchase Agreement") for purchase of the real property parcel located at the address 2 Grand Anacapri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011 (the "Property") to purchase the Property for \$800,000, which Purchase Agreement was offered by Defendant Mr. Fagan as Trustee of the Fagan Trust through his counsel, which was remitted to an Escrow Officer at Defendants' escrow company, First American Title Insurance Company ("First American") and executed on January 21, 2021 by Lail Leonard as President of Plaintiff, AAL-Jay, Inc. ("Ms. Leonard").

7. As evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Zions Bancorporation, N.A. dba Nevada State Bank ("Lender"), Plaintiff is ready, willing and able to close on the purchase of the

1 Property for \$800,000, the purchase price set forth in the Purchase Agreement (“New Purchase  
2 Price”), which price reflected the (35) prior payments made under the terms of the original Contract  
3 and Addendum (defined herein).

4 8. The pre-approved lending from Lender is more than enough for the Plaintiff to close  
5 on the Purchase of the Property at the New Purchase Price.

6 9. Good cause exists for this instant request for an expedited hearing on the Emergency  
7 Motion and an expedited hearing on the Emergency Motion because the Lender will not fund the  
8 loan for the Plaintiff’s purchase of the Property until the Lender receives a fully executed Purchase  
9 Agreement.

10 10. Good cause also exists because Defendants have commenced eviction proceedings  
11 against the Plaintiff to vacate the Property on or before June 2, 2021 by way of serving a Thirty-  
12 Day “No Cause” Notice to Quit Pursuant to NRS 40.251 (“Notice to Quit”) served on May 3, 2021.

13 11. Plaintiff respectfully requests that this Court permit this Emergency Motion to be  
14 heard on an order shortening time because Plaintiff believes that, in the absence of such relief,  
15 Plaintiff risks losing the Property where Mr. Christiano DeCarlo currently resides with his family,  
16 including a minor child, as well as the prior payments Plaintiff has made over the years toward the  
17 goal of purchasing the Property.

18 12. Plaintiff is facing threat of eviction because the Defendants refuse to honor the  
19 Purchase Agreement for \$800,000, notwithstanding that Plaintiff is prepared to immediately close  
20 pursuant to the Purchase Agreement previously prepared by and submitted by the Defendants.

21 13. Plaintiff respectfully requests this Court hold a hearing on or before **June 2, 2021**,  
22 on the Emergency Motion to ensue Plaintiff is not forced to forfeit the funds that have already been  
23 invested over the years to Defendants towards the purchase of the Property, and to compel  
24 Defendants to allow the sale to close on the agreed Purchase Price of \$800,000 for the Property.

25 14. This request for an order shortening time on the Emergency Motion is made in good  
26 faith and without dilatory motive.

27 /s/ Ogonna Brown  
28 OGONNA M. BROWN, ESQ.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff brings the instant Emergency Motion for Specific Performance of Purchase  
4 Agreement, on an Order Shortening Time in order that Plaintiff may be afforded specific  
5 performance of the Residential Purchase Agreement (“Purchase Agreement”) for purchase of the  
6 real property parcel located at the address 2 Grand Anacapri, Henderson, Nevada, 89011, Assessor  
7 Parcel Number 162-22-810-011 (the “Property”), which Purchase Agreement was offered by  
8 Defendant Mr. Fagan as Trustee of the Fagan Trust through counsel, who in turn submitted the  
9 Purchase Agreement for \$800,000 to an Escrow Officer at Defendants’ title company, First  
10 American Title Insurance Company (“First American”). Plaintiff accepted the offer of \$800,000 as  
11 evidenced by the Purchase Agreement drafted and prepared by Defendants, as evidenced by the  
12 executed Purchase Agreement for \$800,000, signed on January 21, 2021 by Lail Leonard as  
13 President of Plaintiff, AAL-Jay, Inc. (“Ms. Leonard”).

14 In addition to executing the Purchase Agreement, Plaintiff has also made payments toward  
15 the Purchase Price and funded an Earnest Money Deposit (“EMD”) in the total amount of \$170,000.  
16 Under the terms of the Promissory Note, Mr. Chrisitiano DeCarlo, the Director of AAL-JAY, Inc.,  
17 and Ms. Leonard, the President of AAL-Jay, made 16 consecutive weekly payments of \$20,685.00  
18 beginning January 30, 2019, totaling \$330,960. Further, in connection with the significant water  
19 damage to the Property, on May 28, 2020, Chubb approved the claim in the amount of  
20 approximately \$33,000, and withheld the \$10,000 deductible from the claim payments. Ultimately,  
21 the contractors were paid approximately \$77,000 to make the necessary repairs to make the  
22 Property habitable. Defendants are attempting to gain a windfall instead of selling the Property to  
23 Plaintiff as previously agreed.

24 Plaintiff’s substantial investment in the Property with the expectation of purchasing the  
25 Property will be forfeited in the absence of specific performance of the Purchase Agreement, as  
26 Defendants are attempting to evict Plaintiff. Defendants fraudulently induced the Plaintiff in an  
27 attempt to void the \$800,000 Purchase Agreement, and duped the Plaintiff into believing that  
28 Defendants would review the reconciliation of past payments and proceed with the \$800,000

Purchase Agreement. Instead, Defendants extended the lease through April 2021, and then repeatedly attempted to evict Plaintiff, all while refusing to proceed with the \$800,000 Purchase Agreement in good faith. Plaintiff has been left with no other choice but to seeks an order from this Court to enforce the terms of the Purchase Agreement to purchase the Property for \$800,000, and for this Court to order Defendants to proceed to closing of the sale of the Property to Plaintiff for \$800,000, for which \$170,000 remains in escrow with the title company.

## II. STATEMENT OF FACTS

### CONTRACT FOR DEED AND ADDENDUM

1. Plaintiff leased the Property from the owner, Philip J. Fagan, Jr., Trustee of the Philip J. Fagan, JR 2011 Trust (“Defendant,” or alternatively, “Landlord”) on or near November of 2011.

2. Christiano DeCarlo, the Director of AAL-JAY, Inc. (“Mr. DeCarlo”), is the current occupant of the Property.

3. On December 8, 2016, Plaintiff and Defendant (collectively, the “Parties”) entered into a Contract for Deed (“Contract”). The Contract was signed by the Defendant, Philip J. Fagan (“Dr. Fagan”) as Seller and Lail Leonard (“Ms. Leonard”) as President of AAL-JAY as Purchaser. A true and correct copy of the Contract is attached to the DeCarlo Decl. as **Exhibit “1”**.

4. Pursuant to the terms of the Contract, Defendant agreed to sell the Property to the Plaintiff for the purchase price of \$1,050,000.00 (“Purchase Price”). See **Ex. “1”** to the DeCarlo Decl.

5. The Purchase Price was to be paid on a schedule agreed by and between the Parties, as set forth in the Contract. See **Ex. “1”** to the DeCarlo Decl.

6. The balance of \$1,000,000 was to be due and payable as follows:

Balance payable, together with interest on the whole sum that shall be from time to time unpaid at the rate of 3.25 per cent, per annum, payable in the amount of Five Thousand Six Hundred Seventy-one and 96/100 dollars (\$5,671.96) per month beginning on the 1st day of December, 2016, and continuing on the same day of each month thereafter until the 31st day of October, 2019, when all remaining principal and interest shall be paid. Interest shall be computed monthly and deducted from payment and the balance of payment shall be applied on principal.

1 See **Ex. “1”** to the DeCarlo Decl. at pg. 2. Also attached to the DeCarlo Decl. as **Exhibit “2”** is a  
2 reconciliation schedule spreadsheet (“Reconciliation”) setting forth the Tenant’s payments for the  
3 Property beginning in December 2016.

4 7. The interest rate was set at 3.25% for the term of the Contract, and was not variable.  
5 See **Ex. “1”** to the DeCarlo Decl.

6 8. In addition to the Purchase Price, the first year’s Property taxes were to be paid by  
7 the Defendant and then added to the Purchase Price. After the first year, Plaintiff would assume  
8 responsibility for the Property taxes for each subsequent year. See **Ex. “1”** to the DeCarlo Decl. at  
9 pg. 3.

10 9. Despite this provision in the executed Contract, Defendant failed to add the 2017  
11 Property taxes to the Purchase Price until March 2021.

12 10. Each party to the Contract agreed to insure their own contents of the Property. See  
13 **Ex. “1”** to the DeCarlo Decl. at pg. 3.

14 11. Under the terms of the Contract, Plaintiff also assumed responsibility for liability  
15 and hazard insurance for the duration of the Contract. Defendant agreed to purchase fire, hazard  
16 and windstorm insurance but Plaintiff was to “repay the amount so paid by Seller within ten (10)  
17 days of demand for same by Seller.” See **Ex. “1”** to the DeCarlo Decl. at pg. 3.

18 12. In January 2018, the Parties entered into Addendum No. 1 to the Contract  
19 (“Addendum”). The Addendum was signed by Dr. Fagan on behalf of the Defendant and me on  
20 behalf of the Plaintiff. A true and correct copy of the Addendum is attached to the Leonard Decl.  
21 as **Exhibit “3”**.

22 13. Under the terms of the Addendum, Plaintiff agreed to cure defaults for January,  
23 February and March 2018. See **Ex. “3”** to the Leonard Decl.

24 14. Specifically, Plaintiff agreed to pay Defendant \$12,340.97 on or before February 2,  
25 2018, but ultimately paid \$12,437.75. See **Ex. “3”** to the Leonard Decl.

26 15. Pursuant to the Addendum, the Parties further agreed that Plaintiff would pay to  
27 Defendant on or before February 20, 2018 the monthly payments due under the Contract for April  
28 and May 2018. See **Ex. “3”** to the Leonard Decl.

1           16.     Thereafter, the Plaintiff would make each monthly payment due on the first day of  
2 each month under the Contract and continue said monthly payments four (4) months in advance  
3 until the amount due under the Contract was paid in full. *See Ex. “3”* to the Leonard Decl.

4           17.     Plaintiff was also required to remain current on the payments due under the Contract  
5 for the insurance and property taxes. *See Ex. “3”* to the Leonard Decl.

6           18.     The Addendum further set forth provisions for future defaults: “In the event  
7 Purchaser fails to timely make payment of the Deferred Amount to Seller or any of the payments  
8 due under Section 4 and 5 of this Addendum or Purchaser otherwise defaults under the terms of the  
9 Contract in the future, Purchaser agrees to immediately vacate the Property, deliver possession of  
10 the Property to Seller and cooperate with Seller in terminating the Contract.” *See Ex. “3”* to the  
11 Leonard Decl.

12     **TENANT MAKES PAYMENTS FOR ARREARS**

13           19.     On February 12, 2018, after the Parties executed the Addendum, Plaintiff contacted  
14 Defendant’s accountant, Michael Noll at Lorenzen & Noll, CPAs (“Mr. Noll”) to request  
15 documentation for the insurance amounts in arrears as well as the amounts billed in advance  
16 pursuant to the agreed terms of the Addendum, including statements of all premiums paid for 2017  
17 and 2018. Mr. Noll provided the requested information (copies of insurance policies, invoices and  
18 receipts for payment) on February 21, 2018. A true and correct copy of the February 12, 2018  
19 email exchange with Mr. Noll, including attachments, is attached to the DeCarlo Decl. as **Exhibit**  
20 **“3”**.

21           20.     On March 9, 2018, Mr. Noll emailed Ms. Leonard advising that “[u]pon receipt of  
22 the balance due of \$12,437.75, this will bring Mr. Decarlo [*sic*] fully paid up through June 30,  
23 2018.” A true and correct copy of the March 9, 2018 email exchange with Mr. Noll is attached to  
24 the DeCarlo Decl. as **Exhibit “4”**.

25           21.     In his March 9, 2018 email, Mr. Noll further stated that in order “[t]o stay 3+ months  
26 ahead, Mr. Decarlo [*sic*] is required to pay the July loan payment of \$5,671.96 on April 1, 2018.”  
27 *See Ex. “4”* to the DeCarlo Decl.

28     ...

22. On March 10, 2018, Plaintiff paid Defendant \$12,437.75, the total amount of the outstanding arrears pursuant to the Addendum. A true and correct copy of Check No. 2141 is attached to the DeCarlo Decl. as **Exhibit “5”**.

23. Defendant also paid the 2018 Property taxes totaling \$6,677.52. A true and correct copy of a spreadsheet of all 2018 Property tax payments, including the corresponding check numbers, is attached to the DeCarlo Decl. as **Exhibit “6”**; *see also* **Ex. “2”** to the DeCarlo Decl.

24. Beginning in June 2018, Defendant increased the interest rate on the payments from 3.25% to 4.85%, however, this rate increase was never fully explained to the Plaintiff until August 2020, at which time Defendant retroactively assessed the higher interest rate. At that time, Dr. Fagan claimed that the increased interest rate was not a variable rate, but a “sliding scale” and “is what it is.” Neither the Contract nor the Addendum included provisions for changes to the interest rate.

25. On January 22, 2019, a Promissory Note in the amount of \$330,000 was executed by Ms. Leonard, as Trustee of the Lail Leonard Trust dated January 26, 2005 and the undersigned as Maker and Defendant as Payee. A true and correct copy of the January 22, 2019 Promissory Note is attached to the DeCarlo Decl. as **Exhibit “7”**.

26. Ms. Leonard was provided with a check from Dr. Fagan’s wife in the amount of \$330,000.00. Mrs. Fagan then accompanied Ms. Leonard to Nevada State Bank, wherein Ms. Leonard deposited said check; and at Mrs. Fagan’s request per her husband, to have Ms. Leonard issue a payment of \$30,000.00 to Philip J. Fagan Jr. which Ms. Leonard did in the form of Nevada State Bank check number 001AA.

27. Ms. Leonard was told verbally by Dr. Fagan at a later date that the \$30,000.00 would be applied to principle balance if the purchase agreement terms were fulfilled, and forfeited with the other similar instances if we defaulted or failed to complete the purchase of the Property.

28. Under the terms of the Promissory Note, Ms. Leonard and Mr. DeCarlo made 16 consecutive weekly payments of \$20,685.00 beginning January 30, 2019. *See* **Ex. “8”** to the DeCarlo Decl.

...



1           29.     However, based on a verbal agreement between the Parties, the manner in which the  
2 payments under the January 2019 Promissory Note were to be applied to the outstanding balance  
3 on the Property payments was disputed by the Parties.

4           30.     The Plaintiff maintains that \$30,000 of these payments were to be applied to the  
5 principal balance in addition to the \$28,000 that was also to be applied pursuant to the two previous  
6 promissory notes.

7           31.     According to the Defendant, \$30,000 of these payments represented three mortgage  
8 payments, not including taxes and insurance. Consequently, the \$30,000 represents a value applied  
9 to the principal of only \$13,366.50 (calculated as [\$5,671.96 monthly payment - \$660.00 tax  
10 payment – \$556.46 interest payment = \$4,455.5] x 3 payments).

11          32.     As of the date of this Motion, the Parties have not resolved this discrepancy in the  
12 application of the funds.

13           **PROPERTY DAMAGE AND INSURANCE CLAIM**

14          33.     In 2019 the Property sustained significant water damage as a result of a pipe burst.

15          34.     In connection with the water damage, a claim was filed against the Property  
16 insurance carrier, Chubb, under policy number 1019823002.

17          35.     On May 28, 2020, Chubb approved the claim in the amount of approximately  
18 \$33,000, and withheld the \$10,000 deductible from the claim payments.

19          36.     Ultimately, the contractors were paid approximately \$77,000 to make the necessary  
20 repairs to make the Property habitable.

21          37.     Beginning in July 2020, Defendant again increased the interest rate on the payments  
22 from 4.85% to 5.125%. Again, this rate increase was never fully explained to the Tenant until  
23 August 2020, at which time Landlord retroactively assessed the higher interest rate. At that time,  
24 Dr. Fagan claimed that the increased interest rate was not a variable rate, but a “sliding scale” and  
25 “is what it is.” Neither the Contract nor the Addendum included provisions for changes to the  
26 interest rate.

27          38.     On July 2, 2020, Dr. Fagan’s bookkeeper, Kendrah Hardin (“Ms. Hardin”) sent the  
28 breakdown of the principal and interest payments for the Property to Ms. Leonard. A true and

1 correct copy of the July 2, 2020 email exchange and the attachments is attached to the DeCarlo  
2 Decl. as **Exhibit “8”**.

3 39. On July 16, 2020, Ms. Hardin sent a summary of the 2020 payments to Ms. Leonard.  
4 A true and correct copy of the July 16, 2020 email exchange and the attachments is attached to the  
5 DeCarlo Decl. as **Exhibit “9”**.

6 40. On August 11, 2020, Ms. Hardin sent an email to Ms. Leonard regarding past due  
7 payments from April 2020 through August 2020. A true and correct copy of the August 11, 2020  
8 email is attached to the DeCarlo Decl. as **Exhibit “10”**.

9 41. In response, on August 15, 2020, Ms. Leonard sent an email to Ms. Hardin  
10 explaining that the prior advance payments had been applied to the rent for February, March and  
11 April 2020. Ms. Leonard further stated that the payment for May 2020 was being sent. A true and  
12 correct copy of the August 15, 2020 email is attached to the DeCarlo Decl. as **Exhibit “11”**.

13 42. Ms. Leonard also requested an update on the status of the Chubb insurance payments  
14 for the water damage claim, to which no response was provided by Ms. Hardin or Dr. Fagan. *See*  
15 **Ex. “12”** to the DeCarlo Decl.

16 **NEW PURCHASE AGREEMENT**

17 43. Sometime in the latter part of 2020, Mr. DeCarlo, on behalf of Plaintiff, engaged in  
18 discussions with Dr. Fagan’s attorney, Richard Scott, Esq. (“Attorney Scott”) regarding the existing  
19 terms of the Property purchase.

20 44. As a result of these conversations, on January 6, 2021, an Escrow Officer at First  
21 American Title Insurance Company (“First American”) sent a Residential Purchase Agreement  
22 (“Purchase Agreement”) to Ms. Leonard. A true and correct copy of the January 6, 2021 email  
23 and attachments is attached to the DeCarlo Decl. as **Exhibit “12”**.

24 45. According to the terms of the Purchase Agreement that was prepared by the  
25 Landlord’s attorneys and remitted by the escrow company by, the new Purchase Price for the  
26 Property was \$800,000.00 (“New Purchase Price”), with a stipulation for \$50,000 to be placed in  
27 escrow as Earnest Money Deposit (“EMD”). The New Purchase Price reflected the (35) prior  
28

1 payments made under the terms of the original Contract and Addendum. *See Ex. "13"* to the  
2 DeCarlo Decl.

3 46. On January 11, 2021, Ms. Leonard executed the Purchase Agreement and  
4 transmitted via electronic correspondence the executed Purchase Agreement to the First American  
5 Escrow Officer. A true and correct copy of the January 11, 2021 email and attachments is attached  
6 to the DeCarlo Decl. as **Exhibit "13"**.

7 47. On January 12, 2021, Tenant wired \$50,000 into an escrow account. A true and  
8 correct copy of the January 12, 2021 U.S. Bank General Wire Transfer Request is attached to the  
9 DeCarlo Decl. as **Exhibit "14"**.

10 **LANDLORD RESCINDS EXISTING OFFER AND DRAFTS REVISED PURCHASE AGREEMENT**

11 48. On January 12, 2021, Dr. Fagan contacted Ms. Leonard to dispute the New Purchase  
12 Price, and informed her that he was withdrawing the offer to sell the Property at the New Purchase  
13 Price of \$800,000, notwithstanding that the Tenant already accepted the offer

14 49. On January 15, 2021, the First American Escrow Officer verbally advised Ms.  
15 Leonard via telephone and text message of a revised Residential Purchase Agreement ("Revised  
16 Purchase Agreement") with a new Purchase Price of \$895,000 instead of the previously agreed-  
17 upon Purchase Price of \$800,000. A true and correct copy of the January 15, 2021 text message  
18 attached to the Leonard Decl. as **Exhibit "16"**.

19 50. The First American Escrow Officer then presented the Revised Purchase  
20 Agreement. A true and correct copy of the January 13, 2021 email and attachments is attached to  
21 the DeCarlo Decl. as **Exhibit "15"**.

22 51. As a result of the retroactive interest rate increases, the revised Purchase Price was  
23 overvalued at \$871,560.01 as opposed to \$848,304.44, which would have been the price as of  
24 December 31, 2020, had the rate interest rate remained at the contractual rate of 3.25% This  
25 represented an increase to the original contract purchase price of \$36,695.56.

26 52. The Revised Purchase Agreement also required a \$50,000 EMD. *See Ex. "13"* to  
27 the DeCarlo Decl.

28 . . .

1           53. On January 15 2021, Ms. Leonard rejected the Landlord's Revised Purchase  
2 Agreement on behalf of the Plaintiff on the basis that the parties already had a deal to purchase the  
3 Property for \$800,000 as evidenced by the Purchase Agreement executed by Ms. Leonard.

4 **SECOND REVISED PURCHASE AGREEMENT & RESIDENTIAL LEASE AGREEMENTS**

5           54. To permit time to negotiate the terms of the Second Revised Purchase Agreement  
6 and the Modified Purchase Price, the Defendant agreed to sign documentation believed to represent  
7 an extension of time to negotiate the purchase of the Property to the Plaintiff for the month of  
8 February 2021. Defendant relied on the nearly ten-year relationship with Dr. Fagan as trust in his  
9 story that the agreement signed was for the purpose Dr. Fagan proposed was needed to finalize the  
10 terms of the sale.

11           55. To that end, the Parties entered into a Residential Lease Agreement dated January  
12 22, 2021 for the term of February 2021 for the agreed rent amount of the sum of the three  
13 reoccurring payments of Wells Fargo Mortgage payment, interest, and taxes ("First Lease  
14 Agreement"). A true and correct copy of the January 22, 2021 First Lease Agreement executed by  
15 Ms. Leonard is attached to the Leonard Decl. as **Exhibit "17"**.

16           56. On February 23, 2021, at Plaintiff's request, Ms. Hardin sent to Plaintiff the  
17 amortization schedule for the Property payments ("Amortization Schedule") which included the  
18 increased interest rate. A true and correct copy of the February 23, 2021 email and attachment is  
19 attached to the Leonard Decl. as **Exhibit "18"**.

20           57. Plaintiff was current on the payments due and owing under the Amortization  
21 Schedule through March 2021, based upon the credit of the \$30,000 payment made under the  
22 Promissory Note.

23           58. On March 12, 2021, Defendant filed a Five-Day Notice to Quit for Tenancy At Will  
24 ("Five-Day Notice"). A true and correct copy of the Five-Day Notice is attached to the DeCarlo  
25 Decl. as **Exhibit "16"**.

26           59. On March 15, 2021, the Parties conferred regarding the updated Amortization  
27 Schedule.

28           60. During this discussion, Dr. Fagan agreed to have his staff itemize all payments.

1           61. While the parties were verifying the itemization and reconciliation, Dr. Fagan  
2 represented to Plaintiff that in furtherance of discussions regarding the purchase of the Property,  
3 that the Landlord and the Tenant would enter into another lease agreement for the months of March  
4 2021 and April 2021.

5           62. Ms. Leonard, acting on Plaintiff's behalf and relying upon Attorney Yergensen's  
6 representations, agreed to enter into another lease agreement for the months of March and April  
7 under the false understanding that discussions regarding the purchase of the Property would  
8 continue.

9           63. On March 9, 2021, Defendant presented a second lease agreement which was dated  
10 March 2, 2021 ("Second Lease Agreement"). A true and correct copy of the March 9, 2021 email  
11 exchange and attachments is attached to the Leonard Decl. as **Exhibit "19"**.

12           64. Landlord also sent an unsigned Letter of Agreement attached to the March 9, 2021  
13 email. The Letter of Agreement stated that, upon execution of the March Lease Agreement that  
14 "all other agreements are terminated and of no further force or effect." There were also additional  
15 provisions based on proposed closing dates. *See Ex. "19"* to the Leonard Decl.

16           65. Under the terms of the Second Lease Agreement, Tenant would make (2) monthly  
17 payments in the amount of \$6,800 for the months of March and April 2021, of which \$3,000 of the  
18 payment amount would be applied to the Modified Purchase Price. *See Ex. "19"* to the Leonard  
19 Decl.

20           66. Accordingly, Plaintiff submitted two checks dated March 15, 2021 to Defendant,  
21 each in the amount of \$6,800. A true and correct copy of the check numbers 3276 and 3277  
22 representing payment for the March and April 2021 Property rent are attached to the Leonard Decl.  
23 as **Exhibit "20"**.

24           67. On the same day and after submission of the March and April rent payments, Ms.  
25 Leonard executed the Second Lease Agreement on behalf of the Plaintiff. A true and correct copy  
26 of the Second Lease Agreement dated March 2, 2021 signed by Ms. Leonard on March 15, 2021 is  
27 attached to the Leonard Decl. as **Exhibit "21"**.

28 . . .

68. Once the Second Lease Agreement was executed by the Plaintiff, the Defendant agreed to not pursue the March 12, 2021 Five-Day Notice. Landlord further agreed that a new Purchase Agreement which would correctly reflect and apply all prior Property payments would be completed and submitted expeditiously (“Third Revised Purchase Agreement”).

69. However, shortly thereafter, Plaintiff was informed by Defendant that the Third Revised Purchase Agreement would not be executed until the end of the lease term.

70. Instead, Dr. Fagan ceased communicating in good faith regarding the fair and accurate itemization and reconciliation of the previous payments made by the Tenant, refused to negotiate in good faith and refused to sign any purchase agreement for Tenant’s purchase of the Property.

71. On March 17, 2021, as a result of Dr. Fagan’s refusal to proceed in good faith and proceed with the Purchase Agreement, the Tenant placed a stop payment order on check numbers 3276 and 3277.

#### **LANDLORD RE-INITIATES EVICTION PROCEEDINGS**

72. On March 26, 2021, Plaintiff was served with a Seven (7) Day Notice To Pay Or Quit pursuant to NRS § 40.253 (“Seven-Day Notice”) from Defendant. Service was effectuated by posting a copy of the Seven-Day Notice on the Property. A true and correct copy of the Seven-Day Notice is attached to the DeCarlo Decl. as **Exhibit “17”**.

73. On April 6, 2021, Plaintiff filed an Affidavit in Henderson Justice Court (“Justice Court”) in opposition to the Seven-Day Notice, initiating case number 21EH000680.<sup>1</sup>

74. On April 14, 2021, a hearing regarding the Seven-Day Notice was held before Judge Bateman in Justice Court at which time the Court denied the Defendant’s request for summary eviction and permitted the District Court to maintain jurisdiction over the Parties’ dispute.

...

<sup>1</sup> Plaintiff requests that this Court take judicial notice of the Justice Court docket. This Court may take judicial notice pursuant to Chapter 47 of the Nevada Revised Statutes under the Nevada Rules of Evidence. *See* NEV. REV. STAT. §§ 47.130-.170; *see also Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (allowing Nevada courts to take judicial notice of matters of public record); *FGA, Inc. v. Giglio*, 128 Nev. 271, 286, 278 P.3d 490, 500 (2012) (same).

**PLAINTIFF FILES COMPLAINT AGAINST DEFENDANT**

75. On April 5, 2021, Plaintiff initiated the above-captioned matter seeking an Order from the Court to enforce the existing Purchase Agreement and enforce Plaintiff's rights to purchase the Property. *See* Complaint, on file herein.

**PLAINTIFF PAYS RENT ARREARS TO DEFENDANT**

76. On April 23, 2021, Plaintiff delivered a cashier's check in the amount of \$17,575.00 to the Defendant ("Cashier's Check"), representing payment of rent for March and April 2021, inclusive of late fees in accordance with the Second Lease Agreement, made under reservation of rights to avoid further eviction proceedings while Plaintiff pursues its rights under the Purchase Agreement for \$800,000. A true and correct copy of the Cashier's Check is attached to the DeCarlo Decl. as **Exhibit "19"**.

77. On April 26, 2021, the Defendant remitted an invoice for May 2021 ("Invoice"), even though the Defendant should have signed the \$800,000 Purchase Agreement, and as a result, the Plaintiff has been forced to pay rent for February, March and April 2021. A true and correct copy of Invoice No. 1059 for May 2021 is attached to the DeCarlo Decl. as **Exhibit "20"**.

78. The Defendant has refused to negotiate with the Plaintiff in good faith has refused to agree to the \$800,000 Purchase Price and has refused to discuss any terms with the Plaintiff.

79. The Defendant is proceeding in bad faith and induced the Plaintiff to waive its rights under the original \$800,000 Purchase Agreement to trick the Plaintiff, and all the while the Defendant continues to charge rent instead of allowing the Plaintiff to purchase the Property at the previously negotiated \$800,000 purchase price, which was submitted by the Defendant's attorney.

80. Defendant reneged on the Purchase Agreement and is proceeding in bad faith, and should be compelled to proceed with the \$800,000 Purchase Agreement.

81. Plaintiff is ready, willing and able to close on the purchase of the Property for \$800,000, as evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Zions Bancorporation, N.A. dba Nevada State Bank ("Lender"), which is more than enough for the Plaintiff to close on the Purchase of the Property. A true and correct copy of the email dated April 24, 2021, from Heather Weger, from



1 First American Title, confirming the total receipt of \$170,000 deposited in its escrow account for  
2 the real property located at 1 Grand Anacapri Drive, in the amount of \$170,000 is attached to the  
3 DeCarlo Decl. as **Exhibit “21”**; a true and correct copy of the Conditional Approval and Pre-  
4 Qualification Letter dated April 14, 2021, from the Lender is attached to the DeCarlo Decl. as  
5 **Exhibit “22”**.

6 82. The Lender will not fund the loan for the Plaintiff’s purchase of the Property until  
7 the Lender receives a fully executed Purchase Agreement.

8 83. The Plaintiff requires this Court’s intervention to order the Landlord to perform  
9 under the Purchase Agreement to sell the Property to the Tenant for \$800,000.

### 10 **III. APPLICABLE LAW**

#### 11 **A. Specific Performance of the Purchase Agreement Should Be Granted**

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

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

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

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

4           Any remedy at law is inadequate because the Property is a singular parcel of real property  
5           having unique characteristics and because under the Parties' contractual agreements, including the  
6           Contract, Addendum, and the Purchase Agreement, Defendants agreed to sell the Property to the  
7           Plaintiff. Based on these contractual agreements, Defendants have funded money, including the  
8           (35) prior payments made under the terms of the original Contract and Addendum, as well as the  
9           \$50,000 EMD, to the Plaintiff for the specific purpose of purchasing the Property. Any monetary  
10          remedy would therefore be inadequate. Plaintiff has commenced purchase of the Property for  
11          \$800,000 as contemplated under the Purchase Agreement, and has been approved for a loan by  
12          Lender once the Defendant signs the Purchase Agreement and honors the New Purchase Price set  
13          forth in the Purchase Agreement. Plaintiff has performed under the terms of the Parties' contractual  
14          agreements and is seeking an Order of the Court to compel Defendants to also perform by  
15          completing the sale of the Property to the Plaintiff.

16          If the Plaintiff is not able to complete the purchase of the Property at the agreed-upon price  
17          of \$800,000 as contemplated by the Purchase Agreement, the Defendants will be unjustly enriched  
18          by the funds that Plaintiff has previously paid to the Defendants, and which funds were paid for the  
19          express purpose of the purchase of the Property. As a result, Defendants will unjustly reap  
20          Plaintiff's equity in the Property and capitalize upon the same by improperly denying Plaintiff its  
21          purchase transaction.

22          Plaintiff is ready, willing and able to close on the purchase of the Property for \$800,000, as  
23          evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending  
24          in the amount of up to \$680,000 from Lender, Nevada State Bank, which is more than enough for  
25          the Plaintiff to close on the Purchase of the Property. *See Exs. "21" and "22"* attached to the  
26          DeCarlo Decl.

27          Certainly, if Defendants are permitted to renege on their agreement to sell the Property to  
28          the Plaintiff at the \$800,000 Purchase Price, Plaintiff will never be able to recoup the benefit for  
29          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 characteristics, a monetary compensation by way of returned funds to the Plaintiff would not be an adequate remedy in this circumstance.

**3. Plaintiff and Its Lender, Nevada State Bank, Have Tried to Tender Performance but Were Unable to Do So When Defendants Refused to Proceed with the Sale of the Property to Plaintiff.**

The record unequivocally established that Plaintiff tendered performance under the Purchase Agreement by funding the \$50,000 EMD on January 12, 2021, immediately after Plaintiff executed the Purchase Agreement. *See Ex. “15”* to the DeCarlo Decl. Since initially funding \$50,000 for the earnest money deposit in escrow, Plaintiff has transferred an additional \$120,000 into escrow, increasing the earnest money deposit held in escrow with the title company to \$170,000 as of the date of this Motion. Furthermore, Plaintiff is prepared to immediately close should Defendants execute the Purchase Agreement. Plaintiff is ready, willing and able to close on the purchase of the Property for \$800,000, as evidenced by the proof of funds in escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Lender, Nevada State Bank, which is more than enough for the Plaintiff to close on the Purchase of the Property. *See Exs. “21” and “22”* attached to the DeCarlo Decl.

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, 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 Plaintiff believes that, in the absence of the requested relief for Defendants to perform under  
2 the Purchase Agreement, Plaintiff risks losing Plaintiff is prepared to immediately close should  
3 Defendants execute the Purchase Agreement.

4 **4. Specific Performance Is Warranted Under Circumstances of this Case.**

5 Plaintiff respectfully urges this Court to order specific performance of the Purchase  
6 Agreement to enable Plaintiff to close on the purchase transaction of the Property, for which  
7 Property Plaintiff has previously funded an EMD in the amount of \$50,000, and made (35)  
8 payments towards over the course of several years.

9 In *Gullo v. City of Las Vegas*, 2015 WL 233493 (Tbl.) (Case No. 61843) (Nev. Jan. 15,  
10 2015), the Nevada Supreme Court (in an unpublished disposition) upheld the District Court's order  
11 of specific performance by finding that the City of Las Vegas had been entitled to specific  
12 performance of its purchase contract because it signed all necessary closing documents, it deposited  
13 all signed closing documents and the entire amount due under the purchase agreement with the  
14 escrow agent on the closing date, and it had sought to close escrow on the closing date. *Id* at \*1,  
15 citing *Mayfield*, 124 Nev. 343, 184 P.3d 362. Here, Plaintiff has demonstrated proof of funds in  
16 escrow in the amount of \$170,000, and the pre-approved lending in the amount of up to \$680,000  
17 from Lender, Nevada State Bank, which is more than enough for the Plaintiff to close on the  
18 Purchase of the Property. Plaintiff has also previously paid the \$50,000 EMD as contemplated  
19 under the terms of the Purchase Agreement, which has since been increased, and is now funded in  
20 the amount of \$170,000.

21 Absent specific performance, Plaintiff risks losing the Property where Mr. Christiano  
22 DeCarlo currently resides with his family, including a minor child. In the event specific  
23 performance is not ordered by this Court, the prior payments Plaintiff has made over the years  
24 toward the goal of purchasing the Property will be completely lost. Plaintiff is facing threat of  
25 eviction a second time now in the last thirty (30) days because the Defendants refuse to honor the  
26 Purchase Agreement for \$800,000, notwithstanding that Plaintiff is prepared to immediately close  
27 pursuant to the Purchase Agreement previously prepared by and submitted by the Defendants.  
28 Absent relief from this Court, Plaintiff will be forced to forfeit the funds that have already been

1 invested over the years to Defendants towards the purchase of the Property. Under the  
2 circumstance, this Court should compel Defendants to allow the sale of the Property to close for  
3 the previously agreed upon Purchase Price of \$800,000. Plaintiff urges the Court to grant specific  
4 performance of the Purchase Agreement and order that Defendants honor the terms of the Purchase  
5 Agreement and to sell the Property to the Plaintiff for \$800,000.

6 **B. Specific Performance of the Purchase Agreement is Appropriate Because Plaintiff is**  
7 **Ready, Willing, and Able to Tender the Full Purchase Price of the Property**

8 Under *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d 362, 367-68 (2008), “If a  
9 purchaser of real property has not yet tendered the purchase price, the district court may still grant  
10 specific performance if the purchase can ‘demonstrate that she is ready, willing, and able to  
11 perform.’” *Citing Serpa v. Darling*, 107 Nev. 299, 304, 810 P.2d 778, 782 (1991).

12 Here, the record shows Plaintiff was ready, willing, and able to tender the purchase price of  
13 \$800,000 and further demonstrates that Plaintiff’s Lender, Nevada State Bank has confirmed proof  
14 of funds in escrow and by way of pre-approved lending totaling in excess of the \$800,000 Purchase  
15 Price. *See Exs. “21” and “22”* attached to the DeCarlo Decl. Furthermore, the record established  
16 that Plaintiff tendered performance under the Purchase Agreement by funding the \$50,000 EMD  
17 on January 12, 2021, immediately after Plaintiff executed the Purchase Agreement. *See Ex. “14”*  
18 to the DeCarlo Decl. Although Plaintiff stands ready to complete the purchase transaction,  
19 Defendant has failed to perform under the terms of the Parties’ contractual agreement by way of  
20 the Purchase Agreement.

21 Therefore, on this record, Plaintiff is able to establish that, if Defendants are ordered to  
22 proceed with the sale of the Property to the Plaintiff for \$800,000, Plaintiff’s Lender will proceed  
23 with funding the loan upon receipt of a fully-executed Purchase Agreement from the Defendants.  
24 Accordingly, Plaintiff is able to perform its obligations by tendering the full amount of the  
25 Property’s contracted-for Purchase Price in order to close on the Property, especially in light of the  
26 \$170,000 held in escrow with the title company and the pre-approval letter for the loan from the  
27 Lender, evidencing Plaintiff’s ability to close on the sale of the Property.

28 . . .

1 C. **Specific Performance of the Purchase Agreement is Entirely Appropriate in Light of**  
2 **Defendants' Purposeful Actions Taken in Order to Preclude Plaintiff From Closing**  
3 **on the Purchase Transaction for the Property**

4 The record establishes that the Purchase Agreement was provided to the Plaintiff by  
5 Defendants' representatives following discussions between Plaintiff and Dr. Fagan's counsel,  
6 Attorney Scott. As a result of these conversations, on January 6, 2021, an escrow officer from the  
7 Defendant's escrow company sent the Purchase Agreement to Ms. Leonard. *See Ex. "12"* attached  
8 to the DeCarlo Decl. However, after Plaintiff signed the Purchase Agreement on January 11, 2021  
9 and funded the EMD on January 12, 2021, Defendant Dr. Fagan, on behalf of the Defendants,  
10 proceeded to dispute the New Purchase Price, and informed Plaintiff that Defendants were  
11 withdrawing the offer to sell the Property at the New Purchase Price of \$800,000, notwithstanding  
12 that the Plaintiff already accepted the offer. *See Exs. "13" and "14"* attached to the DeCarlo Decl.

13 On January 13, 2021, the First American Escrow Officer presented Ms. Leonard with the  
14 Revised Purchase Agreement with a new Purchase Price of \$895,000 instead of the previously  
15 agreed-upon Purchase Price of \$800,000, which agreement was rejected on the basis that the Parties  
16 already had a deal to purchase the Property for \$800,000 as evidenced by the Purchase Agreement  
17 executed by Ms. Leonard. Subsequently, the Parties agreed to enter into two lease agreements for  
18 the term of February, March and April 2021. Plaintiff justifiably relied upon the information  
19 provided by Defendants in that it entered into the Lease Agreements with the expectation that  
20 Plaintiff would be permitted to purchase the Property as promised for the Purchase Price of  
21 \$800,000. As a proximate cause of Defendants' misrepresentations and unfair dealings, Plaintiff  
22 was induced into entering into the Second Lease Agreement under false circumstances. Defendants  
23 were not engaging in good faith negotiations when they induced Plaintiff to sign the March Lease  
24 Agreement with the intention of changing the Purchase Price. Instead, Dr. Fagan ceased  
25 communicating in good faith regarding the fair and accurate itemization and reconciliation of the  
26 previous payments made by the Plaintiff, and refused to negotiate in good faith and refused to sign  
27 any purchase agreement for Plaintiff's purchase of the Property. Plaintiff is therefore seeking the  
28 Court to order Defendants to honor the terms set forth in the original Purchase Agreement executed  
by Plaintiff on January 11, 2021, and to sell the Property to the Plaintiff for the agreed-upon price



of \$800,000 as contemplated under the Purchase Agreement, and to determine that all later proposed purchase prices are not enforceable.

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

Based upon the record before this Court, equity may only be served if this Court orders specific performance. The Nevada Supreme Court's ruling in *Carcione v. Clark*, 96 Nev. 808,811,618 P.2d 346,348 (1980) is instructive:

Equity regards as done what in good conscience ought to be done. *Woods v. Bromley*, 69 Nev. 96 at 107, 241 P.2d 1103. Specific performance is available when the terms of the contract are definite and certain, *Dodge Bros., Inc. v. Williams Estate Co.*, 52 Nev. 364, 287 P.2d 282 (1930), the remedy at law is inadequate, *Harmon v. Tanner Motor Tours*, 79 Nev. 4, 377 P.2d 622 (1963), the plaintiff has tendered performance, *Southern Pacific Co. v. Miller*, 39 Nev. 169, 154 P. 929 (1916), and the court is willing to order it.

Although non-precedential, the Supreme Court's analysis in *Gullo v. City of Las Vegas*, 2015 WL 233493 (Tb1.) (Case No. 61843) (Nev. Jan. 15, 2015), regarding the equity of awarding performance is persuasive here. In *Gullo*, the Supreme Court's review of the record found City of Las Vegas entitled to specific performance appropriate even though the City of Las Vegas's actions in timely performing all of its responsibilities under the purchase agreement meant that a periodic payment otherwise due on the escrow closing date was not made.

Even where time is made material, by express stipulation, the failure of one of the parties to perform a condition within the particular time limited will not in every case defeat his right to specific performance, if the condition be subsequently performed, without unreasonable delay, and no circumstances have intervened that would render it unjust or inequitable to give such relief. The discretion which a court of equity has to grant or refuse specific performance, and which is always exercised with reference to the circumstances of the particular case before it, may and of necessity must often be controlled by the conduct of the party who bases his refusal to perform the contract upon the failure of the other party to strictly comply with its conditions.

*Gullo*, 2015 WL 233493 at \*1 (internal quotation marks omitted), *quoting Mosso v. Lee*, 53 Nev. 176,182,295 P. 776, 777-78 (1931) (*quoting Cheney v. Libby*, 134 U.S. 68, 78 (1890) (internal citations omitted)).



1 In the present case, specific performance is warranted and appropriate because Plaintiff  
2 performed its responsibilities under the Parties' contractual agreements by making (35) payments  
3 towards the purchase of the Property over the course of several years, by funding an EMD in the  
4 amount of \$50,000, increasing the EMD to \$170,000, and by securing pre-approved funds in the  
5 amount of \$680,000 from its Lender, Nevada State Bank, which in the aggregate, is more than  
6 sufficient to fund the purchase of the Property at the previously agreed upon purchase price of  
7 \$800,000. Lender is only waiting for the completely executed Purchase Agreement to proceed with  
8 funding the balance of the loan to the Plaintiff for purchase of the Property. However, Defendants  
9 reneged on the \$800,000 Purchase Agreement in bad faith, and fraudulently coerced Plaintiff to  
10 attempt to void the Purchase Agreement based upon misrepresentations to Plaintiff that a  
11 reconciliation of past payments would be forthcoming and adjusted accordingly in connection with  
12 the purchase of the Property. However, after the lease extensions were executed, Defendants did  
13 not negotiate with Plaintiff in good faith and cut off all communications with Plaintiff regarding  
14 the purchase of the Property, in direct contravention of the representations Defendants made to  
15 induce Plaintiff to "negotiate" the final purchase of the Property.

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

26 Defendants' deceptive actions and unfair dealings have prevented Plaintiff from purchasing  
27 the Property, which unjustly places Defendants in the position of reaping Plaintiff's equity in the  
28 Property. Defendants' refusal to now sell the Property to the Plaintiff at the previously agreed-

1 upon Purchase Price of \$800,000, based upon a Purchase Agreement drafted by Defendants'  
2 counsel and submitted to the title company, is wholly inequitable and should be remedied by this  
3 Court by ordering specific performance.

4 **IV. CONCLUSION**

5 For the forgoing reasons, Plaintiff AAL-JAY, INC. requests that this Court issue an order  
6 directing Defendants to specifically perform the Purchase Agreement by immediately executing  
7 the Purchase Agreement for the Purchase Price of \$800,000; by accepting Plaintiff's tender of the  
8 loan funds secured through Plaintiff's Lender, Nevada State Bank; and by closing on Plaintiff's  
9 purchase of the real property parcel located at the address 2 Grand Anacapri, Henderson, Nevada,  
10 89011, Assessor Parcel Number 162-22-810-011 in the amount of \$800,000.

11 DATED this 7th day of May, 2021.

12 LEWIS ROCA ROTHGERBER CHRISTIE LLP

13  
14  
15 By: 

Ogonna M. Brown, Esq. (NBN 7589)  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
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18  
19 *Attorneys for Plaintiff AAL-JAY, Inc.*  
20  
21  
22  
23  
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28

**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on May 7, 2021, I served a copy 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;

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

Tisha R. Black, Esq.                      tblack@blackwadhams.law  
Chris Yergensen, Esq.                  cyergensen@blackwadhams.law

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

Philip J. Fagan Jr.  
2 Via Sienna Place  
Henderson, NV 89011

Philip J. Fagan Jr. Trust  
2 Via Sienna Place  
Henderson, NV 89011

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

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Motion was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/18/2021

15 Ogonna Brown

obrown@lewisroca.com

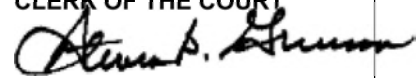
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**OPPM**  
**BLACK & WADHAMS**  
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*Attorneys for Defendants/Counterclaimants*

**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

**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.**

1 **Fagan**”), and PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001  
2 TRUST (hereinafter, the “**Fagan Trust**”), (Dr. Fagan and the Fagan Trust may hereinafter be  
3 collectively referred to as “**Defendant**”) by and through their attorney, Chris V. Yergensen, Esq.  
4 of the law firm of Black & Wadhams., and hereby submits its opposition to Plaintiff’s Motion for  
5 Specific Performance.  
6

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

11 Dated this 8<sup>th</sup> day of June, 2021.

**BLACK & WADHAMS**



---

Chris V. Yergensen, Esq.  
Nevada Bar No. 6183  
10777 West Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89135  
*Attorney for Defendants*

**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



1 Parties. Plaintiff alleges that the \$800,000 “new” purchase price reflects within the draft “purchase  
2 agreement” was established by accounting for “the (35) prior payments made by Plaintiff under  
3 the terms of the original Contract.” But, even though the original Contract is of no further force  
4 or effect due to Plaintiff’s breach, the most novice of mathematicians can easily determine that  
5 Plaintiff’s fuzzy math does not make sense, for 35 principal payments of sums ranging from  
6 \$3,110.73 to \$1,743.04 is closer to \$80,000, which less the \$1,000,000 original principal balance  
7 would put the “new” purchase price at over \$900,000, not \$800,000. Further, the purchase price  
8 is not even close to a definite amount, for the *Serpa Court* stated that to enforce specific  
9 performance as a remedy upon a contract, “the terms of the contract [must be] definite and certain.”  
10 *See id.* at 304. The alleged purchase price based upon the (35) prior payments is not definitive,  
11 but simply an approximate number unilaterally established by Plaintiff. And given that there is no  
12 definite or certain closing date to close the purchase and sale transaction, nor is the purchase price  
13 a definite or certain number, which are both essential terms of a real estate purchase and sale  
14 transaction, specific performance is not available under Nevada law.

15  
16  
17 And finally, when the negotiations of the purchase and sale of the real property failed to  
18 reach resolution between the Parties, Plaintiff and Defendant negotiated two (2) lease agreements  
19 rather than continuing to negotiate a purchase and sale transaction. The lease agreements, executed  
20 by both Plaintiff and Defendant, state that each lease agreement “**supersedes and terminates all**  
21 **previous agreements, whether written or not written, between the Parties**” and the lease  
22 agreement “**replaces all previous discussions, understandings, and oral agreements, and as**  
23 **such all previous discussions, understandings, and oral agreements are void and of no further**  
24 **force or effect.**” The express language of the lease agreements terminated and voided the so-  
25 called “purchase agreement”, assuming there was an agreement, and therefore, there is no valid  
26 contract in which to formulate a remedy of specific performance. Plaintiff’s motion should be  
27  
28

1 denied in its entirety.

2 **II. LEGAL ARGUMENT**

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

12  
13 The remedy of specific performance is an equitable remedy, governed by equitable  
14 principals. Thus, specific performance is not available if equity does not demand it due to evidence  
15 of unfairness, fraud, or overreaching on the part of the party seeking specific performance. *See*  
16 *Shreeve v. Greer*, 64 Ariz. 35, 39, 173 P.2d 641, 644 (1946).

17  
18 **A. There is no valid contract between Plaintiff and Defendant**

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

22  
23 In *Kern v. Kern*, 107 Nev. 988, 823 P.2d 275 (1991), the Nevada Supreme Court expressed  
24 that specific performance under a contractual obligation to convey real property was not  
25 appropriate because the “agreement was not signed by the party to be bound.” *Id.* at 991. The  
26 *Kern Court* made clear that NRS 111.210 (1) requires that a contract for the sale of land to be in  
27 writing, “and be subscribed by the party by whom the lease or sale is to be made.” *Id.* at 992. The  
28

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

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

13 Furthermore, most troubling with Plaintiff’s motion is that it does not even seek to  
14 distinguish itself from the facts of the *Kern Court*, which is squarely on point. Plaintiff also fails  
15 to even address NRS 111.210, Nevada’s long-standing requirement that real estate sales contracts  
16 be in writing. Rather, Plaintiff alludes to verbal discussions with Richard Scott, Esq. (Defendant’s  
17 prior attorney) in November 2020 regarding the purchase of the Property. *See* Plaintiff Mot. ¶¶ 43  
18 and 44. Plaintiff then uneventfully concludes that “as a result of these conversations” the  
19 “purchase agreement” was then prepared by Defendant’s counsel. *Id.* Nowhere in Plaintiff’s  
20 motion does Plaintiff argue, or even conclude, that a valid contract had been formed due to these  
21 alleged conversations with Richard Scott. Plaintiff simply suggest that, “based upon a Purchase  
22 Agreement drafted by Defendants’ counsel and submitted to the title company”, this Court should  
23 direct “Defendants to specifically perform the Purchase Agreement by immediately executing the  
24  
25  
26  
27  
28

Purchase Agreement”.<sup>1</sup> 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 Scott, 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. Even if this court finds a valid contract, the terms of the contract are not definite or certain.**

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

---

<sup>1</sup> Defendant is unaware of any authority, nor does Plaintiff provide any authority, for whether this court has the authority to order a party to execute 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.

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

7  
8 First, Plaintiff glosses over the facts that the express terms of the “purchase agreement”  
9 provide for a closing date of December 17, 2020. *See Ex. 13* to Plaintiff Mot. Plaintiff admits  
10 that it did not receive, accept or even execute the draft “purchase agreement” until January 11,  
11 2021. *See* Plaintiff Mot. ¶46 Therefore, the “purchase agreement” is incomplete and indefinite.  
12 The draft “purchase agreement” allegedly between Plaintiff and Defendant does not provide for a  
13 closing date, which would require the Parties to further negotiate the essential term and condition  
14 of a closing date. *See Lahaina-Maui Corp. v. Tau Tet Hew*, 362 F.2d 419, 422 (9<sup>th</sup> Cir. 1966)  
15 (stating that “if . . . negotiations of the parties affirmatively disclose or indicate *further*  
16 negotiations, terms and conditions are contemplated, the proposed [contract] . . . is considered  
17 incomplete and incapable of being specifically enforced.”). The draft “purchase agreement” by its  
18 express terms had expired prior to any acceptance by either Party. By the very facts presented  
19 here, the draft “purchase agreement” could not be completed by its express terms, and therefore  
20 further negotiations were necessary by the Parties to establish definite and certain terms and  
21 conditions. Specific performance is not warranted under these specific facts.  
22  
23

24 And secondly, the “purchase agreement” does not provide for a certain and definite  
25 purchase price. Plaintiff attempts to establish the \$800,000 “new” purchase price by indicating  
26 that the “New Purchase Price reflected the (35) prior payments made under the terms of the original  
27 Contract and Addendum.” *See* Plaintiff Mot. at ¶ 44. But the math does not figure under any  
28

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

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

12  
13 The “new” purchase price, as alleged by Plaintiff, was not definite or certain, was never  
14 agreed to by Defendant, and therefore, specific performance is not available in accordance to  
15 Nevada law.

16  
17 **C. The remedy at law is adequate – Not owner-occupied housing**

18 Plaintiff concludes that any monetary remedy would be inadequate because there are  
19 alleged contractual obligations between the Parties, and that Plaintiff has paid money in  
20 accordance to those alleged contractual obligations. See Plaintiff Mot. pp 19. Plaintiff’s claims  
21 are nonsensical for a remedy of specific performance, for if in fact Plaintiff’s damages are the  
22 funds that have been paid to Defendant, then it seems sensical that the damages in which Plaintiff  
23 should receive is the compensatory monetary damages of the funds in return. The remedy of  
24 compensatory damages appears to be appropriate here, and therefore, specific performance should  
25 be denied. See *Hamm v. Arrowcreek Homeowners’ Assn*, 124 Nev. 290, 297, 183 P.3d 895, 901  
26 (2008) (citing *Univ. Sys. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100P.3d 179, 187  
27  
28

1 (2004) and stating that “[generally], harm is ‘irreparable’ if it cannot adequately be remedied by  
2 compensatory damages”).

3 Further, Plaintiff alludes to a claim of unjust enrichment of the funds that Plaintiff has  
4 previously paid to Defendant to justify specific performance. Problematic with this claim is that  
5 Plaintiff fails to account for its possession of the Property in return for such monetary payments to  
6 Defendant. Does Plaintiff honestly argue that Plaintiff is entitled to possession of the Property for  
7 a period of 5 years without making any payment, even a payment of rent or otherwise, to  
8 Defendant? And once again, if Defendant has been unjustly enriched by funds that were paid by  
9 Plaintiff, then the adequate remedy would be compensatory of those monetary damages in return,  
10 not specific performance.  
11

12 And finally, Plaintiff quickly alludes to real property having unique characteristics in  
13 support of its conclusion that any monetary remedy is inadequate. But here, Plaintiff is a Nevada  
14 corporation, not an individual. *See Hamm*, 124 Nev. at 298 (holding that irreparable harm in the  
15 context of ownership of real property is unique because of one’s ability to possess, use and enjoy  
16 the real property). While Plaintiff, as a corporation, may own the Property, it cannot possess, use  
17 or enjoy the Property. Plaintiff, as a corporation, does not benefit from the unique characteristics  
18 specified by the Nevada Supreme Court that warrants a conclusion that a monetary remedy is  
19 inadequate in the context of claims against the ownership real property. *See id.* Therefore,  
20 monetary damages are adequate in this case and specific performance should be denied.  
21

22 Furthermore, Plaintiff is owned solely by Lail Leonard, who is not even an occupant of the  
23 Property. *See* Plaintiff’s attorney letter indicating Lail Leonard to be the sole shareholder of AAL-  
24 JAY, Inc. attached hereto as **Exhibit 3**. Given that the Property is not owner-occupied, and cannot  
25 be so under Nevada law due to the fact that Plaintiff is a corporation, the Property has marketable  
26 value and a calculation of money damages can be easily accomplished. Specific performance is  
27  
28



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

1 contract in which the Court could determine if specific performance was an adequate remedy.  
2 Here, there is no such mutually executed purchase contract by and between Plaintiff and  
3 Defendant. Specific performance is unwarranted here based upon the *Gullo Court's* unpublished  
4 opinion and the *Mayfield Court's* opinion for the facts presented here are clearly distinguishable  
5 and dispositive against specific performance.  
6

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

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

14 Each lease agreement was in similar form. The first residential lease agreement was for  
15 the term of one (1) month for the month of February 2021, and required the payment of rent by  
16 Plaintiff in the amount of \$7,000.00 (the "First Lease Agreement"). The First Lease Agreement  
17 is attached hereto as **Exhibit 4**. Plaintiff made the rent payment in accordance to the First Lease  
18 Agreement and maintained possession of the Property.  
19

20 The second lease agreement was for a term of two (2) months of March and April, 2021,  
21 and required the payment of rent by Plaintiff in the amount of \$13,600 (the "Second Lease  
22 Agreement"). The Second Lease Agreement is attached hereto as **Exhibit 5**. On March 15, 2021,  
23 Plaintiff executed the Second Lease Agreement and delivered to Defendant two (2) checks in the  
24 amount of \$13,600, but on March 16, 2021, Plaintiff placed a "stop payment" order on both checks,  
25 thereby prohibiting Defendant from collecting the funds from either check. Then, some thirty  
26 eight days later, on April 23, 2021, Plaintiff delivered to Defendant a cashier's check for the rent  
27 for March and April, 2021, and included Fifty-Three (53) days of late fees at \$75.00 per day, in  
28

1 accordance to the Second Lease Agreement.

2 Both residential lease agreements provide that each Lease Agreement “**supersedes and**  
3 **terminates all previous agreements, whether written or not written, between the Parties.**”

4 And further, both residential lease agreements provide that “[t]his Agreement replaces all  
5 **previous discussions, understandings, and oral agreements, and as such all previous**  
6 **discussions, understandings, and oral agreements are void and of no further force or effect.**”

7 See Article II and Article XXXVII of **Exhibits 4 and 5** attached hereto.  
8

9 By the express terms of the First Lease Agreement and the Second Lease Agreement, it is  
10 clear that any and all claims to previous agreements, understandings, discussions, whether written  
11 or oral, are terminated and of no further force of effect between Plaintiff and Defendant. Plaintiff’s  
12 claims to specific performance of the unexecuted “purchase agreement” drafted in December of  
13 2020 is contrary to the express terms of the subsequent lease agreements, which were negotiated,  
14 agreed to and executed by the Plaintiff and Defendant. Plaintiff’s claims of specific performance  
15 of the unexecuted “purchase agreement” are not warranted, and this Court should deny Plaintiff’s  
16 motion for specific performance.  
17

18 **F. Equity does not demand Specific Performance – Plaintiff is overreaching and**  
19 **seeking a windfall to Defendant’s detriment of over a \$1,000,000 loss**

20 Plaintiff argues that equity favors Plaintiff in this case. Plaintiff is wrong for equity favors  
21 Defendant in this case, not Plaintiff. Here, Defendant purchased the Property for \$1,900,000 and  
22 stands to lose over \$1,000,000 dollars based upon Plaintiff’s claim for specific performance at the  
23 Plaintiff’s “new” purchase price. Defendant did not agree to such a purchase price, nor did  
24 Defendant execute any written instructions from a title company, nor execute any purchase  
25 agreement with Plaintiff other than the original contract in 2016, which has since terminated due  
26 to Plaintiff’s breaches of said agreement. In this case, Defendant stands to lose more than Plaintiff,  
27 and equity favors Defendant in denying Plaintiff’s motion for specific performance.  
28

1     **III.     CONCLUSION**

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

4             Dated this 8<sup>th</sup> day of June 2021.

7                             **BLACK & WADHAMS**

8                             

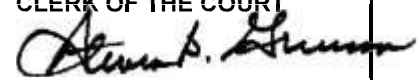
9                             \_\_\_\_\_  
Chris V. Yergensen, Esq.  
Nevada Bar No. 6183  
10                            10777 West Twain Avenue, 3<sup>rd</sup> Floor  
11                            Las Vegas, Nevada 89135  
12                            *Attorneys for Fagan*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Black & Wadhams, and that on the 8<sup>th</sup> 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:

Ogonna Brown, Esq.  
LEWIS ROCA ROTHERGERBER CHRISTIE LLP  
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Las Vegas, NV 89169  
[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)

/s/ Diane Meeter  
An Employee of Black & Wadhams



Ogonna M. Brown, Esq.  
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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**

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

3 Dated: June 15, 2021.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6 

7 By: \_\_\_\_\_

8 Ogonna M. Brown, Esq. (NBN 7589)  
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14 *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 Anacapi, 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 \$800,000 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.

## 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

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

3 Here, under the first element of specific performance, the terms of the Purchase Agreement  
4 are definite and certain. Pursuant to the Purchase Agreement that was prepared by the Defendants’  
5 attorneys and remitted to Defendants’ escrow company, First American by the Defendants’  
6 attorney, Defendants agreed to sell the Property to the Plaintiff for the New Purchase Price of  
7 \$800,000.00, with a stipulation for \$5,000 to be placed in escrow as EMD. *See Ex. “14”* to the  
8 DeCarlo Decl. The New Purchase Price reflected the (35) prior payments made by Plaintiff under  
9 the terms of the original Contract and Addendum (defined *supra*). The Purchase Agreement was  
10 forwarded by the First American Escrow Officer, who was acting as a representative of the  
11 Defendant, to Ms. Leonard on January 6, 2021, which Purchase Agreement Ms. Leonard executed  
12 on January 21, 2021 and subsequently transmitted via electronic correspondence to the First  
13 American Escrow Officer. *See Ex. “14”* to the DeCarlo Decl.

## 14 **2. Defendant’s Actions are Consistent With the Existence of a Contract**

15 Contract formation requires mutual consent of the parties. *In re Bishay*, No. ADV 8:10-AP-  
16 01142-ES, 2012 WL 5236169, at \*7 (B.A.P. 9th Cir. Oct. 24, 2012). Such mutual consent may be  
17 determined based on the reasonable meaning of the words and actions of the parties. *Id.*  
18 The contract's terms must be certain in material respects, but the existence of minor areas of  
19 disagreement will not render the contract void and entirely unenforceable. *Id.*; See also *Sunset-*  
20 *Sternau Food Co. v. Am. Almond Prod. Co.*, 259 F.2d 93, 96 (9th Cir. 1958) (noting that subsequent  
21 actions are consistent with its acceptance of agreement); See *Dynamics Corp. of Am. v. United*  
22 *States*, 389 F.2d 424, 430 (Ct. Cl. 1968) (“[T]he practical interpretation of a contract, as shown by  
23 the conduct of the parties, is of great weight in interpreting the contract.”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 IV. CONCLUSION

2 For the forgoing reasons, Plaintiff AAL-JAY, INC. requests that this Court issue an order  
3 directing Defendants to specifically perform the Purchase Agreement by immediately executing  
4 the Purchase Agreement for the Purchase Price of \$800,000; by accepting Plaintiff's tender of the  
5 loan funds secured through Plaintiff's Lender, Nevada State Bank; and by closing on Plaintiff's  
6 purchase of the real property parcel located at the address 1 Grand Anacapri, Henderson, Nevada,  
7 89011, Assessor Parcel Number 162-22-810-011 in the amount of \$800,000. Plaintiff is ready,  
8 willing and able to close, as evidenced by the loan approval and the \$170,000 that remains in  
9 escrow.

10 DATED: June 15, 2021.

11 LEWIS ROCA ROTHGERBER CHRISTIE LLP

12  
13  
14 By: 

Ogonna M. Brown, Esq. (NBN 7589)  
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Email: obrown@lewisroca.com

18 *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

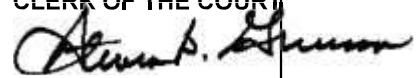
Chris V. Yergensen cyergensen@blackwadhams.law

☐ 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



1 RTRAN

2  
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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 AAL-JAY, INC.,

9 Plaintiff,

10 vs.

11 PHILIP FAGAN, JR.,

12 Defendants.

CASE#: A-21-832379-C

DEPT. XXIV

13  
14 BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE  
15 TUESDAY, JUNE 22, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **EMERGENCY MOTION FOR SPECIFIC PERFORMANCE OF**  
18 **PURCHASE AGREEMENT, ON AN ORDER SHORTENING TIME**

19  
20 APPEARANCES:

21 For the Plaintiff:

OGONNA M. BROWN, ESQ.

22  
23 For the Defendants:

CHRISTOPHER YERGENSEN, ESQ

24  
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, June 22, 2021

2 \*\*\*\*\*

3 [Hearing began at 8:58 a.m.]

4 THE COURT: Page Number 3, AAL-JAY, Inc. versus Philip  
5 Fagan, Jr., Case Number A-21-832379-C. And, ma'am, would you state  
6 your appearance.

7 MS. BROWN: Good morning, Your Honor. Ogonna Brown  
8 from the law firm of Lewis Roca, Bar Number 7589, on behalf of the  
9 plaintiff and movant today, AAL-JAY, LLC.

10 THE COURT: Okay. And who do I have on behalf of the  
11 Fagan – who else do I have?

12 MR. FLANNIGAN: This is Sean Flannigan for Leo Flangas.

13 THE COURT: Okay. That's not this case. We're looking for  
14 someone representing Philip Fagan, Jr.

15 THE CLERK: It should be Mr. Yergensen.

16 THE COURT: Okay. We seem like we're going to have to  
17 recall this case. So Ms. Brown, sorry about that.

18 MS. BROWN: May I sit here, Your Honor?

19 THE COURT: Sure. Yeah.

20 [Proceeding trailed and resumed at 9:03 a.m.]

21 THE COURT: Page Number 3, AAL-JAY, Inc. versus Philip  
22 Fagan, Jr., Case Number A-21-832379-C. Ms. Brown is present, and  
23 who else do I have? Mr. Yergensen, can you –

24 MR. YERGENSEN: Your Honor, I'm sorry. This is Chris  
25 Yergensen for defendant, Philip Fagan.

1 THE COURT: Thank you.

2 So here's where I am. I'm inclined to grant the motion for  
3 specific performance. I believe that the initial contract for the sale was  
4 valid. I believe that the terms of the initial contract were definite and  
5 certain. I believe that everything has been met. They were the original  
6 total price and the requirement of the 35 months in payments.

7 I think that the remedy at law is inadequate because property  
8 is considered unique and, therefore, any monetary compensation would  
9 not be an adequate remedy for the plaintiff. And the plaintiff, I believe,  
10 tendered performance on their end by taking possession of the property  
11 as well as making payments towards purchasing the property, and I  
12 think that specific performance is actually the solution in this case.

13 Mr. Yergensen, go ahead and make your record.

14 MR. YERGENSEN: Your Honor, that caught me a little bit off  
15 guard in that the motion for specific performance was not on the original  
16 contract, Your Honor.

17 The motion for specific performance is pursuant to a  
18 residential purchase agreement that was drafted the 14<sup>th</sup> day of  
19 December, 2020.

20 Your Honor, the motion – I apologize. That got me. That's not  
21 even what the motion for specific performance was filed for. The original  
22 contract, Your Honor, I believe – I don't even think that plaintiff  
23 themselves are arguing that that contract is valid.

24 There were so many breaches throughout the five years, Your  
25 Honor. And plaintiff has not even made a payment pursuant to that

1 contract for almost a year now, Your Honor.

2 The motion in front of this Court is not a motion for specific  
3 performance under the original contract that was signed in 2016. The  
4 motion for specific performance is for specific performance for a draft  
5 purchase agreement that was drafted in December of 2020. I don't  
6 know what more to say, Your Honor.

7 THE COURT: Okay. Ms. Brown.

8 MS. BROWN: Thank you, Your Honor.

9 We are here before this Court today arising from the original  
10 contract in 2016, and as a result of that contract, we have the right to a  
11 purchase agreement.

12 You will note for the record correctly that counsel for the  
13 defendant, the seller, drafted an agreement for the purchase with a  
14 specific term of \$800,000, and \$50,000 in escrow.

15 You'll note as Exhibit 12 that on January 6, 2021, an escrow  
16 officer at First American Title sent a residential purchase agreement to  
17 Ms. Leonard who is the representative of the plaintiff here, she is an  
18 agent of the buyer, for a purchase price, again, very specific, \$800,000,  
19 and a \$50,000 earnest money deposit. That's in Exhibit 12 to the  
20 DeCarlo Declaration.

21 The purchase price reflected, just as this Court noted, that  
22 there were 35 prior payments that the buyer made under the terms of  
23 the original contract and addendum. That's Exhibit 13 to the DeCarlo  
24 Declaration.

25 On January 11<sup>th</sup>, 2021, Ms. Leonard executed the purchase

1 agreement and transmitted it via e-mail to First American Title. And that  
2 is, again, Exhibit 13 to the DeCarlo Declaration, Your Honor.

3 Turning next to what happened with the escrow. That's the  
4 \$50,000 escrow deposit. On January 12<sup>th</sup>, 2021, the evidence brought  
5 before this Court is that the buyer wired \$50,000 into escrow. That's  
6 Exhibit 14. That is uncontested. Those are the facts before this Court.

7 Everything was on track with successful closing, and then to  
8 the buyer's surprise on January 12, 2021, Dr. Fagan contacted Ms.  
9 Leonard to dispute the purchase price. Notwithstanding the fact that his  
10 lawyer drafted the document, it was submitted to escrow, my client, the  
11 buyer, accepted the offer, signed it, and performed.

12 We are ready, willing, and able to proceed, Your Honor.  
13 There is absolutely no evidence to the contrary. The issue with the  
14 lease payments that were made after the fact are all current. We were  
15 taken aback that they tried to renege on the deal, and so, of course, my  
16 client wasn't going to pay for lease payments when there should have  
17 been a closing that should have occurred months ago.

18 In the interim because of eviction efforts that the seller has  
19 effectuated, we were able to avoid eviction because we told the Court  
20 that we filed a complaint for specific performance before this Court, and  
21 we tried to get this heard on shortened time. Counsel said he didn't  
22 receive the motion with a file stamp even though I sent the motion to  
23 him, so we agreed, of course, to continue the hearing to give him the  
24 opportunity to brief it.

25 But we're before you today, Your Honor, with the exact

1 agreement that you cited to. It is for the purchase of property for  
2 \$800,000, with the escrow of \$50,000.

3 I will note for the record in furtherance of our good faith efforts  
4 to close, we've added more money to the escrow account, and we have  
5 proof of that, Your Honor. We have now \$170,000 that's sitting in  
6 escrow. We are ready, willing, and able to proceed with the closing.

7 We also have, and that's Exhibit 21 for this Court's reference,  
8 and we also have lender confirmation for a loan that's approved, that's  
9 Exhibit 22, up to \$680,000. So the delta between the \$170,000 and the  
10 \$680,000, Your Honor, there's more than enough to cover the \$800,000  
11 purchase price.

12 My client specifically seeks specific performance to require the  
13 seller to proceed. This is a case of seller's remorse. It's absolutely  
14 inappropriate. I know that there's been an uptick in the market. I've  
15 seen more and more cases where the sellers are reneging on the deal.  
16 This is inappropriate, and this is, Your Honor, the poster child for specific  
17 performance, and we request that you grant our motion.

18 THE COURT: And I'm still inclined to grant the motion. Mr.  
19 Yergensen, you're welcome to take that up, but I'm going to sign  
20 whatever Ms. Brown puts in front of – not whatever Ms. Brown puts in  
21 front, but a motion basically stating what I had said – I mean, an Order  
22 stating what I had said. I'm going to ask you to run it by Mr. Yergensen  
23 but I still think that she's correct. This is just seller's remorse.

24 MS. BROWN: I will submit the Order to opposing counsel  
25 before I submit it to the Court.



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THE COURT: Thank you.

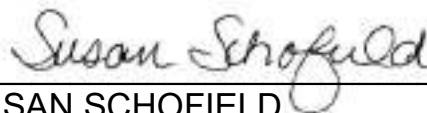
MS. BROWN: Thank you very much. Have a good day  
everyone.

MR. YERGENSEN: Yep.

[Hearing concluded at 9:10 a.m.]

\* \* \* \* \*

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



SUSAN SCHOFIELD  
Court Recorder/Transcriber

Ogonna M. Brown, Esq. (NBN 7589)  
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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-C

Dept. No. 24

**ORDER GRANTING EMERGENCY  
MOTION FOR SPECIFIC  
PERFORMANCE OF PURCHASE  
AGREEMENT, ON AN ORDER  
SHORTENING TIME**

An Application for Emergency Motion for Specific Performance of Purchase Agreement, on an Order Shortening Time (“Application”) having been duly made by Plaintiff AAL-JAY, INC. (“Plaintiff”, or alternatively, “Buyer”) by and through its counsel, Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP against Phillip J. Fagan, Jr. and Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST (“Defendants”, or alternatively “Seller”), by and through its counsel, Christopher Yergensen, Esq. of the law firm of Black & Wadhams, which Application was set for hearing on June 22, 2021, at 9:00 a.m. before Department 24 of the Eighth Judicial District Court, in and for Clark County, Nevada, with Judge Erika Ballou presiding, and good cause appearing therefor, and the Court, having reviewed the papers and pleadings on file herein and hearing the oral argument of the parties, finds the following:

...

...

## **FINDINGS OF FACT**

1  
2 1. Sometime in the latter part of 2020, Mr. DeCarlo, on behalf of the Buyer, engaged  
3 in discussions with Dr. Fagan's attorney, Richard Scott, Esq. ("Attorney Scott") regarding the  
4 existing terms of the Property purchase.

5 2. As a result of these conversations, on January 6, 2021, an Escrow Officer at First  
6 American Title Insurance Company ("First American") sent a Residential Purchase Agreement  
7 ("Purchase Agreement") to Ms. Leonard.

8 3. According to the terms of the Purchase Agreement that was drafted and prepared by  
9 the Seller's attorneys and emailed by the escrow company First American, to the Buyer, the  
10 Purchase Price for the Property was \$800,000.00 ("Purchase Price"), which Purchase Agreement  
11 was conditioned upon the amount of \$5,000 to be placed in escrow with First American as an  
12 Earnest Money Deposit ("EMD").

13 4. The Purchase Price under the Purchase Agreement reflected the (35) prior payments  
14 made under the terms of the original Contract and Addendum.

15 5. Buyer accepted the offer of \$800,000 as evidenced by the Purchase Agreement  
16 executed on January 11, 2021, by Lail Leonard as President of the Buyer, AAL-Jay, Inc. ("Ms.  
17 Leonard").

18 6. On January 11, 2021, after Ms. Leonard executed the Purchase Agreement on behalf  
19 of the Buyer, Ms. Leonard transmitted via electronic correspondence the executed Purchase  
20 Agreement to the First American Escrow Officer.

21 7. On January 12, 2021, the Buyer wired \$50,000 into an escrow account, as evidenced  
22 by the January 12, 2021 U.S. Bank General Wire Transfer Request.

23 8. After Buyer executed the Purchase Agreement, Buyer funded the \$50,000.000  
24 earnest money deposit ("EMD") with First American.

25 9. The Court hereby finds that there was a meeting of the minds and a binding  
26 agreement between the Seller and the Buyer for the Seller to sell the Property to the Buyer for  
27 \$800,000 as evidenced by the Purchase Agreement.

1           10.     The Court hereby finds that there was a valid, binding and enforceable contract  
2 evidenced by the Purchase Agreement for the sale of the property from the Seller to the Buyer in  
3 the amount of \$800,000.

4           11.     The Court hereby finds that there was a meeting of the minds and a binding  
5 agreement between the Seller and the Buyer for the Seller to sell the Property to the Buyer for  
6 \$800,000 as evidenced by the Purchase Agreement.

7           12.     The Court hereby finds that after the Buyer executed the Purchase Agreement and  
8 funded the EMD, the Buyer refused to close on the sale of the Property.

9           13.     The Court hereby finds that on January 12, 2021, Dr. Fagan contacted Ms. Leonard  
10 to withdraw the offer to sell the Property at the Purchase Price of \$800,000, notwithstanding that  
11 the Buyer already accepted the offer as evidenced in the executed Purchase Agreement.

12           14.     The Court hereby finds that on January 15, 2021, the First American Escrow Officer  
13 verbally advised Ms. Leonard via telephone and text message of a revised Residential Purchase  
14 Agreement (“Revised Purchase Agreement”) with a new Purchase Price of \$895,000 instead of the  
15 previously agreed-upon Purchase Price of \$800,000.

16           15.     The Court hereby finds that the First American Escrow Officer then presented the  
17 Revised Purchase Agreement, as evidenced by the January 13, 2021 email and attachments.

18           16.     The Court hereby finds that on January 15 2021, Ms. Leonard rejected the  
19 Landlord’s Revised Purchase Agreement on behalf of the Buyer on the basis that the parties already  
20 had a deal to purchase the Property for \$800,000 as evidenced by the Purchase Agreement executed  
21 by Ms. Leonard.

22           17.     The Court hereby finds that the Buyer agreed to sign documentation believed to  
23 represent an extension of time to negotiate the purchase of the Property to the Buyer for the  
24 month of February 2021, to reconcile the prior payments, and that the Buyer relied in good faith  
25 on the nearly ten-year relationship with Dr. Fagan and trusted in his story that the Second Revised  
26 Purchase Agreement was signed was for the purpose Dr. Fagan proposed was needed to finalize  
27 the terms of the sale.

1           18.     The Court hereby finds that on February 23, 2021, at Buyer's request, Ms. Hardin,  
2 the Seller's agent, sent to Buyer the amortization schedule for the Property payments  
3 ("Amortization Schedule") which included the increased interest rate.

4           19.     The Court hereby finds that the Buyer was current on the payments due and owing  
5 under the Amortization Schedule through March 2021, based upon the credit of the \$30,000  
6 payment made under the Promissory Note.

7           20.     The Court hereby finds that on March 12, 2021, the Seller filed a Five-Day Notice  
8 to Quit for Tenancy At Will ("Five-Day Notice") to evict the Buyer.

9           21.     The Court hereby finds that on March 15, 2021, the Parties conferred regarding the  
10 updated Amortization Schedule.

11          22.     The Court hereby finds that during this discussion, Dr. Fagan, on behalf of the  
12 Seller, agreed to have his staff itemize all payments.

13          23.     The Court hereby finds that while the parties were verifying the itemization and  
14 reconciliation, Dr. Fagan, on behalf of the Seller, represented to Buyer that in furtherance of  
15 discussions regarding the purchase of the Property, that the Seller and Buyer would enter into  
16 another lease agreement for the months of March 2021 and April 2021.

17          24.     The Court hereby finds that Ms. Leonard, acting on Buyer's behalf and relying  
18 upon Attorney Yergensen's representations, agreed to enter into another lease agreement for the  
19 months of March and April under the false understanding that discussions regarding the purchase  
20 of the Property would continue.

21          25.     The Court hereby finds that on March 9, 2021, the Seller presented a second lease  
22 agreement which was dated March 2, 2021 ("Second Lease Agreement").

23          26.     The Court hereby finds that the Seller also sent an unsigned Letter of Agreement  
24 attached to the March 9, 2021 email. The Letter of Agreement stated that, upon execution of the  
25 March Lease Agreement that "all other agreements are terminated and of no further force or effect",  
26 and there were also additional provisions based on proposed closing dates.

1           27.     The Court hereby finds that under the terms of the Second Lease Agreement, Tenant  
2 would make (2) monthly payments in the amount of \$6,800 for the months of March and April  
3 2021, of which \$3,000 of the payment amount would be applied to the purchase price.

4           28.     The Court hereby finds that the Buyer submitted two checks dated March 15, 2021  
5 to Seller, each in the amount of \$6,800, consisting of check numbers 3276 and 3277 representing  
6 payment for the March and April 2021 Property rent.

7           29.     The Court hereby finds that on the same day and after submission of the March  
8 and April rent payments, Ms. Leonard executed the Second Lease Agreement on behalf of the  
9 Buyer.

10          30.     The Court hereby finds that once the Second Lease Agreement was executed by  
11 the Buyer, the Seller agreed to not pursue the March 12, 2021 Five-Day Notice and the Buyer  
12 further agreed that a purchase agreement which would correctly reflect and apply all prior  
13 Property payments would be completed and submitted expeditiously (“Third Revised Purchase  
14 Agreement”).

15          31.     The Court hereby finds that shortly thereafter, the Buyer was informed by the Seller  
16 that the Third Revised Purchase Agreement would not be executed until the end of the lease term.

17          32.     The Court hereby finds that instead, Dr. Fagan, on behalf of the Seller, ceased  
18 communicating in good faith regarding the fair and accurate itemization and reconciliation of the  
19 previous payments made by the Buyer, refused to negotiate in good faith and refused to sign any  
20 purchase agreement for Buyer’s purchase of the Property.

21          33.     The Court hereby finds that on March 17, 2021, as a result of Dr. Fagan’s refusal to  
22 proceed in good faith and proceed with the Purchase Agreement, the Buyer placed a stop payment  
23 order on check numbers 3276 and 3277.

24          34.     The Court hereby finds that on April 23, 2021, the Buyer delivered a cashier’s check  
25 in the amount of \$17, 575.00 to the Seller (“Cashier’s Check”), representing payment of rent for  
26 March and April 2021, inclusive of late fees in accordance with the Second Lease Agreement, made  
27 under reservation of rights to avoid further eviction proceedings while Buyer pursues its rights  
28 under the Purchase Agreement for \$800,000.

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1           35.     The Court hereby finds that the Seller has refused to negotiate with the Buyer in  
2 good faith and has refused to allow the Buyer to close on the sale of the \$800,000 Purchase Price.

3           36.     The Court hereby finds that the Seller is proceeding in bad faith and induced the  
4 Buyer to waive its rights under the original \$800,000 Purchase Agreement to trick the Buyer, and  
5 all the while the Seller continues to charge rent instead of allowing the Buyer to purchase the  
6 Property at the previously negotiated \$800,000 purchase price, which was prepared and submitted  
7 by the Seller's attorney.

8           37.     The Court hereby finds that the Seller reneged on the Purchase Agreement and is  
9 not proceeding in good faith, and should be compelled to proceed with the \$800,000 Purchase  
10 Agreement.

11           38.     The Court hereby finds that Buyer is ready, willing and able to close on the purchase  
12 of the Property for \$800,000, as evidenced by the proof of funds in escrow in the amount of  
13 \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Zions  
14 Bancorporation, N.A. dba Nevada State Bank ("Lender"), which is more than enough for the Buyer  
15 to close on the Purchase of the Property.

16           39.     The Court hereby finds that on April 24, 2021, Heather Weger, from First American  
17 Title, confirmed the total receipt of \$170,000 deposited by Buyer in its escrow account for the real  
18 property located at 1 Grand Anacapri Drive,

19           40.     The Court hereby finds that the Lender has remitted the Conditional Approval and  
20 Pre-Qualification Letter dated April 14, 2021, to fund the Buyer's the purchase of the Property.

21           41.     The Court hereby finds that the Lender will not fund the loan for the Buyer's  
22 purchase of the Property until the Lender receives a fully executed Purchase Agreement.

23           42.     The Court hereby finds that it is necessary for this Court to intervene to order  
24 specific performance to order the Seller to perform under the Purchase Agreement to sell the  
25 Property to the Buyer for \$800,000.

26           43.     The Court hereby finds that the Seller suffered from a case of "seller's remorse" in  
27 refusing to close the sale of the Property after Seller's attorney prepared the Purchase Agreement  
28



1 and transmitted the same to First American, who in turn transmitted to the Purchase Agreement to  
2 the Buyer for signature and to fund the EMD.

3 44. To the extent any of the foregoing Findings of Fact are more properly deemed a  
4 Conclusion of Law, they may be so construed.

5 **CONCLUSIONS OF LAW**

6 1. This Court concludes that “specific performance is available only when: (1) the  
7 terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the appellant  
8 has tendered performance; and (4) the court is willing to order it.” *Serpa v. Darling*, 107 Nev. 299,  
9 304, 810 P.2d 778, 782 (1991); *see also Carcione v. Clark*, 96 Nev. 808, 811, 618 P.2d 346, 348  
10 (1980).

11 2. This Court concludes that under the first element of specific performance, the terms  
12 of the Purchase Agreement are definite and certain, and that pursuant to the Purchase Agreement  
13 that was prepared by the Seller’s attorneys and emailed to escrow company, First American by the  
14 Seller’s attorney, Seller agreed to sell the Property to the Buyer for the Purchase Price of  
15 \$800,000.00, conditioned upon \$5,000 to be placed in escrow as EMD.

16 3. This Court concludes that the Purchase Agreement was forwarded by the First  
17 American Escrow Officer, , to Ms. Leonard on January 6, 2021, which Purchase Agreement Ms.  
18 Leonard executed on January 21, 2021 and subsequently transmitted via electronic correspondence  
19 to the First American Escrow Officer.

20 4. This Court concludes that any remedy at law is inadequate because the Property is  
21 a singular parcel of real property having unique characteristics and because under the Parties’  
22 contractual agreements, including the Contract, Addendum, and the Purchase Agreement, Seller  
23 agreed to sell the Property to the Buyer.

24 5. This Court concludes that based on these contractual agreements, Buyer has funded  
25 money, including the (35) prior payments made under the terms of the original Contract and  
26 . . .  
27 Addendum, as well as the \$50,000 EMD, to the Seller for the specific purpose of purchasing the  
28 Property, and that any monetary remedy would therefore be inadequate.

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1           6.       This Court concludes that if the Buyer is not able to complete the purchase of the  
2 Property at the agreed-upon price of \$800,000 as contemplated by the Purchase Agreement, the  
3 Seller will be unjustly enriched by the funds that Buyer has previously paid to the Seller, and which  
4 funds were paid for the express purpose of the purchase of the Property.

5           7.       This Court concludes that Buyer is ready, willing and able to close on the purchase  
6 of the Property for \$800,000, as evidenced by the proof of funds in escrow in the amount of  
7 \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Lender, Nevada  
8 State Bank, which is more than enough for the Buyer to close on the Purchase of the Property.

9           8.       This Court concludes that if the Seller is permitted to ??on the agreement to sell the  
10 Property to the Buyer at the \$800,000 Purchase Price, Buyer will never be able to recoup the benefit  
11 for which it expressly bargained with Seller years ago: owning and living in the Property,  
12 maintaining the Property and purchasing the Property.

13           9.       This Court concludes that because the Property possesses specific and unique  
14 characteristics, a monetary compensation by way of returned funds to the Buyer would not be an  
15 adequate remedy in this circumstance.

16           10.      This Court concludes that Buyer tendered performance under the Purchase  
17 Agreement by funding the \$50,000 EMD on January 12, 2021, immediately after Buyer executed  
18 the Purchase Agreement.

19           11.      This Court concludes that Buyer is ready, willing and able to close on the purchase  
20 of the Property for \$800,000, as evidenced by the proof of funds in escrow in the amount of  
21 \$170,000, and the pre-approved lending in the amount of up to \$680,000 from Lender, Nevada  
22 State Bank, which is more than enough for the Buyer to close on the Purchase of the Property.

23           12.      This Court concludes that specific performance appropriate when the record  
24 demonstrates there is “no dispute” that the purchaser of real property offered to tender the purchase  
25 price. *See Mayfield v. Koroghli*, 124 Nev. 343, 351-52, 184 P.3d 362, 367-68 (2008).

26       ...

27           13.      This Court concludes that it is Seller’s – not Buyer’s – actions that are preventing  
28 the close of the Buyer’s purchase of the Property.

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1           14. This Court concludes that the Buyer is entitled to specific performance of its  
2 purchase contract because it signed all necessary closing documents, it deposited all signed closing  
3 documents and the entire amount due under the purchase agreement with the escrow agent in the  
4 form of the \$50,000 earnest money deposit was payment was timely made, and the Buyer has  
5 sought to close escrow to purchase the Property.

6           15. This Court concludes that absent specific performance, Buyer risks losing the  
7 Property, and that in the event specific performance is not ordered by this Court, the prior payments  
8 Buyer has made over the years toward the goal of purchasing the Property will be completely lost.

9           16. This Court concludes that absent relief from this Court, Buyer will be forced to  
10 forfeit the funds that have already been invested over the years to the Seller towards the purchase  
11 of the Property.

12           17. This Court concludes that the funds the Buyer paid to Seller after the Buyer accepted  
13 the Purchase Agreement and executed the same evidencing rent payments will not be applied to  
14 reduce the \$800,000 purchase price under the Purchase Agreement.

15           18. This Court concludes that under *Mayfield v. Koroghli*, 124 Nev. 343, 351, 184 P.3d  
16 362, 367-68 (2008), “If a purchaser of real property has not yet tendered the purchase price, the  
17 district court may still grant specific performance if the purchase can ‘demonstrate that she is ready,  
18 willing, and able to perform.’” *Citing Serpa v. Darling*, 107 Nev. 299,304,810 P.2d 778, 782  
19 (1991).

20           19. This Court concludes that the record shows the Buyer was ready, willing, and able  
21 to tender the purchase price of \$800,000 and further demonstrates that Buyer’s Lender, Nevada  
22 State Bank, has confirmed proof of funds in escrow and by way of pre-approved lending totaling  
23 in excess of the \$800,000 Purchase Price.

24           20. This Court concludes that although the Buyer stands ready to complete the purchase  
25 transaction, Seller has failed to perform under the terms of the Parties’ contractual agreement by  
26 way of the Purchase Agreement.

27           21. This Court concludes that if Seller is ordered to proceed with the sale of the Property  
28 to the Buyer for \$800,000, that Buyer’s Lender will proceed with funding the loan upon receipt of

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1 a fully-executed Purchase Agreement from the Sellers.

2 22. This Court concludes that based upon the record before this Court, equity may only  
3 be served if this Court orders specific performance.

4 23. This Court concludes that the Nevada Supreme Court's ruling in *Carcione v. Clark*,  
5 96 Nev. 808, 811, 618 P.2d 346, 348 (1980) is instructive:

6 Equity regards as done what in good conscience ought to be done.  
7 *Woods v. Bromley*, 69 Nev. 96 at 107, 241 P.2d 1103. Specific  
8 performance is available when the terms of the contract are definite  
9 and certain, *Dodge Bros., Inc. v. Williams Estate Co.*, 52 Nev. 364,  
10 287 P.2d 282 (1930), the remedy at law is inadequate, *Harmon v.*  
11 *Tanner Motor Tours*, 79 Nev. 4, 377 P.2d 622 (1963), the plaintiff  
12 has tendered performance, *Southern Pacific Co. v. Miller*, 39 Nev.  
13 169, 154 P. 929 (1916), and the court is willing to order it.

14 24. This Court concludes that under *Gullo*, 2015 WL 233493 at \*1 (internal quotation  
15 marks omitted), *quoting Mosso v. Lee*, 53 Nev. 176, 182, 295 P. 776, 777-78 (1931) (*quoting Cheney*  
16 *v. Libby*, 134 U.S. 68, 78 (1890) (internal citations omitted):

17 Even where time is made material, by express stipulation, the failure  
18 of one of the parties to perform a condition within the particular time  
19 limited will not in every case defeat his right to specific  
20 performance, if the condition be subsequently performed, without  
21 unreasonable delay, and no circumstances have intervened that  
22 would render it unjust or inequitable to give such relief. The  
23 discretion which a court of equity has to grant or refuse specific  
24 performance, and which is always exercised with reference to the  
25 circumstances of the particular case before it, may and of necessity  
26 must often be controlled by the conduct of the party who bases his  
27 refusal to perform the contract upon the failure of the other party to  
28 strictly comply with its conditions.

21 25. This Court concludes that in the present case, specific performance is warranted and  
22 appropriate because Buyer performed its "under the Parties' " by making (35) payments towards  
23 the purchase of the Property over the course of several years, by funding an EMD in the amount of  
24 \$50,000, increasing the EMD to \$170,000, and by securing pre-approved funds in the amount of  
25 \$680,000 from its Lender, Nevada State Bank, which in the aggregate, is more than sufficient to  
26 fund the purchase of the Property at the previously agreed upon purchase price of \$800,000.

27 . . .

28 . . .

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30. To the extent any of the foregoing Conclusions of Law are more properly deemed a Finding of Fact, they may be so construed.

Therefore, based on the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** that Buyer's Application for Emergency Motion for Specific Performance of Purchase Agreement, on an Order Shortening Time is **GRANTED** in its entirety.

**IT IS FURTHER ORDERED** that cause exists to order specific performance of Buyer's purchase of the real property parcel located at the address 1 Grand Anacapri, Henderson, Nevada, 89011, Clark County Assessor Parcel Number 162-22-810-011, which real property is described as follows: PARCEL ONE (1): LOT SIXTEEN (16) OF AMENDED CAPRI (ALSO KNOWN AS "LAKE LAS VEGAS· PARCEL 30"), AS SHOWN BY MAP THEREOF ON FILE IN BOOK 57 OF PLATS, PAGE 88 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. PARCEL TWO (2): AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THOSE AREAS SHOWN AS "PRIVATE DRIVES" AND "COMMON AREA" ON

1 THE MAP OF SAID LAND (“Property”), and that Seller is hereby ordered to sell the Property to  
2 Buyer or its assignee for \$800,000 pursuant to the Residential Purchase Agreement for the Purchase  
3 Price of \$800,000.00, for which Buyer timely deposited \$50,000 as the Earnest Money Deposit  
4 (“EMD”), which Purchase Price reflected the (35) prior payments made under the terms of the  
5 original Contract and Addendum.

6 **IT IS FURTHER ORDERED** that the \$50,000 Buyer wired into the escrow account held  
7 with First American Title Insurance Company on January 12, 2021, in addition to the \$120,000  
8 Buyer subsequently deposited with First American Title for a total of \$170,000 in EMD shall be  
9 used toward the close of escrow for the purchase of the Property.

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**LEWIS**  **ROCA**

**IT IS SO ORDERED.**

*Enika Balbo*

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# EXHIBIT “A”

## RESIDENTIAL PURCHASE AGREEMENT FOR \$800,000

**LAIL LEONARD**

1873 Golden Horizon drive  
Las Vegas, Nevada 89123

TELEPHONE: (702) 384-8650

CELL: (702) 332-8651

E-MAIL: [auntlail@cox.net](mailto:auntlail@cox.net)

FAX: (702) 384-8653

DATE: January 11, 2021

TO: MICHELLE

FIRST AMERICAN TITLE INSURANCE COMPANY.

E-MAIL: [michele@firstam.com](mailto:michele@firstam.com)

Attached please find Residential Purchase agreement signed,

Thank you for your assistance

Lail Leonard

## RESIDENTIAL PURCHASE AGREEMENT

This Residential Purchase Agreement ("Agreement") is entered into on this 14<sup>th</sup> 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 Anacapi, 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: JS

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

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 or counteroffer.

Buyer's Initials: LL

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 or counteroffer.

Buyer's Initials: XX Seller's Initials:



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/FEE: 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

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: \_\_\_\_\_



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:   *AS*  

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 14<sup>th</sup> 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  
Lail Leonard, its President

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 or counteroffer.

Buyer's Initials: LA

Seller's Initials: \_\_\_\_\_

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

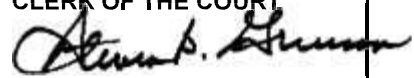
11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/26/2021

15 Ogonna Brown	obrown@lewisroca.com
16 Kennya Jackson	kjackson@lewisroca.com
17 Peggy Dale	Mdale@lewisroca.com
18 Diane Meeter	dmeeter@blackwadhams.law
19 Chris Yergensen	cyergensen@blackwadhams.law
20 Jerri Hunsaker	jhunsaker@blackwadhams.law
21 Patricia Grijalva	PGrijalva@lewisroca.com
22 Nicole Lord	nlord@lewisroca.com

23  
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25  
26  
27  
28

AA00186



Ogonna M. Brown, Esq.  
Nevada Bar No. 7589  
**LEWIS ROCA ROTHGERBER CHRISTIE LLP**  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
Tel: (702) 949-8200  
Fax: (702) 949-8398  
Email: obrown@lewisroca.com

*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-C

Dept. No. 24

**DECLARATION OF OGONNA M.  
BROWN, ESQ., IN SUPPORT OF  
ORDER GRANTING EMERGENCY  
MOTION FOR SPECIFIC  
PERFORMANCE OF PURCHASE  
AGREEMENT, ON AN ORDER  
SHORTENING TIME**

PHILIP J. FAGAN, JR., as Trustee of the  
PHILIP J. FAGAN, JR. 2001 TRUST

Counter-Claimaint,

v.

AAL-JAY, INC., a Nevada Corporation;  
CHRISTIANO DE CARLO, an individual and  
LAIL LEONARD,

Counter-Defendants.

I, OGONNA M. BROWN, ESQ., being duly sworn states as follows:

1. I am a partner with the law firm of Lewis Roca Rothgerber Christie LLP, and  
counsel for Plaintiff AAL-JAY, Inc., the Plaintiff in the above-captioned case.

115397512.2

AA00187

2. I am over the age of eighteen (18) years and competent to testify to the matters set forth herein.

3. I make this Declaration based on my personal knowledge of the facts and matters of this action.

4. I make this Declaration in support of the enforcement of the Order Granting Plaintiff's Emergency Motion for Specific Performance of Purchase Agreement ("Order Granting Specific Performance"). A true and correct copy of the Purchase Agreement which is the subject of the Order Granting Specific Performance is attached hereto as **Exhibit "1"**.

5. On August 28, 2021, I sent an email to Attorney Yergensen to request Defendant's signature on the Purchase Agreement, a true and correct copy of which email is attached hereto as **Exhibit "2"**.

6. On August 28, 2021, Attorney Yergensen responded and stated:

We will be filing a writ to Nevada Supreme Court on Monday under an emergency motion challenging the order. Please note that my client will not sign any document. I have never ever heard of a court mandating that a person, by order of a court, sign a document. Even the attached order does not do so. If I am mistaken, then let me know where the court has ordered my client to sign a document in which he has never agreed to?

See Email, **Exhibit "2"**.

7. On August 28, 2021, I emailed Attorney Yergensen and identified the last decretal paragraph in the Order, which provides as follows:

That the Clerk of the Court shall execute the Residential Purchase Agreement dated December 14, 2020, and executed by Buyer on January 11, 2021, in the purchase price amount of \$800,000 for the sale of the Property, a true and correct copy of which is attached hereto as Exhibit "1", and that the Clerk of the Court shall execute any necessary documents, such as the Deed, to effectuate the transfer of title of the Property to Buyer in compliance with this Order for specific performance in the event the Seller fails and/or refuses to comply with this Court's Order for specific performance.

See Email, **Exhibit "2"**.

8. In my subsequent email of August 28, 2021, I asked attorney Yergensen to clarify

1 and affirm his client's refusal so that I may proceed with submitting the Purchase Agreement to the  
2 Clerk of the Court for signature as provided in the Order Granting Specific Performance. *See*  
3 Email, **Exhibit "2"**.

4           9. In response, Attorney Yergensen stated that he would try to reach his client on  
5 August 30, 2021, to confirm if his client would agree to execute the Purchase Agreement. *See*  
6 Email, **Exhibit "2"**.

7           10. On August 30, 2021, Attorney Yergensen sent me a copy of the Writ of Mandamus  
8 and Writ of Prohibition (the "Writ Petition") which indicated that Defendants sought an emergency  
9 petition from the Nevada Supreme Court to prohibit Plaintiff from submitting the Purchase  
10 Agreement to the Clerk of the Court to execute on behalf of Defendants as set forth in the Order.  
11 *See* Email, **Exhibit "2"**.

12           11. At 10:22 a.m., on August 30, 2021, I requested that Defendant provide a response  
13 by noon, Monday, August 30, 2021, to make arrangements for a runner to pick up the fully executed  
14 Purchase Agreement from Defendant, as the cutoff for the runner is 2:00 p.m. Attorney Yergensen  
15 informed me via email that he will provide me with the second stay Motion on Tuesday, August  
16 31, 2021, which he did. However, there has been no affirmative refusal for Defendant to sign the  
17 Purchase Agreement.

18           12. At 5:38 p.m., on August 30, 2021, I sent Attorney Yergensen email correspondence  
19 expressing disappointment of his failure to inform me during our phone call earlier that same day  
20 that the Writ Petition included a request to prohibit the Clerk of the Court from administering the  
21 Court's Order Granting Specific Performance regarding presentation of the purchase agreement to  
22 the Clerk of the Court in the event Defendant failed and/or refused to sign the Purchase Agreement.  
23 *See* Email, **Exhibit "3"**.

24           13. During my call with Attorney Yergensen, he gave me the impression that his clients  
25  
26  
27  
28

1 had not affirmatively refused to sign the Purchase Agreement, but after reviewing the Writ Petition,  
2 it is clear that Defendants were seeking the Writ Petition to request that the Clerk of the Court be  
3 prohibited from signing the Purchase Agreement, resulting in delay to the Plaintiff in submitting  
4 the Purchase Agreement to the Clerk of the Court for execution pursuant to the Order Granting  
5 Specific Performance.  
6

7 14. As of the date of the filing of this Declaration, there is no stay currently in place,  
8 and no prohibition for the Clerk of the Court to effectuate this Court's Order Granting Specific  
9 Performance, expressly authorizing the Clerk of the Court to execute the Purchase Agreement on  
10 behalf of the seller Philip J. Fagan, Jr., 2011 Trust, as set forth on page 13 of the Order Granting  
11 Specific Performance on lines 1-7 thereof.  
12

13 15. As of the date of this Declaration, Defendant has failed and refused to sign the  
14 Purchase Agreement presented to him, notwithstanding this Court's Order Granting Specific  
15 Performance.  
16

17 16. Plaintiff hereby requests that the Clerk of the Court effectuate this Court's Order  
18 Granting Specific Performance and sign the Purchase Agreement on behalf of the Seller in  
19 compliance with this Court's Order Granting Specific Performance.  
20

21 I declare under penalty of perjury under the laws of the United States that the foregoing is  
22 true and correct to the best of my knowledge.  
23

24 Dated: September 1, 2021.

25   
26 \_\_\_\_\_  
27 OGONNA M. BROWN, ESQ.  
28



**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on September 1, 2021, I served a copy of **DECLARATION OF OGONNA M. BROWN, ESQ., IN SUPPORT OF ORDER GRANTING 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, which includes all relevant parties in the above entitled matter.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on September 1, 2021.



\_\_\_\_\_  
An employee of Lewis Roca Rothgerber Christie LLP

# **EXHIBIT “1”**

## RESIDENTIAL PURCHASE AGREEMENT

This Residential Purchase Agreement ("Agreement") is entered into on this 14<sup>th</sup> 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 Anacapi, 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: JS

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

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 or counteroffer.

Buyer's Initials: LL

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 or counteroffer.

Buyer's Initials: XX Seller's Initials:



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

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: \_\_\_\_\_



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:   *AS*  

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 14<sup>th</sup> 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  
Lail Leonard, its President

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 or counteroffer.

Buyer's Initials: LA

Seller's Initials: \_\_\_\_\_

# **EXHIBIT “2”**

**From:** Brown, Ogonna  
**Sent:** Monday, August 30, 2021 10:22 AM  
**To:** Christopher Yergensen  
**Cc:** Lord, Nicole; Lopez, Kim; Grijalva, Patricia  
**Subject:** RE: AAL-Jay v. Fagan - 2021.08.26 NOE Order Granting Motion for Specific Performance(115380738.1).pdf  
  
**Importance:** High

Dear Chris:

Please confirm by noon today so I may make arrangement for my runner to pick up the original signature on the purchase agreement, as the runner cut off is at 2:00 p.m. and the instructions must be submitted in advance of the 2:00 p.m. cutoff. Alternatively, if your client is failing/refusing to sign, please advise so I may submit the agreement to the clerk of the court with my runner today. Thank you.

Ogonna Brown  
Partner  
OBrown@lewisroca.com  
D. 702.474.2622  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
lewisroca.com

-----Original Message-----

From: Christopher Yergensen <cyergensen@blackwadhams.law>  
Sent: Monday, August 30, 2021 9:29 AM  
To: Brown, Ogonna <OBrown@lewisroca.com>  
Cc: Lord, Nicole <NLord@lewisroca.com>; Lopez, Kim <KLopez@lewisroca.com>; Grijalva, Patricia <PGrijalva@lewisroca.com>  
Subject: RE: AAL-Jay v. Fagan - 2021.08.26 NOE Order Granting Motion for Specific Performance(115380738.1).pdf

[EXTERNAL]

I have forwarded your email request to my client.

Chris Yergensen, Esq.  
Attorney

p: (702)869-8801  
f: (702)869-2669  
a: 10777 W. Twain Avenue, Suite 300  
Las Vegas, NV 89135  
w: www.blackwadhams.law e: cyergensen@blackwadhams.law

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be legally privileged. This message (and any associated files) is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential, subject to copyright or constitutes a trade secret. If you are not the intended recipient, you are hereby notified that any dissemination, duplication or distribution of all, or any part of this message, or any file associated with this message, is strictly prohibited. If you have received this communication in error, please notify Black & Wadhams immediately by telephone (702-869-8801) and destroy the original message. Please be further advised that any message sent to or from Black & Wadhams may be monitored.

-----Original Message-----

From: Brown, Ogonna <OBrown@lewisroca.com>

Sent: Saturday, August 28, 2021 4:29 PM

To: Christopher Yergensen <cyergensen@blackwadhamslaw.com>

Cc: Lord, Nicole <NLord@lewisroca.com>; Lopez, Kim <KLopez@lewisroca.com>; Grijalva, Patricia <PGrijalva@lewisroca.com>

Subject: Re: AAL-Jay v. Fagan - 2021.08.26 NOE Order Granting Motion for Specific Performance(115380738.1).pdf

Dear Chris, your client agreed to the terms of the purchase agreement and prior to your involvement, and the agreement was presented through Mr. Fagan's counsel to escrow, and in turn, to my client, which my client signed. Pursuant to the last page of the order, I am presenting the purchase agreement for your client's signature and in the event Mr. Fagan fails and/or refuses to sign the agreement, I will submit it to the clerk of the court for signature. I have used this procedure in other cases where a party refuses to comply with a court order and refuses to sign a document.

In the avoidance of doubt, please confirm that your client is refusing to sign the agreement notwithstanding the provision in the last decretal paragraph in the order. Please do not hesitate to call me if you have any questions as I'm working this weekend.

Ogonna Brown  
Partner  
702.474.2622  
702.949.8298  
OBrown@lrrc.com

Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
LRRC.com

> On Aug 28, 2021, at 12:02 PM, Christopher Yergensen <cyergensen@blackwadhamslaw.com> wrote:

>

> [EXTERNAL]

>

> Ogonna.

>

> We will be filing a writ to Nevada Supreme Court on Monday under an emergency motion challenging the order.

>

> Please note that my client will not sign any document. I have never ever heard of a court mandating that a person, by order of a court, sign a document. Even the attached order does not do so. If I am mistaken, then let me know where the court has ordered my client to sign a document in which he has never agreed to?

>

> Chris Yergensen.

>

>> On Aug 28, 2021, at 10:52 AM, Brown, Ogonna <OBrown@lewisroca.com> wrote:

>> Dear Mr. Yergensen:

>>  
>> Pursuant to the attached order, please present the agreement for your client to execute, and please email me a copy and I will send a runner to pick up the original at the location you specify. Thank you.  
>>  
>> Ogonna Brown  
>> Partner  
>>  
>> OBrown@lewisroca.com<mailto:OBrown@lewisroca.com>  
>> D. 702.474.2622  
>> [cid:image003.png@01D79BFA.8549BB10]  
>> 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169  
>> lewisroca.com<http://lewisroca.com/>  
>> LEWIS ROCA ROTHGERBER CHRISTIE LLP  
>> Learn more about the new Lewis Roca brand at  
>> lewisroca.com<http://lewisroca.com/>. Please note my new email  
>> address OBrown@lewisroca.com<mailto:OBrown@lewisroca.com>.  
>>  
>>  
>> \_\_\_\_\_  
>>  
>> This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.  
>>  
>> <2021.08.26 NOE Order Granting Motion for Specific  
>> Performance(115380738.1).pdf>

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# **EXHIBIT “3”**



**From:** Brown, Ogonna  
**Sent:** Monday, August 30, 2021 8:11 PM  
**To:** Christopher Yergensen  
**Cc:** Tisha Black; Diane Meeter  
**Subject:** RE: Writ of Mandamus/Prohibition

Dear Chris:

Have you submitted the stay motion to the court already without copying me? I will be up late working, so if you have already submitted the motion to the court, please forward to me this evening. Thank you.

**Ogonna Brown**  
Partner

[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)  
D. 702.474.2622

**LEWIS  ROCA**

---

**From:** Christopher Yergensen <[cyergensen@blackwadhams.law](mailto:cyergensen@blackwadhams.law)>  
**Sent:** Monday, August 30, 2021 8:08 PM  
**To:** Brown, Ogonna <[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)>  
**Cc:** Tisha Black <[tblack@blackwadhams.law](mailto:tblack@blackwadhams.law)>; Diane Meeter <[dmeeter@blackwadhams.law](mailto:dmeeter@blackwadhams.law)>  
**Subject:** Re: Writ of Mandamus/Prohibition

[EXTERNAL]

---

I am playing tennis right now. I will send to you the motion to stay tomorrow morning.

Sent from my iPhone

On Aug 30, 2021, at 5:38 PM, Brown, Ogonna <[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)> wrote:

Dear Mr. Yergensen:

I am disappointed that you failed to inform me during our call today that your writ includes a request to prohibit the clerk of the court from administering the court's order as it relates to the last decretal paragraph regarding presentation of the purchase agreement to the clerk of the court in the event Mr. Fagan failed and/or refused to sign the purchase agreement as directed by the Court. When I asked you if you were stalling in terms of obtaining a definitive answer from your client on whether or not he would sign the purchase agreement, you simply stated that you would try to call him today to request permission, all the while your writ expressly provides emergency relief from the Nevada Supreme Court to prohibit the clerk of the court from administering the Court's order. I made clear to you this morning and during our call today that I wanted my runner to deliver the purchase agreement to the court house by the 2:00 p.m. delivery deadline, and still no response. Now that I have reviewed your petition for

writ, it is clear that your client has no intention of signing the purchase agreement. If I am incorrect in my understanding, please provide me with your client's signature on the purchase agreement today.

During our call you also noted that you would be filing an emergency motion for stay with the Court, which you referenced in the email below. I request as a professional courtesy that if you email the court with the emergency motion for stay that you copy me on the email to the court to avoid delay which would prejudice my client, instead of waiting for the judge to grant the OST on your second stay motion. In the event you have already submitted your emergency stay motion to the state court, please forward the document to me today so I may review and begin preparing an opposition. Thank you.

**Ogonna Brown**

Partner

<image003.png>

[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)

D. 702.474.2622

<image004.png>

---

**From:** Christopher Yergensen <[cyergensen@blackwadhams.law](mailto:cyergensen@blackwadhams.law)>

**Sent:** Monday, August 30, 2021 1:51 PM

**To:** Brown, Ogonna <[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)>

**Cc:** Tisha Black <[tblack@blackwadhams.law](mailto:tblack@blackwadhams.law)>; Diane Meeter <[dmeeter@blackwadhams.law](mailto:dmeeter@blackwadhams.law)>

**Subject:** Writ of Mandamus/Prohibition

**[EXTERNAL]**

---

We will be filing shortly the enclosed motion for a writ of mandamus and writ of prohibition to the Nevada Supreme Court. Please note that we have filed the motions on an emergency basis pursuant to NRAP 27(e). I have indicated to the clerk of the Nevada Supreme Court that I have sent to you this motion prior to filing.

I will also be filing a motion to stay with the District Court on an OST. It is essentially the same motion that we filed earlier prior to the District Court filing its opinion.

**Chris Yergensen, Esq.**

Attorney

<image005.png>

p: (702)869-8801

f: (702)869-2669

a: 10777 W. Twain Avenue, Suite 300

Las Vegas, NV 89135

w: [www.blackwadhams.law](http://www.blackwadhams.law) e: [cyergensen@blackwadhams.law](mailto:cyergensen@blackwadhams.law)

<image006.png>

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*Heather S. Linn*  
CLERK OF THE COURT

**ORDR**

Ogonna M. Brown, Esq. (NBN 7589)  
**LEWIS ROCA ROTHGERBER CHRISTIE LLP**  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169  
Tel: 702.949.8200  
Fax: 702.949.8398  
Email: obrown@lewisroca.com

*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-C

Dept. No. 24

**ORDER DENYING DEFENDANTS'/  
COUNTERCLAIMANTS' MOTION FOR  
STAY PENDING ADJUDICATION OF  
DEFENDANTS/COUNTERCLAIMANTS'  
WRIT OF MANDAMUS AND/OR IN  
THE ALTERNATIVE, WRIT OF  
PROHIBITION ON AN ORDER  
SHORTENING TIME**

Date of Hearing: September 21, 2021

Time of Hearing: 9:00 a.m.

**Judge: Hon. Erika Ballou**

This matter having come on for hearing on September 21, 2021, at 9:00 a.m. before the Honorable Erika Ballou in Department 24 in the Eighth Judicial District Court on shortened time on Defendants/ Counterclaimants' Motion for Stay Pending Adjudication of Defendants'/Counterclaimants' Writ of Mandamus and/or the Alternative, Writ of Prohibition ("Stay Motion"). Plaintiff AAL-JAY, INC. ("Plaintiff", or alternatively, "Buyer") appeared by and through its counsel, Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP, and Phillip J. Fagan, Jr. and Trustee of the PHILIP J. FAGAN, JR. 2001 TRUST

114895205.1

AA00208

1 (“Defendants”, or alternatively “Seller”), appeared by and through its counsel, Christopher  
2 Yergensen, Esq. of the law firm of Black & Wadhams, , and good cause appearing therefor, and  
3 the Court, having reviewed the Defendants’ Stay Motion, the Buyer’s Opposition to the Stay  
4 Motion, Defendants’ Reply to the Stay Motion papers and pleadings on file herein and hearing the  
5 oral argument of the parties, finds the following:

6 **IT IS HEREBY ORDERED** that Defendants’ Stay Motion to stay this Court’s Order  
7 Granting the Motion for Specific Performance is **DENIED** in its entirety.

8 **IT IS FURTHER ORDERED** that Defendants failed to meet their burden of proof to  
9 demonstrate cause that a stay of this Court’s Order Granting the Motion for Specific Performance  
10 is warranted.

11 **IT IS FURTHER ORDERED** that Defendants failed to meet their burden of proof to  
12 demonstrate a likelihood of success on the merits to warrant a stay of this Court’s Order Granting  
13 the Motion for Specific Performance

14 **IT IS SO ORDERED.**

Dated this 30th day of September, 2021



09A C41 97A6 68DC  
Erika Ballou  
District Court Judge

17 Submitted by:

18 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

19 /s/ Ogonna Brown  
20 OGONNA M. BROWN  
21 Nevada Bar No. 7589  
22 3993 Howard Hughes Parkway, Suite 600  
23 Las Vegas, Nevada 89169  
24 *Attorneys for Plaintiff AAL-JAY, Inc.*

25 Approves/Disapproves as to form and content:

26 **BLACK & WADHAMS**

27 /s/ Christopher Yergensen  
28 CHRISTOPHER YERGENSEN (SBN 6183)  
10777 West Twain Avenue, 3<sup>rd</sup> Floor  
Las Vegas, NV 89135  
*Attorneys for Defendants/Counterclaimants*

**From:** Christopher Yergensen <cyergensen@blackwadhams.law>  
**Sent:** Friday, September 24, 2021 11:31 AM  
**To:** Brown, Ogonna  
**Cc:** Lord, Nicole; Lopez, Kim; Grijalva, Patricia; Brantley, Adrienne  
**Subject:** RE: Order Denying Motion for Stay Pending Appeal(115583404.1)

[EXTERNAL]

---

Approved as to form by me.

**Chris Yergensen, Esq.**  
Attorney



p: (702)869-8801  
f: (702)869-2669  
a: 10777 W. Twain Avenue, Suite 300  
Las Vegas, NV 89135  
w: [www.blackwadhams.law](http://www.blackwadhams.law) e: [cyergensen@blackwadhams.law](mailto:cyergensen@blackwadhams.law)

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**From:** Brown, Ogonna <OBrown@lewisroca.com>  
**Sent:** Tuesday, September 21, 2021 12:05 PM  
**To:** Christopher Yergensen <cyergensen@blackwadhams.law>  
**Cc:** Lord, Nicole <NLord@lewisroca.com>; Lopez, Kim <KLopez@lewisroca.com>; Grijalva, Patricia <PGrijalva@lewisroca.com>; Brantley, Adrienne <ABrantley-Lomeli@lewisroca.com>  
**Subject:** Order Denying Motion for Stay Pending Appeal(115583404.1)

Dear Chris:

Attached please find the draft order for your review and comments. Thank you.

**Ogonna Brown**  
Partner  
  
[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com)  
D. 702.474.2622



3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
[lewisroca.com](http://lewisroca.com)

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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[lewisroca.com](http://lewisroca.com). Please note my new email address  
[OBrown@lewisroca.com](mailto:OBrown@lewisroca.com).*

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 AAL-JAY, INC., Plaintiff(s)

CASE NO: A-21-832379-C

7 vs.

DEPT. NO. Department 24

8 Philip Fagan, Jr., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/30/2021

15 Ogonna Brown

obrown@lewisroca.com

16 Diane Meeter

dmeeter@blackwadhams.law

17 Chris Yergensen

cyergensen@blackwadhams.law

18 Jerri Hunsaker

jhunsaker@blackwadhams.law

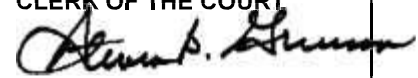
19 Nicole Lord

nlord@lewisroca.com

20 Patricia Grijalva

PGrijalva@lewisroca.com

21  
22  
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**ERR**  
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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.

PHILIP J. FAGAN, JR., as Trustee of the  
PHILIP J. FAGAN, JR. 2001 TRUST

Counter-Claimant,

v.

AAL-JAY, INC., a Nevada Corporation;  
CHRISTIANO DE CARLO, an individual and  
LAIL LEONARD,

Counter-Defendants.

**Case No. A-21-832379-C**

**Dept. No. 24**

**ERRATA TO PLAINTIFF'S**

**(1) EMERGENCY MOTION FOR FIRST  
AMERICAN TITLE INSURANCE  
COMPANY TO TURNOVER FUNDS IN  
ESCROW TO THE BUYER AAL-JAY,  
INC. AND**

**(2) MOTION FOR ORDER TO SHOW  
CAUSE WHY THIS COURT SHOULD  
NOT HOLD PHILIP J. FAGAN, JR., AS  
TRUSTEE OF THE PHILIP J. FAGAN,  
JR. 2001 TRUST IN CONTEMPT FOR  
VIOLATING THIS COURT'S SALE  
ORDER ON ORDER SHORTENED TIME**

Plaintiff AAL-JAY, INC. ("Plaintiff", "AAL-JAY" or "Buyer"), by and through its  
attorneys, Ogonna M. Brown, Esq. of the law firm Lewis Roca Rothgerber Christie LLP ("Lewis  
Roca"), hereby files this Errata to its Emergency Motion for First American Title Insurance  
Company to Turnover Funds in Escrow to the Buyer AAL-Jay, LLC and Motion for Order to Show

Cause Why This Court Should Not Hold Philip J. Fagan, Jr., as Trustee of the Philip J. Fagan, Jr. 2001 Trust in Contempt for Violating This Court's Sale Order, On Order Shortened Time ("Emergency Motion"), lodged with this Court on March 10, 2022:

The Emergency Motion erroneously identifies the property at issue in this litigation as **2 Grand Anacabri, Henderson, Nevada, 89011, Assessor Parcel Number 162-22-810-011**. The correct property at issue is **1 Grand Anacabri, Henderson, Nevada, 89011, Assessor Parcel Number 160-22-810-011**. The purpose of this Errata is to correct this clerical error in the Emergency Motion.

DATED this 15<sup>th</sup> day of March, 2022.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna M. Brown

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*Attorneys for Plaintiff AAL-JAY, Inc.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and EDCR 7.6, I certify that on March 15, 2022, I served a true and copy of the foregoing **ERRATA TO PLAINTIFF’S (1) EMERGENCY MOTION FOR FIRST AMERICAN TITLE INSURANCE COMPANY TO TURNOVER FUNDS IN ESCROW TO THE BUYER AAL-JAY, LLC AND (2) MOTION FOR ORDER TO SHOW CAUSE WHY THIS COURT SHOULD NOT HOLD PHILIP J. FAGAN, JR., AS TRUSTEE OF THE PHILIP J. FAGAN, JR. 2001 TRUST IN CONTEMPT FOR VIOLATING THIS COURT’S SALE ORDER ON ORDER SHORTENED TIME** via Odyssey e-filing, to all parties on the court’s service list.

/s/ Nicole Lord

An employee of Lewis Roca Rothgerber  
Christie, LLP