IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CLA Properties, LLC,

Appellant.

vs.

Shawn Bidsal,

Respondent.

No. 86438

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District Eighth Department 31

County Clark Judge Hon. Joanna S. Kishner

District Ct. Case No. A-22-854413-B

2. Attorney filing this docketing statement:

Attorney Robert L. Eisenberg, Esq (Bar #950) Telephone 775-786-6868

Firm Lemons, Grundy & Eisenberg

Address 6005 Plumas Street, Third Floor
Reno, Nevada 89519

Client(s) CLA Properties, LLC

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

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

Attorney James E. Shapiro Telephone 702-318-5033

Firm Smith & Shapiro, PLLC

Address 33 E. Serene Ave, Suite 150
Henderson, NV 89074

Client(s) Shawn Bidsal

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☒ Other disposition (specify): Arb. Confirmation

5. Does this appeal raise issues concerning any of the following?

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

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Bidsal v. CLA Properties, LLC; Case Nos. 80427 and 80831

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

IN RE: PETITION OF CLA PROPERTIES, LLC, Eighth Judicial District Court Case No. A-19-795188-P; December 6, 2019 (subject of the appeal listed in Sec. 6).

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

Appeal of a district court order denying a motion by Appellant to partially vacate a final arbitration award and confirming that award. The Arbitration was a second arbitration arising out of the same transaction that was the subject of the first confirmation and appeal in this mater (Case Nos. 80427 and 80831).

Nature of the dispute is the arbitrator's designation of an "effective date" of the sale contract which disregarded the contractual language requiring closing in 2017 and thereby depriving Appellant of the full benefit of the bargain regarding disputed distributions that Respondent paid himself while delaying performance whil he appealed the first arbitration confirmation.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred by affirming the arbitration award, which failed to comply with the law, and which was the result of a manifest abuse of the arbitrator's authority.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter originates from Business Court and therefore is presumptively retained by the Supreme Court. NRAP 17(a)(9).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Mar 20, 2023

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

17. Date written notice of entry of judgment or order was served Mar 21, 2023

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Apr 17, 2023

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

☐ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☒ Other (specify) NRS 38.247(1)(c)

(b) Explain how each authority provides a basis for appeal from the judgment or order:
NRS 38.247(1)(c) provides than an appeal may be taken from an order denying confirmation or an order confirming an arbitration award.

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

(a) Parties:

CLA Properties, LLC (movant below, appellant here)

Shawn Bidsal (respondent below, respondent here)

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

N/A

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

CLA Properties moved to partially vacate the final arbitration award. Shawn Bidsal counter-moved to confirm. The Court denied CLA Properties' motion and granted the counter-motion on March 20, 2023.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

See attached.

VERIFICATION

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

CLA Properties, LLC
Name of appellant

Robert L. Eisenberg
Name of counsel of record

May 12, 2023
Date

/s/ Robert L. Eisenberg
Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____ , _____ , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

See attached.

Dated this _____ day of _____ , _____

_____
Signature

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LEMONS, GRUNDY & EISENBERG, and on this date the foregoing document was electronically filed with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Todd E. Kennedy
James E. Shapiro

DATED: May 11, 2023

/s/ Margie Nevin
Margie Nevin
Employee of Lemons, Grundy & Eisenberg

Docketing Statement Question 27 (list of documents attached)

1. 6/17/2022 Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment

2. 9/1/2022 Bidsal's Opposition to CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment and Bidsal's Countermotion to Confirm Arbitration Award (Exhibits omitted)

3. 3/20/2023 Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award

4. 3/21/2023 Notice of Entry of Order

Attachment 1

6/17/2022 Motion to Vacate Arbitration Award (NRS 38.241)
and for Entry of Judgment

Attachment 1

6/17/2022 Motion to Vacate Arbitration Award (NRS 38.241)
and for Entry of Judgment

MVAC
Louis Garfinkel, Esq.
Nevada Bar No. 3416
REISMAN SOROKAC
8965 South Eastern Ave, Suite 382
Las Vegas, Nevada 89123
Tel: (702) 727-6258/Fax: (702) 446-6756
Email: Lgarfinkel@rsnvlaw.com
Attorneys for Movant CLA Properties, LLC

CASE NO: A-22-854413-J
Department 23

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration) vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. Dept. No. **MOTION TO VACATE ARBITRATION AWARD (NRS 38.241) AND FOR ENTRY OF JUDGMENT** **HEARING REQUESTED**

Moving Party CLA Properties, LLC ("CLA") hereby moves for an order that the arbitration award in JAMS arbitration No. 1260005736 filed and received by CLA on March 23, 2022 (the "Award")[1] largely in favor of the Claimant therein, Respondent Shawn Bidsal ("Bidsal") and against CLA be partially vacated. [Ex. 117, PX 223, a copy which is also attached hereto for the Court's convenience.[2]] This Motion set out more fully below is made and based upon the papers

[1] The Award, which was signed and dated March 12, 2022, was not filed or served until March 23, 2022.

[2] Concurrently herewith CLA is filing an Appendix with exhibits. The exhibit numbers are set forth on a separation page bearing such number and the actual document to which reference is made

(continued...)

and pleadings on file herein, the attached Memorandum of Points and Authorities, the aforesaid Appendix and any oral argument set for this matter.

WHEREFORE, CLA respectfully requests that this Court:

1. Issue an Order to vacate the Award served March 23, 2022, in JAMS CASE NO. 1260005736 to the extent (a) it determines that the "effective date" of sale does not occur until after Respondent Bidsal's appeal has been concluded and (b) the award of attorneys' fees and costs, and sale takes place and to enter a Judgment so vacating in favor of CLA Properties, LLC and against Respondent Shawn Bidsal; and
2. Grant Movant CLA Properties, LLC such other and further relief as the Court deems just and proper.

Dated this 17th day of June, 2022.

REISMAN SOROKAC

By: /s/ Louis E. Garfinkel
Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Attorneys for Movant CLA Properties, LLC

REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

(...continued)
follows on the next page. As below shown, there is a prior action between the parties in which they filed appendices. CLA's were identified as "PX," so that reference has been maintained herein. The appendix page numbers are six figures beginning with either two or three zeros. Those zeros will be omitted in references herein. Reference herein to "APP. is to an Appendix being filed and served concurrently herewith. Unless otherwise stated all page ("pg"), line and paragraph references are to the same as appearing in the exhibit ("Ex."), and the page numbers are those of the exhibit, not the appendix.

REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ISSUES BEFORE COURT

The issues before this Court are whether, as claimed by CLA, the Arbitrator (1) exceeded his powers by rendering an Award (a) that is partially completely irrational, (b) that exhibits a manifest disregard of the law by first recognizing the law, in this instance the law prohibiting a rewriting of the agreement and then doing so anyway, (c) by issuing an Award in direct contradiction to the Judgment of this Court in establishing the date by which the parties' rights and obligations regarding sale of Bidsal's membership interest became fixed, to wit, the date on which the sale should have taken place but did not by reason of Bidsal's refusal to proceed without an appraisal or what was referred to as "Effective Date" in direct contravention of the contract between the parties, and (d) by wrongfully re-trying the First Arbitration in establishing the date by which the parties' rights and obligations regarding sale of Bidsal's membership interest became fixed, to wit, the date on which the sale should have taken place but did not by reason of Bidsal's refusal to proceed without an appraisal or what was referred to as "Effective Date" or (2) rendered an Award that is partially arbitrary, capricious or unsupported by the agreement.

In short, that part of the Award that set the effective date of the sale, and entitlement to the rights and distributions from Green Valley as of the date when the transaction actually closed as opposed relating back to when the transaction should have closed, should be vacated.

II.

BACKGROUND

A.

PARTIES AND JURISDICTION

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

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

Until after the Award, CLA and Bidsal were members of Green Valley Commerce, LLC ("Green Valley"), a Nevada limited liability company.

CLA and Respondent Bidsal are parties to a certain Operating Agreement for Green Valley which has an effective date of June 15, 2011 (the "Operating Agreement"). [Ex. 122, PX 331, a copy of which is also attached hereto.]

Disputes between CLA and Bidsal arose.

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

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

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

This Court has jurisdiction pursuant to NRS 38.244(2) which states "An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award . . . ." Pursuant to the Operating Agreement, the parties agreed to arbitrate any dispute in Las Vegas, Nevada.

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

REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

B.

FIRST ARBITRATION

In May of 2011, in order to acquire a center of office space for lease in Henderson, Nevada, Green Valley purchased a note in default secured by the center, fully anticipating acquiring title to the center either by foreclosure or a deed in lieu of foreclose. In fact, the latter method was used and on September 22, 2011, Green Valley obtained title to the center.

The Operating Agreement provided an exit plan, sometimes called "Forced Buy-Sell" or "Dutch Auction," but as stated in the Judgment referred to below such designations were not critical to the interpretation of that Agreement. [Ex. 114, PX 169, pg 7] A critical feature of the Operating Agreement was that either party who wanted out, though under no compulsion to initiate a process, could make an offer to buy the other party's interest in the Company at a price based on a formula that included one-half of the excess of the fair market value of Green Valley's property over its cost. The remaining elements of the formula were determined from Green Valley's books and records at the time of the offer. [Ex 122, PX 331, pgs 10 and 11 affixed hereto.] Under the Operating Agreement the offeror is called "Offering Member," and the offeree is called "Remaining Member." In this case, Bidsal was the Offering member and CLA was the Remaining Member.

The Operating Agreement requires the offer to include the fair market value of the Company as determined by the Offering Member. [*Id*.] As below demonstrated a prior judgment from this Court confirmed that the Operating Agreement provides that the Remaining Member could elect either to sell his or its membership interest in Green Valley or buy the Offering Member's membership interest (such as where the stated fair market value was too low) in either instance using the fair market value stated in the offer.

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

This saga began in July of 2017 when Bidsal made just such an offer to buy CLA's membership interest, setting the fair market value below actual market because of a misimpression that CLA lacked the funds to buy him out. [Ex. 153, PX 919, Ex. 155, PX 923 and Ex. 113, PX 147, pg 5.] When CLA instead elected to exercise its right to buy Bidsal's membership interest, Bidsal refused to proceed as required by the Operating Agreement unless the fair market value was established by appraisal instead of the amount included in his offer. [Ex. 113, PX 147, pg 4, ¶ 6.]

Bidsal's refusal to proceed became subject of the first arbitration between the parties, which resulted in an arbitration Award issued on April 5, 2019, by Judge Stephen E. Haberfeld, Ret. in the original arbitration (JAMS Arbitration No. 1260004569) [Ex. 113, PX 147] (the "Original Arbitration"). Judge Haberfeld found in favor of CLA and against Bidsal in part ruling:

> Within ten (10) days of the issuance of this Final Award, Respondent Sharam Bidsal also knows as Shawn Bidsal ("Mr. Bidsal") shall (A) transfer his fifty percent (50% Membership Interest in Green Valley Commerce, LLC ("Green Valley"), . . .to Claimant CLA Properties, LLC . . .and further (B) execute any and all documents necessary to effectuate such sale and transfer. [*Id*, pg 19]

Judge Haberfeld also awarded CLA attorneys' fees and costs of $298,256.00. [*Id*.]

Judge Haberfeld's Award was confirmed by this Court on December 6, 2019 (the "Judgment") [Ex. 114, PX 169]. Rather than simply finding no grounds to vacate the Award, Judge Kishner's Judgement in part provides:

> The language of the Operating Agreement supports the decision of Arbitrator Haberfeld. (citation omitted). The Court finds that Arbitrator Haberfeld's analysis that the offering member does not have a right to an appraisal in the instant

REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

> scenario is supported by the language of the Operating Agreement and the testimony of the witnesses . . as well as other evidence presented. [*Id*, pgs 6-7]

The December 6, 2019, Judgment ordered:

> [T]he Court ORDERS Judgment in favor of Petitioner CLA Properties, LC and against Respondent Shawn Bidsal in accordance with the Award . . .and ordering Bidsal to:
>
> ***
>
> Within fourteen (14) days of the Judgment (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, L ("Green Valley") . . .to CLA Properties, LLC. [*Id,* pg. 8]

At that point, two Judges (i.e., Haberfeld and Kishner) had placed an outside date for the transfer or the latest possible date as that by which the parties' rights and obligations regarding the sale should be determined (Effective Date) either in April or December of 2019**.**

Bidsal appealed the Judgment [Ex. 191, PX 1950] and the Judgment was stayed on the condition of Bidsal posting a bond [Ex. 194, PX 2123].

On March 17, 2022, the Nevada Supreme Court affirmed Judge Kishner's Judgment. [Ex. 276, PX 7669.]

Bidsal's refusal to complete the sale unless there was an appraisal of the property was determined to be wrong, first in Judge Haberfeld's Award, then in this Court's Judgment and finally by the Nevada Supreme Court in its affirmance of the Judgment in Bidsal's appeal.

C.

THE SECOND ARBITRATION

During the pendency of Bidsal's appeal, and well after the Judgment was entered by this Court, on February 7, 2020, Bidsal filed a new arbitration, the "Second Arbitration," this time as a

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

Claimant, against CLA to fix the remaining elements of the formula to determine the purchase price in the event that Bidsal's appeal was not successful. (Had Bidsal's appeal been successful, this sale might never have occurred, so the price would not have been relevant. The Award in the Second Arbitration acknowledged that. [Ex. 117, PX 223, N.5 on page 6.])

CLA filed a counterclaim in the Second Arbitration, seeking, among other things, to recoup $500,500 in distributions made by Bidsal, acting as the manager of Green Valley, to himself after the 2017 date that the sale could have closed but for Bidsal's improper demand for an appraisal. [Ex. 109, PX 118.] CLA claimed that notwithstanding Bidsal's unjustified refusal to proceed without an appraisal, or any dispute over what the purchase price should be, for all purposes the date of the sale should have been treated as thirty (30) days after CLA's response (August 3, 2017, Ex. 154, PX 921), and that date governed the ownership of Green Valley cash and profits thereafter and that the $500,500 in distributions that Bidsal took for himself thusly belonged to CLA or should have been returned or offset against the ultimate purchase price.

The Arbitrator in the Second Arbitration was the Honorable Judge David Wall, Ret. Judge Wall signed the Award on March 12, 2022 [Ex. 117, PX 223], which was served on the parties on March 23, 2022, setting the purchase price, and denying CLA's claim that the cash held by Green Valley when its fair market value had been set by Bidsal in his offer belonged to it as the buyer and instead found that Bidsal was entitled to keep the distributions of them:

> [T]he effective date is NOT deemed to be September of 2017 but shall occur pursuant to Judge Haberfeld's prior Award after the conclusion of the appellate process." [*Id*, pg 31.]

Now of course Judge Haberfeld never said any such thing. How could he? His Award had to have come before this Court's Judgment affirming that Award, much less before Bidsal's appeal, or as Judge Wall's award says, "the appellate process".

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

While more will be said regarding that below, it is important to point out immediately that Judge Wall ruled that the date when the sale should have closed and the rights and obligations of the parties determined, or what was called "Effective Date," HAD NOT YET TAKEN PLACE. There is no conceivable way to reconcile that with the rulings of Judges Haberfeld and Kishner that the transfer was to take place in 2019 some three years earlier! Stated another way, Judge Wall ruled that the date the sale should have closed had not yet arrived while Judges Haberfeld and Kishner had before ruled that it should have already closed some three years earlier.

CLA consummated the purchase on March 28, 2022, paying Bidsal $1,889,010.50, the price as set by Judge Wall's Award for Bidsal's membership interest in Green Valley.

Section 4.2 of Article V of the Operating Agreement governs the time when a sale of membership interest by one member to another should conclude and reads: "The terms to be all cash and close escrow within 30 days of the acceptance." As before noted, CLA exercised its election to buy rather than sell.

When Bidsal made his offer in 2017, CLA chose to buy rather than sell. The word "acceptance" was clearly meant to be "response to the Offer," whether it be acceptance to sell or as the election to buy. We do not have to guess at that. Bidsal's counsel stated exactly that on March 17, 2021 when he represented to Judge Wall that "[U]nder the terms of the operating agreement, it's very specific about what is supposed to happen. They're supposed to close escrow within 30 days." [Ex. 264, PX 5256, pg 43.]

Supportive of that conclusion is that the only subjective, and therefore critical, element of the formula to determine price for the membership interest being sold was its fair market value. Judges Haberfeld and then Kishner both ruled that Bidsal had no right to demand an appraisal to determine the fair market value. Rather, the fair market value was determined by the Offer in July of 2017. [Ex. 113, PX 147, especially ¶ 28 on pg 16 and Ex. 114, PX 169, especially that on pgs

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

6-7 reading, "The Court finds that Arbitrator Haberfeld's analysis that the offering member does not have a right to an appraisal in the instant scenario is supported by the language of the Operating Agreement and the testimony of the witnesses including that of David LeGrand as well as the other evidence presented."]

Judge Wall's determination that the date the sale should have closed, or "Effective Date," had not occurred before 2022, would be in direct contradiction to the establishment of the price which was to be determined by Bidsal's offer and CLA's election to buy in 2017. To do otherwise effectively rewrote the parties' agreement that the closing should occur within 30 days, and the rights to all future profits and distributions, but is also contrary to long established Nevada law (see section V below).

As above noted, this Court's Judgment, as affirmed by the Nevada Supreme Court on March 22, 2022, determined that Bidsal had no right to refuse to proceed with his selling his membership interest unless the fair market value was determined by appraisal. If instead it had been CLA who had refused to proceed, then Bidsal as the seller would have been entitled to interest on the purchase price. But then it would be necessary to determine the date when the sale should have taken place from which interest would run.

Similarly, determination of the date that fixes the parties' rights and obligations regarding the sale or stated differently when the sale should have taken place (Effective Date) would establish the date after which the seller, here Bidsal, no longer was entitled to share in Green Valley's profits or distributions.

Judge Wall wrongfully determined that the Effective Date was not thirty (30) days after the Remaining Member's response (CLA's response being on August 3, 2017 [Ex. 154, PX 919]), but instead would be only when the sale in fact closed, regardless of whether the reason that the sale

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

did not close was because of Bidsal's wrongful insistence on an appraisal to which both this Court and the Nevada Supreme Court found that he was not entitled.

As above shown, the only subjective element of the formula to determine purchase price for Bidsal's membership interest was determined in 2017 (while the rest of the elements were to be determined from Green Valley's books and records). Even assuming a good faith dispute about those elements (which were adjudicated in the Second Arbitration), the Effective Date should relate back to the closing date as agreed to under the contract. The Arbitrator with full knowledge of those facts determined that the date that the transaction should have closed was over four years later, even though the price was set as of 2017, essentially rewriting the Operating Agreement in the process. The effect of this is that while the purchase price including the value of Green Valley was determined as of September 2017, the Arbitrator found that Bidsal was entitled to keep the $500,500 of distributions that either were part of Green Valley's value at the time of the offer or were from profits thereafter earned. Between the conclusion of the thirty (30) day period called for under the Operating Agreement, September of 2017, and the conclusion of the merits hearing in the Second Arbitration in 2021, Bidsal, the seller, drained $500,500 from Green Valley [Ex. 277, PX 7675.][3]

The impact of the Arbitrator's (Judge Wall) determination that the Effective Date is not the thirty (30) days called for by the contract, but rather only when the sale in fact closes, is to deny CLA of the benefit of the bargain accomplished by the Arbitrator's rewriting the Green Valley Operating Agreement.

[3] Even if the date the sale should have closed in 2019, the date that Judges Haberfeld and Kishner ordered Bidsal to convey, there were subsequent distributions by Bidsal. That would have to be a subject of future litigation.

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

IV.

APPLICABLE LAW

As the motion states, the entire Award is not here challenged. The sale contemplated by the Award has now taken place and the price has been paid from CLA to Bidsal, and CLA does not here try to unring that bell by challenging the determination of price and does not seek to have that portion of the Award vacated. Partial vacation has already received judicial recognition. See *Comedy Club Inc. v. Improv. W. Assocs*. 553 F.3d 1277,1293 (9th Cir. 2009).

The statutory grounds for vacating an award include "where the arbitrators exceeded their powers, "9 U.S.C. § 10 or where "[a]n arbitrator exceeded his or her powers" NRS 38.241(1)(d). Such excess here takes several forms. One is that the Award is completely irrational such as here where the price is determined as of 2017 but the Effective Date is determined not yet to have occurred.

The Ninth Circuit Court of Appeals has held that arbitrators "exceed their powers" when the award is (1) "completely irrational" or (2) exhibits a "manifest disregard of the law. *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.,* 341 F .3d 987, 997 (9th Cir. 2003).

Review is not limited to the statutory grounds in NRS 38.241(1). *Graber v. Comstock Bank*, 111 Nev. 1421,1426, 905 P.3d 1112,1115 (1995). There are also two common-law grounds: (1) whether the award is arbitrary, capricious or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law." *Clark Cnty. Educ. Ass'n v. Clark Cnty Sch. Dist*., 122 Nev. 337, 341, 131 P.3d 5,8 (2006).

In *Clark County,* the Nevada Supreme Court recognized two common-law grounds to be applied by a court reviewing an award resulting from private binding arbitration. The Court stated that the two common-law grounds under which a court may review private binding arbitration awards are "…(1) whether the award is arbitrary, capricious, or unsupported by the agreement;

and (2) whether the arbitrator manifestly disregarded the law." Id. *Citing Wichinsky v. Mosa,* 109 Nev. 84, 89-90, 847 P.2d at 731 (1993).

A manifest disregard for the law exists where the "…arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law." See *Clark County id.* at 342.

Collins v. D.R. Horton, Inc., 505 F.3d 874, 879 (9th Cir. 2007) (*quoting* San Maritime Compania De Navegacion, S.A. v. Saguenary Terminals Ltd., 293 F.2d 796, 801 (9th Cir. 1961) held that manifest disregard of the law exists where "the arbitrator 'understood and correctly state[d] the law but proceed[ed] to disregard the same." In other words, "the arbitrators were aware of the law and intentionally disregarded it." Bosack v. Soward, 586 F.3d 1096, 1104 (9th Cir. 2009) (*quoting Lincoln Nat'l Life Ins. Co. v. Payne*, 374 F.3d 672, 675 (8th Cir. 2003). see also *Graber*, 111 Nev. At 1426, 905 P.2d at 1115 (citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930,933 (2d Cir. 1986)).

This is especially true, where the arbitrator disregards a specific contract provision. In *Pacific Motor Trucking Co. v. Automotive Machinists Union*, 702 F.2d 176 (9th Cir. 1983), citing *Federal Employers of Nevada, Inc. v. Teamsters Local No. 631*, 600 F.2d 1263, 1265 (9th Cir. 1979) the court found that, "[a]n award that conflicts directly with the contract cannot be a "plausible interpretation."

> "If an award is determined to be arbitrary, capricious ***or unsupported by the agreement***, it may not be enforced." *Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727, 731 (1993). [emphasis added]. An award is completely irrational "where the arbitration decision fails to draw its essence from the agreement." *Lagstein v. Certain Underwriters at Lloyd's London*. 607 F.3d 634, 642 (9th Cir. 2010); *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 665 (9th Cir. 2012). An arbitration award

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

draws its essence from the agreement if "the award is derived from the agreement, viewed in light of the agreement's language and contest." *Id.*

Here, Judge Wall's Award actually quoted the law precluding his rewriting the agreement, and yet he disregarded the law and in essence rewrote the agreement by changing the date the sale should close, the "Effective Date." *See* section V below.

The Ninth Circuit also follows the "manifest disregard" standard. See G.C. & *K.B. Invs., Inc. V. Wilson*, 326 F.3d 1096,1105 (9th Cir. 2003); *JPMorgan Chase Bank v. KB Home Nev., Inc.*, 478 Fed.App.App'x 398 (9th Cir. 2012).

So, whether characterized as exceeding powers or as a separate common law ground, "manifestly disregarding the law" is a ground for vacating an award. The manifest disregard standard requires that an arbitrator know the law and consciously disregard it. Judge Wall's determination clearly satisfies that standard.

Judge Wall also exceeded his powers since his Award, in effect, reverses Judge Haberfeld's Award that required completion in ten (10) days [Ex. 113, PX 147, pg 19, ¶ 1] as well as violating Judge Kishner's Judgment requiring transfer within fourteen (14) days [Ex. 114, PX 169, pg 8, ¶ A].

Lastly, it was simply irrational to provide that the price would be determined by facts on hand no later than September of 2017, as the Award does, but the Effective Date would be one that had not yet arrived. Moreover, it is capricious and arbitrary, two other common law grounds for vacating an arbitration award.

V.

THE ARBITRATOR RECOGNIZED HE SHOULD NOT RE-WRITE THE CONTRACT BUT THEN DID EXACTLY THAT, AND THEREBY REACHED A DECISION THAT WAS ARBITRARY AND CAPRICOUS SO THE AWARD SHOULD BE VACATED

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

Arbitrators cannot act arbitrarily. One of the bases on which CLA moves to vacate the Second Arbitration Award is that the Arbitrator has in effect, under the guise of construing the Operating Agreement, ignored a material term of the contract between the parties (the Operating Agreement) and created a new term and thus created a different agreement and contrary to that to which the parties had agreed. The Arbitrator recognized the law which precludes his re-writing the contract, but then simply disregarded it, thereby exceeding his powers. Judge Wall stated in the Award:

> "In interpreting an agreement, a court may not modify it or create a new or different one. A court is not at liberty to revise an agreement while professing to construe it." Pg. 7 of Award quoting *Mohr Park Manor, Inc. v. Mohr,* 83 Nev. 107,111 (1967).

The buy-sell provisions of the Operating Agreement in part state that "the terms to be all cash and escrow shall close within 30 days of acceptance." [Pg. 11 of Exh. 2[4]] CLA's response was on August 3, 2017 [Ex. 154, PX 921] making the date escrow should have closed (i.e., the Effective Date) within thirty days thereafter, or on or before September 2, 2017.

What Judge Wall ruled (in the Second Arbitration) does not interpret the thirty (30) day provision. It simply violates that provision and changed it to be when the sale is consummated. The Effective Date of the sale is the date that the escrow should have closed notwithstanding disputes that remained to be decided later. In this case, all the relevant terms for the purchase of Bidsal's interest were determined as of 2017. This included, as mentioned, the only subjective element, fair market value. All of the other elements of the formula were objective and matters of accounting, and even though not decided until Judge Wall's final Award on March 12, 2022, do

[4] Actually, the measurement should be as of the date of the acceptance or counteroffer. No one would anticipate that the selling member who happens to be in control can liquidate the entirety of the assets of Green Valley and then distribute them leaving the buyer holding the bag purchasing nothing for the price it or he must pay. None of the issues here would matter if the effective date was the date of response instead of 30 days later.

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

not extend Bidsal's rights to the profits or assets of Green Valley. Simply stated, a seller cannot try to avoid performing under a purchase and sale provisions of a contract and extend his or her rights to receive profits after the date that escrow should have closed by creating disputes or failing to agree. While the purchase price was established as of 2017, the Arbitrator allowed Bidsal to keep distributions of the profits of the Company that were earned after the date that the sale should have closed.

CLA's position was clearly set forth in ¶¶2 and 9 of the Fourth Amended Answer and Counterclaim in the Second Arbitration [Ex. 109, PX 118]:

> The sale of Mr. Bidsal's interest **should have closed** within 30 days of CLA's election to buy (September 2, 2017) …
>
> Had Mr. Bidsal honored his contractual obligations under the Operating Agreement he would have not been entitled to any distributions after CLA's exercise of its option and the closing of the sale **which should have occurred** within 30 days after August 3, 2017 and should not benefit by delaying the closing of the transaction and diluting the value of the purchase by distributing the assets it held when he initiated the "buy-sell." (Emphasis added.)

Had the sale timely closed, CLA would have been the 100% owner of Green Valley and entitled to 100% of all distributions. Those rights should not be diminished by Bidsal wrongfully disputing his obligation to sell, or disputes about calculations to determine the purchase price. But for Bidsal's continuation of his claim that he did not have to sell without an appraisal, if any dispute existed as to any element of the price, CLA could and would have paid the disputed amount under protest and fought about it later. In this case, Bidsal used the delay to distribute to himself $500,500 that but for the delays he caused, he could not have done.

The Arbitrator's (Judge Wall) decision provides that the Effective Date will not occur until after an appeal from the Judgment confirming the Original Arbitration Award is decided and that until then Bidsal retained all rights in the profits of and to distributions from Green Valley. That is not an interpretation of what the parties agreed to. Rather, it is a rewriting of their agreement.

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

The Operating Agreement contemplates the sale taking place and escrow closing in thirty (30) days, and that thereafter the buyer (whether that be the Offering Member if the offer was accepted, or as here, the Remaining Member who chooses instead to buy) would be entitled to 100% of the profits of Green Valley, i.e., the distributions. [Section 4.2 of Exh. 2]. When Judge Wall decided that the Effective Date is when the sale was actually consummated as opposed to the thirty (30) days from acceptance, he effectively rewrote a material term of the contract and deprived the buyer of the rights to the distributions and profits of Green Valley after September 2, 2017, which Bidsal took for himself ($500,500.) [Ex. 277, PX 7675].

As discussed more fully below, Judge Wall dwelled upon fact that the transaction had not yet been completed. But Judge Wall was required under Nevada law to honor the agreement of the parties and not rewrite it. Fixation on the date that the transaction actually closes, as opposed to when it was supposed to close, ignored the contract and imposed a new and different term.

VI.

THE RULING THAT THE EFFECTIVE DATE WAS THE ACTUAL DATE THE SALE CLOSED WHICH WAS DELAYED BY BIDSAL AND DID NOT RELATE BACK IGNORES LONG STANDING NEVADA LAW AND WAS COMPLETELY IRRATIONAL, ARBITRARY AND/OR CAPRICIOUS

The issue presented to Judge Wall was when the Effective Date of the sale for determining rights to the distributions and profits earned by Green Valley after the date the sale should have closed. Indeed, page 6 of the Second Arbitration Award in part recognizes, "Also at issue is the Effective Date of any purchase of Claimant's interest in GVC." And it further recognizes that that determination would affect "the propriety of and accounting for any distributions made to Claimant after such Effective Date." *Id*.

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

Of course, the words "Effective Date" never have any meaning if all they meant was the actual date. There is a reason the words "Effective Date" are used. They in effect say that the rights and obligations are treated as though things happened, not when they actually happened, but rather, on the Effective Date.

More than that, to rule that "Effective Date" means actual date results in there being no meaning for the words "Effective Date." "A basic rule of contract interpretation is that every word must be given effect if at all possible." *Musser v. Bank of Am.*, 114 Nev. 945,949, 964 P.2d 51, 54 (1998).

Is not ignoring that principle of law either capricious or arbitrary or both?

This is not a new or novel issue, and it seems obvious; a seller who breaches a contract for the sale of property should not be allowed to retain benefits generated from the property, such as rental income or other income/profits, during the time before a court orders the seller to transfer ownership of the property to the buyer. Allowing the seller to retain the income/profits generated during this time frame would violate public policy because it would encourage sellers to breach their contracts and to prolong litigation as long as possible – at least regarding properties that generate income streams.

For many years, the Nevada Supreme Court has ruled that, in a breach of contract case, "the breaching party must place the nonbreaching party in as good a position as if the contract were performed." *Eaton v. J. H. Inc*., 94 Nev. 446, 450, 581 P.2d 14, 16 (1978); *Lagrange Constr., Inc. v. Kent Corp*., 88 Nev. 271, 275, 496 P.2d 766, 768 (1972). The damages should include losses caused to the nonbreaching party, or gains the nonbreaching party was prevented from obtaining, caused by the breach. *Eaton*, 94 Nev. at 450, 581 P.2d at 17. "It is clear that when plaintiff, as here, is prevented from performing the balance of the term of his contract, lost profits are generally an appropriate measure of damages so long as the evidence provides a basis

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

for determining, with reasonable certainty, what the profits would have been had the contract not been breached." *Id*. A record of past profits for an existing business provides a valid basis for determining future profits. *Id*.

In *Eaton*, a supplier of pool tables and game machines had a contract to provide tables and machines to the owner of a bowling alley. The owner breached after about two years, and the supplier sued. The trial court awarded damages consisting, in part, of lost profits for the supplier. The Nevada Supreme Court affirmed the award of lost profits (although the court reversed a portion of the award for a time period during which the plaintiff had actually received proceeds from the machines after the breach).

In *Road & Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 284 P.3d 377 (2012), the plaintiff was a company that entered into a contract to provide rebar and installation services for a construction project. The other party breached, and the plaintiff sued. The jury awarded compensatory damages that included lost profits. The Nevada Supreme Court affirmed this portion of the award, holding that damages should place the plaintiff in the position he would have been in had the contract not been breached. Id. at 392, 284 P.3d at 382. "This includes awards for lost profits or expectancy damages." Id. Relying on the Restatement (Second) of Contracts, the court held that the nonbreaching party had the right to damages based on his expectancy interest, measured by the loss caused by the other party's failure to perform. Id.

There is a California case that further illuminates the issue. In *Brandon & Tibbs v. George Kevorkian Accountancy Corp.*, 277 Cal. Rptr. 40, 226 Cal. App. 3d 442 (Ct. App. 1990), the Brandon accounting firm (the buyer) wanted to open a branch office in Fresno, and Brandon entered into a contract with Kevorkian (the seller), who was an established Fresno accountant. The contract called for a joint venture for a period of time, followed by a buy-out with a certain formula at the end of the joint venture time frame. Shortly after the parties entered into the

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

contract, the seller created major problems involving management of the firm, and he terminated the joint venture. The buyer opened its own new firm in Fresno, losing money for about three years before finally turning a profit. The buyer sued the seller, and the trial court awarded compensatory damages that included lost profits.

Although the *Brandon* court found errors regarding the trial court's calculations of certain offsets relating to the lost profits, the court otherwise affirmed the award of lost profits. The court held that lost profits are recoverable damages for the nonbreaching party, particularly when the generation of profits is the real purpose of the contract. Id. at 48, 226 Cal. App. 3d at 456-57. "The objective of the law is to place the injured party in the same position he would have held were it not for the breach." Id. at 49, 226 Cal. App. 3d at 458. "The only purpose in [the buyer] entering into the [contract] was to ultimately acquire ownership of the [defendant's] accounting practice and generate profits therefrom. If the contract had not been breached, plaintiff [buyer] would have complete and sole ownership of the accountancy corporation." Id. Therefore, the buyer was entitled to damages for the income stream the buyer lost when the seller breached. Id.

In this case, like in *Brandon*, the business of Green Valley is operating a shopping center. The purpose of CLA's purchase of Bidsal's membership interest was to own the profits generated from the shopping center. Judge Wall awarded those profits to Bidsal.

In this case, Judge Wall did more than interpret the contract; his ruling alters the contract by changing the date that the rights should have been transferred to CLA. Instead of finding that those rights relate back to the thirty (30) days as mandated by the contract [Operating Agreement], Judge Wall rewrote the contract to provide for a different Effective Date, he was not allowed to do so.

Judge Wall erroneously fixated on the fact that the sale had not closed. Thus, we find such comments as these under the caption "Effective Date of Sale" [Ex. 117, PX 223, pg 2]: "The

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

transaction has never been completed;" "The OA [Operating Agreement] provides for a procedure for completing a sale of membership interest which procedure has not yet been completed." [*Id.* pg 23.]

Judge Wall then relied on this: "He [Judge Haberfeld] did not find an Effective Date of the transaction to have occurred over a year earlier." (*Id*.) Well of course not. The issue of Effective Date was never before Judge Haberfeld. He never addressed the "Effective Date" at all. All he did was order that the sale be completed in ten (10) days, and that Bidsal's refusal to proceed to sell absent an appraisal was wrongful. That has nothing to do with "Effective Date." Judge Wall's reference to what Judge Haberfeld did was totally capricious.

He then said[5], "Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the Operating Agreement." *Id.* But just fifteen (15) pages earlier the Arbitrator acknowledged that Bidsal's appealing and getting a stay of execution on this Court's Judgment affirming the Award in the Original Arbitration relieved CLA of any obligation to tender the sales price. So, to use CLA's failure to pay the price for the membership interest that Bidsal showed he would not transfer, must be characterized as both "capricious" and "arbitrary."

Judge Kishner's Judgment, affirmed on appeal, by the Nevada Supreme Court, determined that Bidsal had no right to refuse to proceed with the sale unless there were an appraisal. The effect of what Judge Wall said is that a seller can wrongfully delay and since he has not been paid, then he can continue to strip the entity in which he is selling his membership interest of its cash. The issue is not whether Bidsal is still a member. The issue was what are his entitlements where once he becomes obligated to sell his membership interest, with the purchase price determined as

[5] Ignoring the longstanding Nevada law cited above that the nonbreaching party should be placed in as good a position as if the contract were performed.

REISMAN·SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

of September 2017. Instead of using the date the transfer should have closed as provided in the Operating Agreement, Judge Wall rewrites it to provide that that the entitlements transfer when the transaction actually closed. The position taken by the Arbitrator here is both capricious and arbitrary.

Judge Wall choosing a date as the Effective Date long after the offer, and long after the time period used to determine the price to be paid, results in the absurdity that during that delay the risk of reduction in value is placed totally on the buyer--in this case an innocent buyer-while the seller would continue to share in the profits and distributions. This absurd result is contrary to Nevada law.

All that CLA seeks is to be placed in just as good a position as though Bidsal had at once proceeded rather than disputing CLA's election to buy, and then to have the Operating Agreement followed rather than rewritten.

VII.

THE AWARD IN EFFECT OVERTURNS JUDGE KISNER'S JUDGMENT WHICH HAS BEEN AFFIRMED ON APPEAL AND SUBSTITUTES THE ARBITRATOR'S CONCLUSION INSTEAD OF THAT OF THE NEVADA SUPREME COURT

Bidsal's claim on appeal was that it was error for Judge Haberfeld to direct him to transfer his membership interest within ten (10 days by which time the sale should have closed or in other words the Effective Date would have occurred. The Nevada Supreme Court rejected Bidsal's claim. Yet Judge Wall's Award says the sale will not be treated as though closed until the price is paid, or in other words, he undertook to do what the Nevada Supreme Court was to decide and ultimately did decide contrary to Judge Wall.

Moreover, Judge Wall's determination of Effective Date is in direct contrast with Judge Haberfeld's Award (which was confirmed by Judge Kishner and affirmed by the Nevada Supreme

Court) that the sale be consummated within ten (10) days. But Judge Wall had no right to change what Judge Haberfeld had decided.

In reversing Judge Haberfeld and Judge Kishner's Judgment, Judge Wall's conduct cannot be characterized other than irrational, arbitrary and or capricious, any one of which constitutes his exceeding his powers.

VIII.

THE AWARD OF ATTORNEYS' FEES MUST BE VACATED

The Arbitrator found Bidsal to be the prevailing party and awarded him attorneys' fees and costs of $455,644.84. If, however, the Arbitrator's Award is vacated as to the Effective Date, then CLA should be entitled to recover the $500,500 made by Bidsal to himself after September 2, 2017. In that case, CLA should be considered the prevailing party. Accordingly, the award of attorneys' fees should be vacated as well.

IX.

CONCLUSION RE AWARD EXCEEDING JUDGE WALL'S POWERS

Arbitrator Wall did exactly what he said in his Award he could not do: that is, when "interpreting an agreement, a Court may not modify or create a new or different one. A court is not at liberty to revise an agreement while professing to construe it". The Arbitrator recognized the law that he cannot rewrite the contract, but then did exactly that. In so doing, he exceeded his powers by doing that which constitutes manifestly disregarding the law.

In determining that the date the sale should have closed is solely the date it does close, the Arbitrator acted capriciously, arbitrarily resulting in an award that is completely irrational. Any one of those things constitutes Judge Walls exceeding his powers.

REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

The Arbitrator arrogated the rights and powers of Judge Haberfeld, Judge Kishner and the Nevada Supreme Court in contradicting what Judges Haberfeld and Kishner had ruled. Once again, that constitutes his exceeding his powers in acting capriciously and/or arbitrarily.

For the reasons set forth above, the portion of the Award setting the Effective Date of sale denying CLA's counterclaim and recovery of the funds taken by Bidsal should be vacated. As such, the Arbitrator's award of attorneys' fees and costs to Bidsal should likewise be vacated.

DATED this 17th day of June, 2022.

REISMAN SOROKAC

By: /s/ Louis E. Garfinkel
Louis Garfinkel, Esq.
Nevada Bar No. 3416
8965 South Eastern Ave, Suite 382
Las Vegas, Nevada 89123
Tel: (702) 727-6258/Fax: (702) 446-6756
Email: Lgarfinkel@rsnvlaw.com
Attorneys for Movant CLA Properties, LLC

REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123
Phone: (702) 727-6258 Fax: (702) 446-6756

EXHIBIT 117

HON. DAVID T. WALL (Ret.)

JAMS
7160 Rafael Rivera Way, Suite 400
Las Vegas, NV 89113
Phone: (702) 457-5267
Fax: (702) 437-5267
Arbitrator

JAMS

BIDSAL, SHAWN, Claimant, v. CLA PROPERTIES, LLC, Respondents.	Ref. No. 1260005736 **FINAL AWARD**[1]

This matter was presented for Arbitration and a Hearing conducted on March 17-19, 2021, April 26-27, 2021 and September 29, 2021, at the offices of JAMS in Las Vegas before Arbitrator David T. Wall.[2] Claimant appeared personally and with James E. Shapiro, Esq. and Douglas D. Gerrard, Esq. Respondent appeared through representative Benjamin Golshani, with counsel Rodney T. Lewin, Esq, and Louis E. Garfinkel, Esq.

At the Hearing, both Bidsal and Golshani provided testimony.[3] Claimant also called forensic accountant Chris Wilcox and Respondent called forensic accountant Dan Gerety, Jeff Chain and Kasandra Schindler. Excerpts of testimony from the deposition of Jim Main were read

[1] On October 27, 2021, the undersigned Arbitrator issued an Interim Award. Sections I through IV of the Interim Award are reproduced here materially unchanged. The Interim Award included a briefing schedule for an application for an award of attorneys' fees and costs, which is addressed in section V herein.
[2] Closing arguments were conducted on September 29, 2021, via the Zoom videoconference platform.
[3] The totality of the witnesses' testimony is not restated herein. Included are material elements of testimony germane to the Arbitrator's Award.

into the record after designations and cross-designations by counsel. The following exhibits were admitted during the Arbitration Hearing: Joint Exhibits 1-34, 35-39, 43, 50, 52, 56-58, 67, 84, 85, 87, 91, 95, 97, 108, 111, 112, 114, 118,123, 125,136, 137, 139 153, 164-166, 180, 184, 188 (for a limited purpose)-193, portions of 198, 200-202 and 206.[4]

I. Factual Background

Claimant Shawn Bidsal (hereinafter "Bidsal" or "Claimant") and his first cousin, Benjamin Golshani ("Golshani"), formed a joint venture in 2010 called Green Valley Commerce, LLC ("GVC"). Golshani's interest was held entirely by Respondent CLA Properties, LLC ("Respondent" or "CLA"), for which Golshani is the sole member and manager.

Prior to the formation of the joint venture, Claimant was the successful bidder on a note for which the borrower was in default. The note was secured by a Deed of Trust against two parcels of commercial property with eight buildings and a parking lot thereupon. Shortly after Claimant successfully bid on the note, the joint venture between Claimant and Respondent was formed. According to the Operating Agreement for GVC ("OA"), Claimant contributed $1,215,000 toward the purchase price of the note. Golshani contributed $2,834,250 and directed that his interest be held by CLA. Although Claimant provided approximately 30% of the initial capital contribution and Respondent provided approximately 70%, the parties agreed that each member's interest in the joint venture would be 50%. This discrepancy was the result of Claimant's relinquishment of the discovery of the GVC opportunity, combined with Claimant's expertise in managing commercial properties (Golshani had little such experience). Claimant also was chosen to be the day-to-day manager of the properties, although the OA identified both parties as managers.

[4] A corrected version of Exhibit 200 was submitted by Respondent with leave of the Arbitrator on September 29, 2021.

Within several months of the acquisition of the note, Claimant on behalf of GVC negotiated a Deed in Lieu of Foreclosure Agreement with the defaulting borrower. As a result, GVC forgave principal and interest due on the note but received fee simple title in the collateral (the GVC commercial properties). Within this transaction, the borrower also relinquished approximately $295,000 in collected rents from the properties, plus approximately $74,000 in security deposits also being held by the borrower.

At a point in time thereafter, the parties agreed to divide each of the eight commercial buildings into its own parcel, with an additional identified parcel for the joint parking area for the buildings. Each of these parcels was given its own parcel number. By agreement, the parties engaged the services of a vendor in 2013 to provide a Cost Segregation Report that placed a value (or cost basis) for each of the eight individual parcels with buildings on them. The parties agreed that subdividing the entire property in this manner increased the overall value of the properties, such that any of the parcels could be sold individually.

Although the joint venture originated in June of 2011, the OA, which was the subject of significant negotiations between the parties, was not executed until December of 2011.

During the years that followed, three of the eight buildings were sold by GVC. In 2012, the parcel identified as Building C was sold for approximately $1,025,000, resulting in net proceeds of approximately $899,000. By agreement of the parties, the proceeds were immediately deposited with a §1031 exchange accommodator, and in 2013 the exchange was completed with the purchase of a property in Phoenix, Arizona (the "Greenway" property). All but approximately $95,000 of the proceeds of the sale of Building C were used for the purchase of the Greenway property.

In 2014, Building E was sold for approximately $850,000, and in 2015 Building B was sold for approximately $617,760. The proceeds for all three sales (other than the funds used in the §1031 exchange for purchase of the Greenway property) were distributed to Claimant and Respondent as described in more detail below.

The OA contained a provision (Article V, Section 4) permitting one member to initiate a purchase or sale of that member's interest in GVC by the other. The substance of this "buy-sell" provision allowed for one of the members to offer to buy out the interest of the other member based on an offered fair market value of GVC, which would then be inserted into a mathematical formula set forth in the OA to subsequently arrive at a final purchase price. Under the OA, the member making the offer is referred to as the "Offering Member" and the one receiving the offer is referred to as the "Remaining Member." Once the offer is made by the Offering Member, the Remaining Member has the option to: 1) sell his interest using the fair market valuation in the offer, as applied to the formula in the OA; 2) buy the Offering Member's interest using that same fair market valuation and inserting it into the formula in the OA; or 3) demand an independent appraisal to arrive at a fair market valuation, to be used in the formula in the OA. The final paragraph of Section 4.2 of the OA regarding this buy-sell provision states as follows:

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

OA, Article V, Section 4.2.

The formula to be used for calculating the purchase price, pursuant to Section 4.2, is the following:

(FMV – COP) x 0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities.

Id. "FMV" is defined in the OA as "fair market value" as specified in Section 4.2, and "COP" is defined as "cost of purchase" as specified in the escrow closing statement at the time of purchase of each property owned by GVC.

On July 7, 2017, Claimant sent a written offer to Respondent to buy Respondent's 50 percent interest in GVC, using a fair market value (to be inserted into the formula set forth above) of $5,000,000. Using the buy-sell provision referred to above, Respondent on August 3, 2017, elected to buy Claimant's 50 percent interest (rather than sell his own interest) using Claimant's $5,000,000 fair market valuation. On August 5, 2017, Claimant sent notice to Respondent that he was invoking a right under the OA to establish fair market value (for purposes of the formula in the OA) by independent appraisal. On August 28, 2017, CLA responded with a letter suggesting its readiness to close escrow to purchase Bidsal's membership interest.

Thereafter, CLA initiated JAMS Arbitration No. 1260004569 before the Hon. Stephen E. Haberfeld, Ret., to force Bidsal to comply with the buy-sell provision in Section 4 of the OA and sell his membership interest to CLA. Judge Haberfeld determined, in a final award dated April 5, 2019, that Bidsal must sell his membership interest in GVC to CLA under the formula set forth in the OA, using Bidsal's originally offered $5,000,000 as the FMV component. Following the denial of a Motion to Vacate Judge Haberfeld's Award in December of 2019, Bidsal filed an appeal with the Nevada Supreme Court and obtained a stay of the Order to sell his interest in GVC to CLA.

While the appeal was pending, Bidsal filed the instant Arbitration in February of 2020 to resolve any dispute between the parties as to the final purchase price, using the formula set forth in the OA with the FMV component already fixed by Judge Haberfeld at $5,000,000. This Award,

then, determines a final purchase price under that formula, should the Nevada Supreme Court deny Bidsal's request to vacate the prior award.[5]

II. Procedural History

This matter is in Arbitration based upon an Arbitration provision in Article III, Section 14.1 of an Operating Agreement for Green Valley Commerce, LLC, dated on or about June 15, 2011. Neither side currently challenges the arbitrability of the instant dispute.

In this proceeding, Bidsal claims that CLA has essentially forfeited the right to purchase Claimant's interest in GVC based upon a failure to tender payment to Bidsal. The parties tacitly agree that among the issues presented in this proceeding is a calculation of the purchase price of Bidsal's membership interest in GVC, using the formula provided for in the OA with the fair market value component fixed at $5,000,000 based on Judge Haberfeld's Award. Additionally, Respondent alleges that Claimant has, while managing the properties, made distributions to himself in excess of that to which he is entitled. Also at issue is the effective date of any purchase of Claimant's interest in GVC, which begets additional issues to be determined (potential interest to be awarded, Claimant's entitlement to management fees, the propriety of and accounting for any distributions made to Claimant after such effective date, etc.). Each of these issues are discussed below.

III. Legal Standard

Issues presented herein require the interpretation of certain sections of the Operating Agreement for Green Valley Commerce, LLC. When the facts are not in dispute, contract interpretation is a question of law. Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124

[5] The appeal remains outstanding before the Nevada Supreme Court as of the date of this Award. Both parties recognize that the determination of a final purchase price herein is conditioned upon the denial of Claimant's request to vacate the award by Judge Haberfeld, and that no sale can be consummated or finalized while the stay is in effect.

Nev. 1102, 1115 (2008). In interpreting a contract, the intent of the parties shall be effectuated, which may be determined in light of the surrounding circumstances if not clear from the contract itself. Anvui, LLC v. G.L.Dragon, LLC, 123 Nev. 212, 215 (2007). A contract is ambiguous when it is subject to more than one reasonable interpretation. Id. Parol evidence is admissible for ascertaining the true intentions and agreement of the parties when the written instrument is ambiguous. M.C. Multi-Family Development, LLC v. Crestdale Associates, Ltd., 124 Nev. 901, 913-914 (2008). It may also be introduced to show subsequent oral agreements to modify a written contract or to show the existence of a separate oral agreement as to any matter on which a written contract is silent and which is not inconsistent with its terms. Id. When there exists contradictory or inconsistent language in different portions of the contract provisions, a tribunal should endeavor to harmonize the provisions and construe them to reach a reasonable solution. Eversole v. Sunrise Villas VIII Homeowners Association, 112 Nev. 1255, 1260 (1996). As the Nevada Supreme Court stated in Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107 (1967):

> In interpreting an agreement a court may not modify it or create a new or different one. A court is not a liberty to revise an agreement while professing to construe it. Reno Club, Inc. v. Young Investment Co., 64 Nev. 312, 323-324, 182 P.2d 1011, 173 A.L.R. 1145 (1947). On the other hand, a contract should be construed, if logically and legally permissible, so as to effectuate valid contractual relations, rather than in a manner which would render the agreement invalid, or render performance impossible. Reno Club, Inc. v. Young Investment Co., supra, 64 Nev. 325, 182 P.2d 1011. See also, 4 Williston, Contracts, §620 (3d Ed. 1961) wherein it stated: 'The Writing Will Be Interpreted If Possible So That It Shall Be Effective and Reasonable. An interpretation which makes the contract or agreement lawful will be preferred over one which would make it unlawful; an interpretation which renders the contract or agreement valid and its performance possible will be preferred to one which makes it void or its performance impossible or meaningless; an interpretation which makes the contract or agreement fair and reasonable will be preferred to one which leads to harsh or unreasonable results.' A court should ascertain the intention of the parties from the language employed as applied to the subject matter in view of the surrounding circumstances.

Mohr Park Manor, 83 Nev. at 111.

IV. Factual and Legal Analysis

A. Failure to tender funds

Claimant argues that Respondent's failure to tender the purchase price terminated CLA's right to purchase Bidsal's interest in GVC. Initially, Claimant argues that CLA failed to tender the purchase price in the fall of 2017 when offers and counteroffers were made. It is the determination of the Arbitrator that this issue is beyond the scope of the current Arbitration proceeding, and needed to be addressed in the original Arbitration proceeding before Judge Haberfeld. In April of 2019, Judge Haberfeld determined that Claimant must transfer his interest in GVC to Respondent. As such, it is the determination of the Arbitrator that Claimant is not entitled to relief on this issue in the current proceeding.

Next, Claimant argues that CLA's failure to tender any funds to Bidsal after Judge Haberfeld's arbitration award terminated CLA's right to purchase Bidsal's interest in GVC. Immediately following Judge Haberfeld's award, Claimant filed a Motion to Vacate the award in the Clark County District Court. That Motion was denied by Hon. Joanna Kishner in December of 2019 and Claimant immediately sought and received a stay of enforcement of Judge Haberfeld's award to take an appeal to the Nevada Supreme Court. Under these facts, it is the determination of the Arbitrator that any perceived failure of Respondent to tender was appropriate given the state of the proceedings, and is consistent with Claimant's actions in seeking to vacate the award prior to its enforcement. Respondent effectively had an order in place compelling Claimant to sell his interest in GVC to CLA, and valid tender was no longer a prerequisite to Respondent's ability to enforce the buy-sell provision. As such, it is the determination of the Arbitrator that Claimant is not entitled to relief on this issue in the current proceeding.

B. Distribution of proceeds from the sale of properties

Respondent contends that Claimant improperly distributed the proceeds from the sale of certain of the properties belonging to GVC.

Exhibit A to the OA, at section 5.1.1.1, states that "items of income, gain, loss, deduction or credit (or items thereof) shall be allocated among the members in proportion to their Percentage Interests as set forth in Exhibit B, subject to the Preferred Allocation schedule contained in Exhibit B...."

Exhibit B to OA is a single-page document showing each member's percentage interest in GVC (Bidsal and CLA each at 50%) and each member's capital contributions (Bidsal $1,215,000 for 30% and CLA $2.834.250 for 70%). Exhibit B goes on to state the following:

> PREFFERED ALLOCATION AND DISTRIBUTION SCHEDULE
> Cash distributions from capital transactions shall be distributed per the following method between the members of the LLC. Upon any refinancing event, and upon the sale of Company asset, cash is distributed according to a "Step-Down Allocation." Step-down means that, step-by-step, cash is allocated and distributed in the following descending order of priority, until no more cash remains to be allocated. The Step-Down Allocation is:
>
> > First step, payment of all current expenses and/or liabilities of the Company;
> >
> > Second step, to pay in full any outstanding loans (unless distribution is the result of a refinance) held with financial institutions or any company loans made from Manager(s) or Member(s).
> >
> > Third step, to pay each Member an amount sufficient to bring their capital accounts to zero, pro rata based upon capital contributions.
> >
> > Final step, After the Third Step above, any remaining net profits or excess cash from sale or refinance shall be distributed to the Members fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.
>
> Losses shall be allocated according to Capital Accounts.
>
> Cash Distributions of Profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.

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

OA, Exhibit B.

As set forth above, three of the eight buildings were sold between 2012 and 2017. Based on the language of Exhibit B, Respondent contends that these sales constituted "capital transactions" and required distribution of the sales proceeds to the Members consistent with the Preferred Allocation and Distribution Schedule, thereby necessitating distribution (as described in the Third Step) pro rata based on the Members' capital contributions (70% to CLA and 30% to Bidsal) until the capital contributions were entirely reimbursed.

Bidsal did not distribute proceeds from the three sales pursuant to the Preferred Allocation and Distribution Schedule ("PA" or "waterfall provision") set forth in Exhibit B. Based upon the language from Exhibit A, Section 5.1.1.1 (as quoted above) and the language of Exhibit B, Bidsal testified that he determined that each individual sale did not constitute a "capital transaction" as it did not involve the sale of the totality of the Company's asset. Further, he relied on the definition of Cash Distributions of Profits as set forth in Exhibit B (to be distributed 50-50) referring to a capital transaction being one of a "sale of all or a substantial portion of the Company's assets."

Instead, Bidsal distributed proceeds using a two-step approach. He testified that he used the Cost Segregation Report to determine a cost basis for each of the properties as it was sold. He testified that he allocated and distributed the sales proceeds on a 70-30 split up to the amount of the cost basis, so as to provide each Member a return of its original cash contribution for that parcel. He then split the profit (the extent to which the sales proceeds exceeded the cost basis) to the Members on a 50-50 basis.

For Building C, the cost basis in the Cost Segregation Report was $399,193.81. Building C sold for $1,025,000, with net proceeds of $898,629.23. All but $95,272.65 of those proceeds were used as part of the §1031 exchange to purchase the Greenway property in Arizona. Bidsal testified that for the $95,272.65 in remaining proceeds, he split that 70-30 between the Members since it did not exceed the cost basis amount for Building C.

Building E was sold in November of 2014 for $850,000 and Building B was sold in September of 2015 for $617,760. Bidsal testified that he used the same rationale in splitting these proceeds. For the amount of proceeds for each sale up to the cost basis for each parcel as set forth in the Cost Segregation Report, Bidsal distributed the proceeds on a 70-30 split. For the profit (the extent to which the sales proceeds exceeded the cost basis for each parcel), Bidsal distributed the proceeds on a 50-50 split.

Bidsal testified that he believed that the manner in which he distributed the proceeds from the three sales was consistent with Exhibit B of the OA and the parties' intentions throughout the life of GVC, prior to the institution of litigation in late 2017. Bidsal credibly testified that prior to distributing proceeds from each sale, he consulted with CLA principal Golshani, who agreed to Bidsal's distribution mechanism. For each sale, Bidsal provided Respondent with a detailed breakdown of the distribution of sales proceeds.[6] For each sale, the distribution breakdown was clearly noted in the tax returns for that year and itemized on each Member's Schedule K-1 form. For the sales of Buildings E and B, Bidsal provided two separate checks to each member: one comprising that member's share of the 70-30 split of the cost basis, and one comprising the member's share of the profit (split at 50-50).[7] The evidence clearly shows that Respondent was

[6] Golshani testified that he had no disagreement with the cost basis amounts attributed to each parcel in the Cost Segregation Report.

[7] Only one check was given to each member after the sale of Building C, since the remaining proceeds did not exceed the cost basis.

aware of the process used by Bidsal to calculate these distributions and approved the allocations and distributions based on Bidsal's interpretation of the language in Exhibit B.

Aside from the proceeds from the parcel sales referenced above, Bidsal testified that all other distributions of profits from the building leases was distributed on a 50-50 basis, pursuant to Exhibits A and B to the Operating Agreement. These distributions provided each member with more than $2 million dollars between 2011 and 2019.

Respondent contends that the OA required Bidsal to distribute all of the sales proceeds on a 70-30 basis until all of the capital contributions of the parties were recouped. This position is belied by the OA and the evidence presented in this proceeding.

Both parties agree, and have argued in this proceeding, that the OA is ambiguous and not well drafted. As set forth above, an interpretation of the relevant provisions of the OA requires the Arbitrator to determine the intent of the parties at the time of the execution of the agreement, Anvui, supra, to harmonize the inconsistent or ambiguous provisions to reach a reasonable solution consistent with the parties' intentions. Eversole, supra, Mohr Park Manor, supra.

The evidence strongly establishes that at the time of the formation of GVC and the execution of the OA, the objective of GVC was to split all income earned from the entity on a 50-50 basis, with each member being reimbursed for their capital contribution if the company asset was sold at some point in the future. At the time of the formation GVC, the plan was not to subdivide and sell off parcels of real property. This objective is noted in the OA, which states that the business of the company was to acquire secure debt, convert it to fee simple title and then manage the property. See, OA, Art. 1, Sec 01.[8] The formula for calculating the purchase price of a member's interest, discussed in more detail below, is designed to allow the selling member to

[8] The Operating Agreement is littered with errors in the numbering of sections and provisions. Nonetheless, provisions are identified in this Award using the section numbers in the actual OA.

recoup his capital contribution while receiving 50% of the appreciation of the fair market value of the entity. See, OA, Art. 5, Sec. 4.2. The OA further sets forth that "items of income, gain, loss, deduction or credit (or items thereof) shall be allocated among the members in proportion to their Percentage Interests as set forth in ***Exhibit "B"***, subject to the Preferred Allocation schedule contained in ***Exhibit "B"***...." See, OA, Exhibit A, Section 5.1.1.1 (emphasis in original). Exhibit B to the OA states that the Percentage Interests of each member are 50-50, and further states that profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA. See, OA, Exhibit B.

It is clear that the intention of the parties was to allocate gains on a 50-50 basis unless and until the Preferred Allocation language in Exhibit B of the OA was triggered. The evidence establishes that this was fundamental to the formation of the entity.

Both parties agree that the language of Exhibit B to the OA regarding the Preferred Allocation is ambiguous, and both parties ask the Arbitrator to interpret these provisions to effectuate the intent of the parties. Ambiguity is evident from the relevant language of the Preferred Allocation provision. Initially, it states as follows:

> PREFFERED ALLOCATION AND DISTRIBUTION SCHEDULE
> Cash distributions from capital transactions shall be distributed per the following method between the members of the LLC. Upon any refinancing event, and upon the sale of Company asset, cash is distributed according to a "Step-Down Allocation."

OA, Exhibit B.

As set forth above, the OA provides that cash distributions from profits and allocations of income, gain, loss, deduction or credit are on a 50-50 basis, subject to the application of the Preferred Allocation for capital transactions which would result in a 70-30 allocation. However, "capital transactions" is not defined anywhere in the OA. Further, the phrase "and upon the sale of Company asset" presents further ambiguity, suggesting that a sale of the single asset of GVC

might be necessary to trigger the Preferred Allocation. This interpretation would be consistent with the overall business model suggested above, especially in light of the fact that at the time of the first draft of Exhibit B to the OA, GVC owned a single asset (a note) and had not acquired fee simple title to the property (and had not subdivided the property).

The following provision at the end of the one-page Exhibit B to the OA creates further confusion as to the application of the Preferred Allocation:

> Cash Distributions of Profits from operations shall be allocated and distributed fifty percent (50%) to Shawn Bidsal and fifty percent (50%) to CLA Properties, LLC.
>
> > It is the express intent of the parties that "Cash Distributions of Profits" refers to distributions generated from operations resulting in ordinary income in contrast to Cash Distributions arising from capital transactions or non-recurring events such as a sale of all or a substantial portion of the Company's assets or cash out financing.

Id.

Although this provision does not expressly define "capital transactions" for purposes of triggering the Preferred Allocation, it does contrast cash "distributions from operations resulting in ordinary income" (to be distributed 50-50) from "a sale of all or a substantial portion of the Company's assets" (to be distributed 70-30 pursuant to the Preferred Allocation).

Both Bidsal and Golshani testified to their intent regarding these ambiguous provisions. Golshani testified that when he signed the OA, he was not aware that under the OA CLA and Bidsal each had 50% interests in GVC. Transcript, March 17, 2021, p. 83:9-15.[9] This testimony is not credible, in light of all of the evidence surrounding the formation of GVC and Golshani's role in negotiating terms of the OA. Later, Golshani testified that it was his understanding that profit from rent would be distributed 50-50 and any other distributions would be on a 70-30 basis until the capital contributions were returned. Transcript, April 26, 2021, p. 1050:15-21. Bidsal

[9] The parties provided a court reporter for the proceedings, and each party at times has cited from the transcript during the course of these proceedings. Therefore, when necessary, the Arbitrator will also cite to the transcript.

testified that it was his intent (and his agreement with Golshani for CLA) that the members' capital contributions would be returned if there were sufficient funds available from a refinancing of the property, or if the entirety of GVC's assets were sold. Transcript, March 17, 2021, p. 301:5-20. He testified that the Preferred Allocation in Exhibit B to the OA was intended to return the members' capital contributions as part of a winding down or liquidation of the company. Id. at p.305:16-306:3. He further testified that the Preferred Allocation was not triggered by any of the subsequent sales of any of the buildings or parcels. Id. at 306:4-10.

Both parties presented forensic accountants to assist in the interpretation of these provisions as to whether the Preferred Allocation[10]. Respondent presented Daniel Gerety, who testified that a sale of any of the parcels would constitute a "capital transaction" as that term is generally understood, thereby triggering a 70-30 distribution pursuant to the Preferred Allocation provision of Exhibit B to the OA. Transcript, March 19, 2021, p. 859:12-860:15. Claimant presented Chris Wilcox, who testified that none of the three building sales triggered the Preferred Allocation, since they did not constitute "a sale of all or a substantial portion of the Company's assets" as stated in Exhibit B. Transcript, March 18, 2021, p. 352:18-353:18. He also stated that GVC's tax returns, prepared by the office of accountant Jim Main, show that none of the sales of the three buildings were treated as though they triggered the Preferred Allocation provision of Exhibit B to the OA. Id. at p. 353:19-354:17. Wilcox further testified that interpreting the Preferred Allocation in the manner supported by Gerety would have prevented Bidsal from enjoying the appreciation of the gain on the buildings that were sold. Id. at 387:10-23.

Essentially, then, it was the opinion of CLA's expert Gerety that all of the proceeds of each of the parcel sales, including the profit or gain, should have been distributed to the members on a

[10] Neither party disputed the qualifications of the forensic accountants to testify as experts in this matter.

70-30 basis until each member had recouped his entire capital contribution. It was the opinion of Bidsal's expert Wilcox that none of the sales constituted capital transactions triggering the Preferred Allocation, and as such all of the proceeds could properly have been distributed on a 50-50 basis.

As set forth above, Bidsal's methodology followed neither of those opinions. He distributed the portion of the sale proceeds constituting the cost basis for each parcel as a return of capital (on a 70-30 basis), and the gain from each sale on a 50-50 basis. GVC's accountant, Jim Main, testified that this was consistent with his interpretation of Exhibit B to the Operating Agreement. Transcript, April 27, 2021, p. 1321:1-1323:3.[11] Wilcox testified that although the Preferred Allocation was not triggered by the sales of the three buildings, the manner in which Bidsal actually distributed the sales proceeds inured to the benefit of CLA. Transcript, March 18, 2021, p. 356:3-11; 377:9-18.

It is the determination of the Arbitrator that Gerety's interpretation of Exhibit B, insofar as each parcel sale triggering the application of the Preferred Allocation, is not a reasonable interpretation of this ambiguous and poorly drafted provision, in light of the substantial evidence in the record regarding the intent of the parties as it relates to these distributions. It is further the determination of the Arbitrator that Exhibit B to the OA evidences the intent of the parties that the Preferred Allocation procedures would apply only in "a sale of all of a substantial portion of the Company's assets," as that phrase is used in Exhibit B. Although Wilcox's interpretation is the more reasonable one, given the evidence of the overall objectives of the parties in forming this entity, Bidsal's actual methodology was far more favorable to CLA than it needed to be under the terms of the OA. An interpretation of ambiguous contractual provisions that makes the agreement

[11] Main did not testify at the Arbitration Hearing, but designated (and cross-designated) portions of his deposition were read into the record at the Hearing.

fair and reasonable will be preferred to one which leads to harsh or unreasonable results. Mohr Park Manor, 83 Nev. at 111, quoting 4 Williston, Contracts, 620 (3rd Ed. 1961).

Therefore, it is the determination of the Arbitrator that the manner in which Bidsal distributed the proceeds of the sales of Buildings C, E and B was more favorable to CLA than required by the terms of Exhibit B to the OA and does not constitute any improper or excessive distribution to Claimant. Noteworthy in this analysis is strong evidence of an agreement between Bidsal and Golshani to treat the sale proceeds in this manner, thereby establishing either: 1) parol evidence of the true intentions and agreement of the parties when the written instrument is ambiguous, M.C. Multi-Family Development, LLC v. Crestdale Associates, Ltd., supra at 913-914 (2008); or alternatively 2) evidence of a subsequent oral agreement to modify the written contract. Eversole, supra at 1260. Here, Bidsal testified that he had conversations with Golshani regarding the manner in which the proceeds from the first building sale (Building C) would be distributed, such that the cost basis would be distributed on a 70-30 basis and the remaining balance would be split 50-50. Transcript of March 19, 2021, p. 640:7-641:20. Bidsal testified that Golshani agreed to this procedure and did not object to it. Id., p. 641:21-642:4. Bidsal testified that the same conversations with Golshani occurred (and the same agreement was reached) for the sales of Building E and Building B. Id. at p. 651:7-652:23. Further evidence of this agreement between Bidsal and Golshani, and of the transparent nature of Bidsal's actions in distributing the proceeds, is found in the following:

- For each of the three sales, Bidsal provided Golshani with a detailed breakdown of the distribution process under the agreed-upon methodology;

- For the sales of Buildings E and B, Bidsal provided Golshani with separate checks for the portion of proceeds divided 70-30 and the portion divided 50-50, pursuant to the detailed breakdown;
- Jim Main testified that he prepared the Company's tax returns consistent with this distribution procedure;
- Tax returns sent to (and reviewed by) Golshani evidenced this distribution procedure, for each year that a building sale took place;
- Golshani's Schedule K-1 form evidenced this distribution procedure;
- Golshani's did not object to the manner in which Bidsal made these distributions until long after the sales were consummated;
- Golshani's testimony that he was not aware of the manner in which Bidsal was distributing the proceeds of the building sales is simply not credible.

This interpretation of the Preferred Allocation in Exhibit B is consistent with the evidence regarding the parties' intent to divide the cost basis portion of the sales proceeds 70-30 and the gain portion 50-50. It is also consistent with the evidence of the parties' intent to allocate gain on a 50-50 basis (See OA, Exhibit A, Sec. 5.1.1.1) and the totality of the evidence establishing that the overall objective of the parties in forming this entity was to divide all gain on a 50-50 basis (see, e.g., OA Art. 5, Section 4.2, providing that the buy/sell provision is designed to provide the selling member with 50% of the appreciation of the entity in addition to his capital contribution).

C. Application of formula to determine purchase price

Following the arbitration award from Judge Haberfeld, Claimant instituted the instant arbitration proceeding (in part) for the purpose of determining a purchase price pursuant to the formula set forth in the OA. Judge Haberfeld's award required Bidsal to transfer his interest in

GVC to Respondent "at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed at Five Million Dollars and No Cents ($5,000,000.00)...." Haberfeld was not asked to determine the final purchase price using this formula, or to interpret any potentially ambiguous terms within the formula.

The formula to be used for calculating the purchase price, pursuant to Section 4.2, is the following:

> (FMV – COP) x 0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities

OA, Article V, Section 4.2.

For purposes of the instant arbitration, FMV is fixed at $5,000,000 pursuant to Judge Haberfeld's award. COP is defined in the OA as follows:

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

OA, Article V, Section 4.1.

Like the language of Exhibit B to the OA, the parties agree that the language contained in the formula is ambiguous. Judge Haberfeld removed any potential ambiguity in the FMV component by fixing that value at $5,000,000.

The definition of COP is unclear and ambiguous. Read literally, it would require taking information from an escrow closing statement at the time of purchase of Company property. However, the parties agree that there is no escrow closing statement reflecting a purchase of the GVC properties, which were acquired by GVC pursuant to a Deed in Lieu agreement. This factual scenario was obviously not contemplated by the OA formula. Additionally, the formula does not

contemplate an acquisition of property through a §1031 tax deferred exchange that borrows its basis from a prior building sold by the entity.

Similarly, the formula is unwieldy in using the "capital contribution of the Offering Member(s) at the time of purchasing the property," as it fails to account for capital contributions recouped at any point prior to the application of the formula. Applying a literal interpretation would allow the member selling his interest to receive double the value of any capital contributions returned to him prior to the sale of his interest.

Like the issue of the interpretation of Exhibit B to the OA, the parties each engaged their forensic accountant to testify regarding reasonable interpretations of the formula in Section 4.2 to be utilized to calculate a purchase price for Claimant's interest in GVC.

Claimant presented the testimony of Wilcox in support of his interpretation of the formula and calculation of a purchase price using a reasonable interpretation of the formula. For COP, Wilcox took the cost basis of all of the parcels as set forth in the Cost Segregation Report and subtracted out the cost basis for Buildings B and E. He also decreased the total value of the common area parking lot to account for the ratio of square footage no longer owned by GVC after selling Buildings B and E. His COP amount, for use in the formula, is $3,136,431. Therefore, according the formula, FMV ($5,000,000) minus COP ($3,136,431) X 0.5 = $931,784.50 ($5,000,000 minus $3,136,431 = $1,863,569 X 0.5 = $931,784.50). To that number, the formula literally requires adding the value of Bidsal's full capital contribution of $1,215,000. However, Wilcox reasonably concluded that Bidsal had already received a portion of his capital contribution when he distributed to himself 30 percent of the cost basis of the buildings sold by GVC. Wilcox calculated that the three sales (Buildings E and B and the remainder of the proceeds of Building C after the §1031 exchange) reduced Bidsal's unreimbursed capital contribution down to $957,226.

Therefore, in accordance with the formula, Wilcox added that number to the previous total to reach a total purchase price of $1,889,010.50 ($931,784.50 plus $957,226 = $1,889,010.50). Although the formula then requires the subtraction of any prorated liabilities, Wilcox testified that no such liabilities exist and no subtraction is therefore necessary. His final calculated purchase price for Bidsal's interest, using a reasonable interpretation of the terms of the formula, is $1,889,010.50. See, Exhibit 201, Schedule 5. This price is exclusive of any interest and presumes that Bidsal is currently still a member of GVC (and therefore entitled to any distributions that have been made since 2017).

Respondent presented the testimony of Gerety in support of CLA's interpretation of the formula and calculation of a purchase price. Gerety agreed that certain terms in the formula could not be read literally, just as Wilcox did before him. Gerety calculated COP by taking the cost basis of all buildings still owned by GVC and came to a COP figure of $3,686,293. His COP is higher than Wilcox's for two reasons: 1) Gerety used the full price on the escrow statement for the Greenway property acquired in the §1031 exchange, rather than the original cost basis for Building C; and 2) Gerety did not partition any portion of the common area parking lot, as he believed that GVC still owns the entire lot. Applying his COP figure to the first portion of the formula, Gerety's calculation is: FMV ($5,000,000) minus COP ($3,686,293) X 0.5 = $656,854 ($5,000,000 minus $3,686,293 = $1,313,707 X 0.5 = $656,854). Gerety then offered two alternatives for the next portion of the formula calculation regarding Claimant's capital contribution at the time of purchase. In his Alternative A, he uses $840,643 based on potentially improper distributions taken and kept by Bidsal, in addition to offsets for rents and depreciation. In his Alternative C, he uses $975,814 (a figure comparable to Wilcox's determination of unreimbursed capital contributions payable to Bidsal. Gerety also found $34,499 in prorated liabilities (half of security deposits held

by GVC), which he subtracted pursuant to the formula for both Alternatives A and C. Therefore, under Alternative A, Gerety's final purchase price for Bidsal's interest in GVC is $1,462,998. Under Alternative C, Gerety's final purchase price is $1,598,169. See, Exhibit 202.

It is the determination of the Arbitrator that Wilcox's interpretation and application of the formula in Section 4.2 of the OA is the more reasonable approach. Both parties agree that the formula cannot be reasonably applied pursuant to the literal terms of the OA. A strictly literal approach would allow Bidsal to use only the cost of the Greenway property as COP (the only one for which there is an escrow closing statement) and his full capital contribution of $1,215,000, resulting in a windfall to Bidsal not contemplated by the parties at the execution of the OA. Wilcox's COP figure is the more reasonable approach, allowing for Bidsal as a member of GVC to realize the appreciation of Building C when it was used for the §1031 exchange with the Greenway property. Wilcox's conclusion that no prorated liabilities exist is also the more reasonable approach, given the nature of the security deposits held separately by GVC. Therefore, applying the formula in a fair and reasonable manner, and giving due consideration to the intent of the parties, it is the determination of the Arbitrator that the appropriate purchase price for Bidsal's interest in GVC is the sum of $1,889,010.50.[12]

D. Effective Date of Sale

In addition to the purchase price under the formula in Section 4.2 of the OA, it is necessary to determine an effective date of the sale of Bidsal's interest in GVC. Respondent avers that the effective date of sale is September of 2017, the time when Respondent contends his counteroffer transaction should have been consummated. This contention is without merit.

[12] This purchase price is exclusive of any award of fees and costs awarded by Judge Haberfeld in the prior arbitration proceeding.

The transaction has never been completed. Judge Haberfeld, in his award in April of 2019, directed that the transaction take place forthwith. He did not find an effective date of the transaction to have occurred over a year earlier. The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed. Claimant has continued to act as a member (and manager) of GVC since September of 2017, and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA. Bidsal has appropriately received distributions since 2017, and since he remains a member of GVC, he cannot be required to divest himself of those distributions. He has also been treated as a member for GVC for tax purposes since 2017 and paid taxes on the distributions that Respondent now seeks to claw back. Additionally, treating the sale as having an effective date of September of 2017 would require Respondent to compensate Bidsal for his services a property manager over the past four years.

It is the determination of the Arbitrator, based upon all of the relevant evidence in this matter, that the effective date of the purchase of Bidsal's interest has not yet come to pass. Pursuant to Judge Haberfeld's final award, the transfer is to take place ten days of the effective issuance thereof. As that award (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement Judge Haberfeld's award requiring the sale is effectively postponed. The instant Award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective and the instant Final Award has now used a reasonable interpretation of the formula in Section 4.2 to arrive at purchase price.[13]

[13] This analysis presumes, of course, that Judge Kishner's Order Confirming Award is upheld by the appellate court. This presumption is not based on any consideration of the merit of such an appeal, but any other presumption effectively makes this Award moot.

In closing argument, counsel for Claimant has requested interest be awarded from September of 2017 forward on the purchase price, arguing that Bidsal has lost the right to use those funds over the last four years based on CLA's failure to perform. It is the determination of the Arbitrator that Bidsal is not entitled to recover interest on funds he would've received for a transaction which has not yet occurred. Judge Haberfeld did not rule that Respondents inappropriately utilized the arbitration provision in the OA to determine that Bidsal must sell his interest in GVC. Similarly, the undersigned Arbitrator does not find that Bidsal inappropriately utilized the arbitration provision in the OA to institute this proceeding to arrive at a purchase price and an effective date of the sale. Notably, Claimant's forensic accountant, Wilcox, also testified on this issue from an accounting perspective:

> Q: If the sale wasn't effective because no purchase money was ever paid and Mr. Bidsal continued to be a member up until the time he actually gets paid, would he be entitled to this interest amount?
>
> A: [Wilcox] No. He would still own the property, so he would not be entitled to the interest.
>
> Q: Okay. And so he would still, under that theory, be entitled to his distributions from the general operations of the company?
>
> A: Exactly. Yes.

Transcript, March 18, 2021, p. 424:16-25.

Claimant is not entitled to recover interest on the purchase price amount as the transaction cannot be consummated under any circumstances until after the completion of the appellate process (and a concomitant lifting of the stay). He is still a member of GVC and no amount should be deducted from the purchase price for any distributions Claimant received after September of 2017.

V. Award of Attorneys' Fees and Costs

In the Interim Award, the Arbitrator included the following language regarding fees and costs:

> Article III, Section 14.1 of the Operating Agreement states as follows:
>
> The fees and expenses of JAMS and the arbitrator shall be shared equally by the Members and advanced by them from time to time as required; provided that at the conclusion of the arbitration, the arbitrator shall award costs and expenses (including the costs of the arbitration previously advanced and the fees and expenses of attorneys, accountants and other experts) to the prevailing party.
>
> Operating Agreement, Article III, Section 14.1
>
> A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit. Valley Electric Association v. Overfield, 121 Nev. 7, 10 (2005). This Interim Award adopted the recommendations of Claimant as to 1) the interpretation of the Preferred Allocation language in Exhibit B to the Operating Agreement, including Claimant's interpretation of the intent of the parties; 2) the method of calculating a purchase price under the formula contained in Section 4.2 of the Operating Agreement; 3) the actual purchase price as calculated by Claimant's forensic accountant, including Claimant's position as to the propriety of certain distributions; 4) the effective date of the sale; and 5) various claims for relief contained within Respondent's Fourth Amended Answer and Counterclaim. Given the foregoing, the Claimant is the prevailing party.

Interim Award, pp. 25-26.

The Interim Award set forth a briefing schedule for Claimant's application for fees and costs, which schedule was later modified by the agreement of the parties. Claimant filed an Application for Award of Attorney Fees and Costs on November 11, 2021 and Respondent filed an Opposition thereto on December 3, 2021. Claimant filed a Reply brief on December 17, 2021, Respondent filed a Supplemental Opposition on December 23, 2021, and Claimant filed a Response to CLA Properties' Rogue Supplemental Opposition on December 29, 2021. A telephonic hearing on the application for fees and costs was conducted by the Arbitrator on January 5, 2022, during which it was determined that redacted billing statements would be produced by

Claimant to Respondent and that further briefing was necessary. CLA filed a Second Supplemental Opposition to Claimant's Application for Attorneys' Fees and Costs on January 26, 2022. Claimant filed a Second Supplemental Reply brief on February 15, 2022, and a telephonic hearing was conducted on February 28, 2022. In addition to the Arbitrator, Claimant appeared personally with James E. Shapiro, Esq. and Douglas D. Gerrard, Esq. Respondent appeared through counsel Rodney T. Lewin, Esq, and Louis E. Garfinkel, Esq.

As set forth above, support for an award of fees and costs to the prevailing party is found in Section 14.1 of the GVC Operating Agreement. The provision is somewhat mandatory, indicating that the "arbitrator ***shall*** award costs and expenses," (emphasis supplied), including the costs of arbitration. Respondent herein does not dispute that Section 14.1 provides for an award of fees and costs to the prevailing party, but takes issue with the amount of fees and costs claimed by Bidsal.

A. Attorneys' Fees

Respondent correctly notes that the OA incorporates Nevada law for the instant proceedings, which traditionally relies upon Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969), for the considerations applicable to an award of reasonable fees and costs. The Court in Brunzell noted four primary factors to be considered:

1. The qualities of the advocate: his ability, training, education, experience, professional standing and skill;
2. The character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;

3. The work actually performed by the lawyer: the skill, time and attention given to the work; and

4. The result: whether the attorney was successful and what benefits were derived.

Brunzell, 85 Nev. at 349, quoting Schwarz v. Schwerin, 336 P.2d 144, 146 (1959). The Brunzell court directed that all four factors be given consideration and that no one element should be given undue weight. 85 Nev. at 349-350.

Even though Section 14.1 of the OA could generously be interpreted to direct an award of all fees and costs incurred, it is the determination of the Arbitrator that Nevada law requires consideration and determination of a reasonable award of fees and costs based on the Brunzell factors outlined above. Additionally, although certain of the attorney billing statements reference a "flat fee," counsel for Claimant has stated, as officers of the Court, that the instant matter was not billed as a flat fee and that all requested fees were actually billed and paid by Claimant (or remain outstanding, to be paid).

Respondent does not challenge the qualities of the advocates representing Bidsal, and the Arbitrator finds no reason to question such qualities. Indeed, counsel for both parties would satisfy this prong of the Brunzell analysis.

Respondent also does not significantly challenge the character of the work to be performed, to the extent that this litigation involved issues with some level of complexity and sophistication. These proceedings were document intensive and involved complex legal and factual issues.

Respondent does challenge the work actually performed by counsel for Claimant, in several material respects. First, Respondent challenges certain of the redactions in the billing statement provided by Claimant, indicating that it deprives Respondent of the ability to determine exactly how much time was spent on each task. However, the redactions were appropriate to protect

information protected by the attorney-client privilege and the attorney work product doctrine. See, Wynn Resorts, Ltd. v. Eighth Judicial District Court, 399 P.3d 334, 341 (2017). Additionally, Respondent contends that certain "block billing" entries in the billing statements prevent analysis of how much time was spent on each task within the block. However, block-billed time entries are amenable to consideration for an award of reasonable fees and must be considered by the Arbitrator. See, Mendez v. County of San Bernadino, 540 F.3d 1109, 1129 (9th Cir. 2008). Respondent also challenges the fact that Claimant had two primary attorneys conducting the proceedings throughout on behalf of Claimant. However, given the nature of the litigation, it is the determination of the Arbitrator that this does not constitute inappropriate duplication of efforts such that an award of reasonable fees should be limited to the work of a single attorney. Respondent engaged two, and at some points three, attorneys during the course of the proceedings, each of whom provided salient contributions to the litigation. After a review of all of the information and argument submitted with this Application, the Arbitrator has taken into consideration the potential duplication of efforts for some of the work performed by Mr. Shapiro's associate attorney in determining a reasonable fee award.

With respect to the results achieved, Respondent contends that deductions in the overall fee award should be applied for any work on motions or objections for which Bidsal was ultimately found not to have prevailed. Respondent identified motions it prevailed on, and suggested that fees for work on those motions should either be deducted from any fee award to Claimant or otherwise awarded to Respondent for prevailing thereupon. However, neither the OA nor Nevada law provide for such a mechanism when determining an award of a reasonable fee to the prevailing party. It is not necessary, in applying the Brunzell factors, to make findings as to the party that prevailed on each and every motion and objection. Instead, the appropriate analysis is to consider

the work performed and the result achieved as a whole and award a reasonable fee to the prevailing party in the light of the totality of the litigation before the Arbitrator. As set forth above, consideration under the fourth Brunzell factor is given to the fact that Claimant prevailed on an overwhelming majority of the issues presented for consideration during the Arbitration, even if Respondent prevailed on some motions during the course of the proceedings.

Claimant has requested an award of fees in the amount of 444,225.00 incurred by two separate law firms. The Amended Affidavit of Attorney Fees submitted by James E. Shapiro, Esq., requests fees in the amount of $313,985.00, over sixty percent of which was billed by Mr. Shapiro's associate attorney, Aimee M. Cannon, Esq. The Supplemental Affidavit of Attorney Fees For Douglas D. Gerrard, Esq., on Claimant's behalf requests fees in the amount of $137,610.00. Although Mr. Gerrard appeared to serve as lead counsel during the Arbitration Hearing, his fees, though billed at a higher rate than Mr. Shapiro and Ms. Cannon, account for just over thirty percent of the total fees requested on behalf of Claimant. The hourly rates for all of the Claimant's attorneys are reasonable and customary.

Given all of the foregoing, and in consideration of the Brunzell factors set forth above, and having considered the arguments of counsel, the briefs submitted by the parties and any issues of potential duplication of efforts among counsel, it is the determination of the Arbitrator that Claimant shall be awarded a reasonable attorney fee as the prevailing party in the amount of $300,000.00.

B. Costs

Claimant has submitted an Amended Verified Memorandum of Costs and Disbursements, verified by counsel, seeking reimbursement of costs in the total amount of $155,644.84. The

attached verification shows that the costs have been necessarily incurred. See, Cadle Co. v. Woods & Erickson, LLP, 131 Nev. 114, 120, 345 P.3d 1049 (2015).

The largest component of Claimant's costs are the fees for expert witnesses involved in testifying and preparing reports in preparation for the Arbitration Hearing. Respondent has cited to NRS 18.005(5), which allows for a maximum of $1,500.00 for recoverable expert witness costs, unless it is determined that a larger fee is necessary. First, it must be noted that costs are recoverable under the OA provision, not solely pursuant to NRS 18.005. Section 14.1 of the OA does not place a limit on recoverable expert fees. Second, Respondent does not dispute that a Claimant's expert Wilcox (through his firm, Eide Bailly) was entitled to a fee in excess of the limit set forth in 18.005 (see, Respondent / Counterclaimant CLA Properties, LLC's Opposition to Claimant Bidsal's Application for Attorneys' Fees and Costs, p. 10). Finally, after reviewing the billing statements, it is the determination of the Arbitrator that a fee in excess of $1,500.00 is warranted and recoverable.

Based on all of the information provided, the Arbitrator hereby determines that Respondent is entitled to recover costs in the amount of $155,644.84, as follows:

• Runner / Process Service Fees	$100.65
• Copy costs	$1,342.00
• Research / Lexis Nexis	$181.15
• AT&T Teleconference Line Charges	$46.20
• Deposition / Transcript Fees	$17,885.25
• JAMS Fees	$41,208.29
• Expert Witness Fees	$94,881.30
	$155,644.84

VI. Conclusion

Based upon all of the foregoing, the pleadings and papers on file herein, the evidence presented at the Hearing, the applicable law and all arguments of counsel, the Arbitrator hereby:

- FINDS IN FAVOR OF RESPONDENT on the issue of Respondent's alleged failure to tender;
- FINDS IN FAVOR OF CLAIMANT on the interpretation of the Preferred Allocation as contained in Exhibit B of the Operating Agreement, as set forth more fully herein;
- FINDS IN FAVOR OF CLAIMANT on the interpretation of the formula in Section 4.2 of the Operating Agreement, such that the applicable purchase price for Claimant's interest in GVC is $1,889,010.50;
- FINDS IN FAVOR OF CLAIMANT on the effective date of the transaction, such that the effective date is NOT deemed to be September of 2017 but shall occur pursuant to Judge Haberfeld's prior Award after the conclusion of the appellate process;
- FINDS IN FAVOR OF CLAIMANT as to paragraphs B, C, D, F, and H as contained within the Counterclaim set forth in Respondent's Fourth Amended Answer and Counterclaim to Bidsal's First Amended Demand, filed on or about February 19, 2021;
- Awards Attorneys' Fees to Claimant pursuant to Section 14.1 of the GVC Operating Agreement and Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969), in the amount of $300,000.00;
- Awards Costs to Claimant pursuant to Section 14.1 of the GVC Operating Agreement in the amount of $155,644.84.

Dated: March 12, 2022

Hon. David T. Wall (Ret.)
Arbitrator

EXHIBIT 122

OPERATING AGREEMENT

Of

Green Valley Commerce, LLC
A Nevada limited liability company

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

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

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

Article I.
DEFINITIONS

Section 01 Defined Terms

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

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

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

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

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

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

BC SB

Member shall mean a person who has a membership interest in the Limited Liability Company.

Membership Interest shall mean, with respect to a Member the percentage of ownership interest in the Company of such Member (may also be referred to as **Interest**). Each Member's percentage of Membership Interest in the Company shall be as set forth in Exhibit B.

Person means any natural person, sole proprietorship, corporation, general partnership, limited partnership, Limited Liability Company, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

State of Formation shall mean the State of Nevada.

Article II.
OFFICES AND RECORDS

Section 01 Registered Office and Registered Agent.

The Limited Liability Company shall have and maintain a registered office in the State of Formation and a resident agent for service of process, who may be a natural person of said state whose business office is identical with the registered office, or a domestic corporation, or a corporation authorized to transact business within said State which has a business office identical with the registered office, or itself which has a business office identical with the registered office and is permitted by said state to act as a registered agent/office within said state.

The resident agent shall be appointed by the Member Manager.

The location of the registered office shall be determined by the Management.

The current name of the resident agent and location of the registered office shall be kept on file in the appropriate office within the State of Formation pursuant to applicable provisions of law.

Section 02 Limited Liability Company Offices.

The Limited Liability Company may have such offices, anywhere within and without the State of Formation, the Management from time to time may appoint, or the business of the Limited Liability Company may require. The "principal place of business" or "principal business" or "executive" office or offices of the Limited Liability Company may be fixed and so designated from time to time by the Management.

Section 03 Records.

$B G$

The Limited Liability Company shall continuously maintain at its registered office, or at such other place as may by authorized pursuant to applicable provisions of law of the State of Formation the following records:

(a) A current list of the full name and last known business address of each Member and Managers separately identifying the Members in alphabetical order;

(b) A copy of the filed Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any document has been executed;

(c) Copies of the Limited Liability Company's federal income tax returns and reports, if any, for the three (3) most recent years;

(d) Copies of any then effective written operating agreement and of any financial statements of the Limited Liability Company for the three (3) most recent years;

(e) Unless contained in the Articles of Organization, a writing setting out:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute;

(ii) The items as which or events on the happening of which any additional contributions agreed to be made by each Member are to be made;

(iii) Any right of a Member to receive, or of a Manager to make, distributions to a Member which include a return of all or any part of the Member's contribution; and

(iv) Any events upon the happening of which the Limited Liability Company is to be dissolved and its affairs wound up.

(f) The Limited Liability Company shall also keep from time to time such other or additional records, statements, lists, and information as may be required by law.

(g) If any of the above said records under Section 3 are not kept within the State of Formation, they shall be at all times in such condition as to permit them to be delivered to any authorized person within three (3) days.

Section 04 Inspection of Records.

Records kept pursuant to this Article are subject to inspection and copying at the request, and at the expense, of any Member, in person or by attorney or other agent. Each Member shall have the right during the usual hours of business to inspect for any proper purpose. A proper purpose shall mean a purpose reasonably related to such person's interest as a Member. In every

instance where an attorney or other agent shall be the person who seeks the right of inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the Member.

Article III.
MEMBERS' MEETINGS AND DEADLOCK

Section 01 Place of Meetings.

All meetings of the Members shall be held at the principal business office of the Limited Liability Company the State of Formation except such meetings as shall be held elsewhere by the express determination of the Management; in which case, such meetings may be held, upon notice thereof as hereinafter provided, at such other place or places, within or without the State of Formation, as said Management shall have determined, and shall be stated in such notice. Unless specifically prohibited by law, any meeting may be held at any place and time, and for any purpose; if consented to in writing by all of the Members entitled to vote thereat.

Section 02 Annual Meetings.

An Annual Meeting of Members shall be held on the first business day of July of each year, if not a legal holiday, and if a legal holiday, then the Annual Meeting of Members shall be held at the same time and place on the next day is a full Business Day.

Section 03 Special Meetings.

Special meetings of the Members may be held for any purpose or purposes. They may be called by the Managers or by Members holding not less than fifty-one percent of the voting power of the Limited Liability Company or such other maximum number as may be, required by the applicable law of the State of Formation. Written notice shall be given to all Members.

Section 04 Action in Lieu of Meeting.

Any action required to be taken at any Annual or Special Meeting of the Members or any other action which may be taken at any Annual or Special meeting of the Members may be taken without a meeting if consents in writing setting forth the action so taken shall be signed by the requisite votes of the Members entitled to vote with respect to the subject matter thereof.

Section 05 Notice.

Written notice of each meeting of the Members, whether Annual or Special, stating the place, day and hour of the meeting, and, in case of a Special meeting, the purpose or purposes thereof, shall be given or given to each Member entitled to vote thereat, not less than ten (10) nor more than sixty (60) days prior to the meeting unless, as to a particular matter, other or further notice is required by law, in which case such other or further notice shall be given.

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

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

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

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

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

Section 06 Waiver of Notice.

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

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

Section 07 Presiding Officials.

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

BC PP

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

Section 08 Business Which May Be Transacted at Annual Meetings.

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

Section 09 Business Which May Be Transacted at Special Meetings.

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

Section 10 Quorum.

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

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

Section 11 Proxies.

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

Section 12 Voting.

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

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

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

BG+B

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

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

(A) Alter the Preferred Allocations provided for in ***Exhibit "B"***;

(B) Agree to continue the business of the Company after a Dissolution Event;

(C) Approve any loan to any Manager or any guarantee of a Manager's obligations; and

(D) Authorize or approve a fundamental change in the business of the Company.

(E) Approve a sale of substantially all of the assets of the Company.

(F) Approve a change in the number of Managers or replace a Manager or engage a new Manager.

Section 13 Meeting by Telephonic Conference or Similar Communications Equipment.

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

Section 14. Deadlock.

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

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

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

Article IV.
MANAGEMENT

Section 01 Management.

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

Section 02 Rights, Powers and Obligations of Management.

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

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

BG SB

(a) To deal in leasing, development and contracting of services for improvement of the properties owned subject to both Managers executing written authorization of each expense or payment exceeding $ 20,000;

(b) To prosecute, defend and settle lawsuits and claims and to handle matters with governmental agencies;

(c) To open, maintain and close bank accounts and banking services for the Limited Liability Company.

(d) To incur and pay all legal, accounting, independent financial consulting, litigation and other fees and expenses as the Management may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred.

(e) To execute and deliver any contracts, agreements, instruments or documents necessary, advisable or appropriate to evidence any of the transactions specified above or contemplated hereby and on behalf of the Limited Liability Company to exercise Limited Liability Company rights and perform Limited Liability Company obligations under any such agreements, contracts, instruments or documents;

(f) To exercise for and on behalf of the Limited Liability Company all the General Powers granted by law to the Limited Liability Company;

(g) To take such other action as the Management deems necessary and appropriate to carry out the purposes of the Limited Liability Company or this Agreement; and

(h) Manager shall not pledge, mortgage, sell or transfer any assets of the Limited Liability Company without the affirmative vote of at least ninety percent in Interest of the Members.

Section 03 Removal.

Subject to Article IX hereof: The Managers may be removed or discharged by the Members whenever in their judgment the best interests of the Limited Liability Company would be served thereby upon the affirmative vote of ninety percent in Interest of the Members.

Article V.
MEMBERSHIP INTEREST

Section 01 Contribution to Capital.

BG SD

The Member contributions to the capital of the Limited Liability Company wholly or partly, by cash, by personal property, or by real property, or servic unanimous consent of the Members, other forms of contributions to capital of a l company authorized by law may he authorized or approved. Upon receipt of the to contribution to capital, the contribution shall be declared and taken to be full paid further call, nor shall the holder thereof be liable for any further payments on account of that contribution. Members may be subject to additional contributions to capital as determined by the unanimous approval of Members.

Section 02 Transfer or Assignment of Membership Interest.

A Member's interest in the Limited Liability Company is personal property. Except as otherwise provided in this Agreement, a Member's interest may be transferred or assigned. If the other (non-transferring) Members of the Limited Liability Company other than the Member proposing to dispose of his/her interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the Member's interest has no right to participate in the management of the business and affairs of the Limited Liability Company or to become a member. The transferee is only entitled to receive the share of profits or other compensation by way of income, and the return of contributions, to which that Member would otherwise be entitled.

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

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

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

Section 4. Purchase or Sell Right among Members.

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

Section 4.1 Definitions

Offering Member means the member who offers to purchase the Membership Interest(s) of the Remaining Member(s). "Remaining Members" means the Members who received an offer (from Offering Member) to sell their shares.
"COP" means "cost of purchase" as it specified in the escrow closing statement at the time of purchase of each property owned by the Company.
"Seller" means the Member that accepts the offer to sell his or its Membership Interest.
"FMV" means "fair market value" obtained as specified in section 4.2

Section 4.2 Purchase or Sell Procedure.

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

BG TD

Member thinks is the fair market value. The terms to be all cash and close escrow within 30 days of the acceptance.

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

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

(FMV – COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.

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

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

(FMV – COP) x0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities.

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

Section 4.3 Failure To Respond Constitutes Acceptance.

Failure by all or any of the Remaining Members to respond to the Offering Member's notice within the thirty (30 day) period shall be deemed to constitute an acceptance of the Offering Member.

Section 5. Return of Contributions to Capital.

Return to a Member of his/her contribution to capital shall be as determined and permitted by law and this Agreement.

Section 6. Addition of New Members.

A new Member may be admitted into the Company only upon consent of at least ninety percent in Interest of the Members. The amount of Capital Contribution which must be made by a new Member shall be determined by the vote of all existing Members.

BG JB

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

DISTRIBUTION OF PROFITS

Section 03 Qualifications and Conditions.

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

Section 04 Record Date.

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

Section 05 Participation in Distribution of Profit.

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

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

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

Section 07 Date of Payment of Distribution of Profit.

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

Article VI.
ISSUANCE OF MEMBERSHIP INTEREST CERTIFICATES

Section 01 Issuance of Certificate of Interest.

BG

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

Section 02 Transfer of Certificate of Interest.

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

Section 03 Lost, Stolen or Destroyed Certificates.

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

(a) makes proof by affidavit, in form and substance satisfactory to the Management, that a previously issued Certificate has been lost, destroyed or stolen;

(b) requests the issuance of a new Certificate before the Company has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(c) Satisfies any other reasonable requirements imposed by the Management.

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

Article VII.
AMENDMENTS

Section 01 Amendment of Articles of Organization.

BG
10

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

Section 02 Amendment, Etc. of Operating Agreement.

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

Article VIII.
COVENANTS WITH RESPECT TO, INDEBTEDNESS, OPERATIONS, AND FUNDAMENTAL CHANGES

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

Section 01 Title to Company Property.

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

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

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

BG

Article X.
MISCELLANEOUS

a. Fiscal Year.

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

b. Financial Statements; Statements of Account.

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

c. Events Requiring Dissolution.

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

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

B.G.

JB

d. Choice of Law.

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

e. Severability.

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

f. Successors and Assigns.

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

g. Non-waiver.

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

h. Captions.

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

i. Counterparts.

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

j. Definition of Words.

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

k. Membership.

BG

A corporation, partnership, limited liability company, limited liability partnership or individual may be a Member of this Limited Liability Company.

l. Tax Provisions.

The provisions of Exhibit A, attached hereto are incorporated by reference as if fully rewritten herein.

ARTICLE XI
INDEMNIFICATION AND INSURANCE

Section 1. Indemnification: Proceeding Other than by Company. The Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Company, by reason of the fact that he or she is or was a Manager, Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, shareholder, director, officer, partner, trustee, employee or agent of any other Person, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Indemnification: Proceeding by Company. The Company may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that he or she is or was a Manager, Member, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, member, shareholder, director, officer, partner, trustee, employee or agent of any other Person, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company. Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals there from, to be liable to the Company or for amounts paid in settlement to the Company, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

BG

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

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

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

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

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

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

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

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

BG BB

ARTICLE XII
INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION

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

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

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

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

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

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

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

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

BG

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

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

ARTICLE XIII

Preparation of Agreement.

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

(A) The Members have been advised by the Law Firm that a conflict of interest would exist among the Members and the Company as the Law Firm is representing the Company and not any individual members, and

(B) The Members have been advised by the Law Firm to seek the advice of independent counsel; and

(C) The Members have been represented by independent counsel or have had the opportunity to seek such representation; and

(D) The Law Firm has not given any advice or made any representations to the Members with respect to any consequences of this Agreement; and

(E) The Members have been advised that the terms and provisions of this Agreement may have tax consequences and the Members have been advised by the Law Firm to seek independent counsel with respect thereto; and

(F) The Members have been represented by independent counsel or have had the opportunity to seek such representation with respect to the tax and other consequences of this Agreement.

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

B C
JO

Member:

Shawn Bidsal, Member

CLA Properties, LLC

by _____

Benjamin Golshani, Manager

Manager/Management:

Shawn Bidsal, Manager

Benjamin Golshami, Manager

TAX PROVISIONS

EXHIBIT A

1.1 Capital Accounts.

4.1.1 A single Capital Account shall be maintained for each Member (regardless of the class of Interests owned by such Member and regardless of the time or manner in which such Interests were acquired) in accordance with the capital accounting rules of Section 704(b) of the Code, and the regulations there under (including without limitation Section 1.704-1(b)(2)(iv) of the Income Tax Regulations). In general, under such rules, a Member's Capital Account shall be:

4.1.1.1 increased by (i) the amount of money contributed by the Member to the Company (including the amount of any Company liabilities that are assumed by such Member other than in connection with distribution of Company property), (ii) the fair market value of property contributed by the Member to the Company (net of liabilities secured by such contributed property that under Section 752 of the Code the Company is considered to assume or take subject to), and (iii) allocations to the Member of Company income and gain (or item thereof), including income and gain exempt from tax; and

4.1.1.2 decreased by (i) the amount of money distributed to the Member by the Company (including the amount of such Member's individual liabilities that are assumed by the Company other than in connection with contribution of property to the Company), (ii) the fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that under Section 752 of the Code such Member is considered to assume or take subject to), (iii) allocations to the Member of expenditures of the Company not deductible in computing its taxable income and not properly chargeable to capital account, and (iv) allocations to the Member of Company loss and deduction (or item thereof).

4.1.2 Where Section 704(c) of the Code applies to Company property or where Company property is revalued pursuant to paragraph (b)(2)(iv)(t) of Section 1.704-1 of the Income Tax Regulations, each Member's Capital Account shall be adjusted in accordance with paragraph (b)(2)(iv)(g) of Section 1.704-1 of the Income Tax Regulations as to allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes with respect to such property.

4.1.3 When Company property is distributed in kind (whether in connection with liquidation and dissolution or otherwise), the Capital Accounts of the Members shall first be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such property (that has not been

reflected in the Capital Account previously) would be allocated among the Members if there were a taxable disposition of such property for the fair market value of such property (taking into account Section 7701{g) of the Code) on the date of distribution.

4.1.4 The Members shall direct the Company's accountants to make all necessary adjustments in each Member's Capital Account as required by the capital accounting rules of Section 704(b) of the Code and the regulations there under.

5

ALLOCATION OF PROFITS AND LOSSES; TAX AND ACCOUNTING MATTERS

5.1 **Allocations.** Each Member's distributive share of income, gain, loss, deduction or credit (or items thereof) of the Company as shown on the annual federal income tax return prepared by the Company's accountants or as finally determined by the United States Internal Revenue Service or the courts, and as modified by the capital accounting rules of Section 704(b) of the Code and the Income Tax Regulations there under, as implemented by Section 8.5 hereof, as applicable, shall be determined as follows:

5.1.1 Allocations. Except as otherwise provided in this Section 1.1:

5.1.1.1 items of income, gain, loss, deduction or credit (or items thereof) shall be allocated among the members in proportion to their Percentage Interests as set forth in ***Exhibit "B"***, subject to the Preferred Allocation schedule contained in ***Exhibit "B"***, except that items of loss or deduction allocated to any Member pursuant to this Section 2.1 with respect to any taxable year shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have a deficit balance in his or its Capital Account at the end of such year, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of Section 1.704-1 of the Income Tax Regulations. Any such items of loss or deduction in excess of the limitation set forth in the preceding sentence shall be allocated as follows and in the following order of priority:

5.1.1.1.1 first, to those Members who would not be subject to such limitation, in proportion to their Percentage Interests, subject to the Preferred Allocation schedule contained in ***Exhibit "B"***; and

5.1.1.1.2 Second, any remaining amount to the Members in the manner required by the Code and Income Tax Regulations.

Subject to the provisions of subsections 2.1.2 – 2.1.11, inclusive, of this Agreement, the items specified in this Section 1.1 shall be allocated to the

Members as necessary to eliminate any deficit Capital Account balances and thereafter to bring the relationship among the Members' positive Capital Account balances in accord with their pro rata interests.

5.1.2 Allocations With Respect to Property Solely for tax purposes, in determining each Member's allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to revalued property where the Company's property is revalued pursuant to paragraph (b)(2)(iv)(f) of Section 1.704-1 of the Income Tax Regulations, shall be allocated to the Members in the manner (as to revaluations, in the same manner as) provided in Section 704(c) of the Code. The allocation shall take into account, to the full extent required or permitted by the Code, the difference between the adjusted basis of the property to the Member contributing it (or, with respect to property which has been revalued, the adjusted basis of the property to the Company) and the fair market value of the property determined by the Members at the time of its contribution or revaluation, as the case may be.

5.1.3 Minimum Gain Chargeback. Notwithstanding anything to the contrary in this Section 2.1, if there is a net decrease in Company Minimum Gain or Company Nonrecourse Debt Minimum Gain (as such terms are defined in Sections 1.704-2(b) and 1.704-2(i)(2) of the Income Tax Regulations, but substituting the term "Company" for the term "Partnership" as the context requires) during a Company taxable year, then each Member shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) in the manner provided in Section 1.704-2 of the Income Tax Regulations. This provision is intended to be a "minimum gain chargeback" within the meaning of Sections 1.704-2(f) and 1.704-2(i)(4) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

5.1.4 Qualified Income Offset. Subject to the provisions of subsection 2.1.3, but otherwise notwithstanding anything to the contrary in this Section 2.1, if any Member's Capital Account has a deficit balance in excess of such Member's obligation to restore his or its Capital Account balance, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of Section 1.704-1 of the Income Tax Regulations, then sufficient amounts of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be allocated to such Member in an amount and manner sufficient to eliminate such deficit as quickly as possible. This provision is intended to be a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.

5.1.5 Depreciation Recapture. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, gain recognized (or deemed recognized under the provisions hereof) upon the sale

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

5.1.6 Loans If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.

5.1.7 Tax Credits Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members under subsection 2.1.1 hereof, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.

5.1.8 Change of Pro Rata Interests. Except as provided in subsections 2.1.6 and 2.1.7 hereof or as otherwise required by law, if the proportionate interests of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in section 2.1.1 during each such portion of the taxable year in question.

5.1.9 Effect of Special Allocations on Subsequent Allocations. Any special allocation of income or gain pursuant to subsections 2.1.3 or 2.1.4 hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.1 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 2.1 if such special allocations of income or gain under subsection 2.1.3 or 2.1.4 hereof had not occurred.

5.1.10 Nonrecourse and Recourse Debt. Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.7042(b)(4) of the

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

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

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

5.3 **Tax Status and Returns**.

5.3.1 Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.

5.3.2 The Manager(s) shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within one-hundred twenty (120) days after the end of each calendar year, the Manager(s) shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.

5.3.3 Unless otherwise provided by the Code or the Income Tax Regulations there under, the current Manager(s), or if no Manager(s) shall have been elected, the Member holding the largest Percentage Interest, or if the Percentage Interests be equal, any Member shall be deemed to be the "Tax Matters

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

BG FB

EXHIBIT B

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

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

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

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

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

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

Losses shall be allocated according to Capital Accounts.

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

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

BC

SB

Attachment 2

9/1/2022 Bidsal's Opposition to CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment and Bidsal's Countermotion to Confirm Arbitration Award (Exhibits omitted)

Attachment 2

9/1/2022 Bidsal's Opposition to CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment and Bidsal's Countermotion to Confirm Arbitration Award (Exhibits omitted)

OPPS
James E. Shapiro, Esq.
Nevada Bar No. 7907
jshapiro@smithshapiro.com
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
acannon@smithshapiro.com
SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
702-318-5033
Attorneys for SHAWN BIDSAL

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No. A-22-854413-B Dept. No. 31 Date: September 22, 2022 Time: 8:30am

BIDSAL'S OPPOSITION TO CLA PROPERTIES, LLC'S MOTION TO VACATE ARBITRATION AWARD (NRS 38.241) AND FOR ENTRY OF JUDGMENT

AND

BIDSALS' COUNTERMOTION TO CONFIRM ARBITRATION AWARD

COMES NOW Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys SMITH & SHAPIRO, PLLC, and hereby files his Opposition (the "***Opposition***") to CLA Properties, LLC's ("***CLA***") Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (the "***Motion to Vacate***") and Countermotion to Confirm Arbitration Award (the "***Countermotion***").

The Opposition and Countermotion are made and based upon the papers and pleadings on file herein, the Points and Authorities which follow, and such oral argument as entertained by the Court at the hearing on this matter.

\ \ \

\ \ \

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Dated this 1st day of September, 2022

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Nevada Bar No. 7907
Aimee M. Cannon, Esq.
Nevada Bar No. 11780
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Shawn Bidsal

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PREFATORY STATEMENT

In a thinly veiled and clear effort to relitigate the underlying case (which is not permitted under Nevada law), CLA argues that the Second Arbitration Final Award should be vacated. CLA completely fails to explain how its position can be reconciled with its previous arguments to this Court and misconstrues both this Court's prior rulings and a prior arbitration decision to manufacture an argument that is inconsistent with CLA's own actions. CLA previously agreed that the Second Arbitration Final Award would be final and binding, and CLA has not and cannot meet the very high burden required to vacate the Second Arbitration Final Award. Not only should CLA's Bidsal is entitled to an order confirming the Second Arbitration Final Award.

II.

STATEMENT FACTS

A. BACKGROUND.

1. Overview Of The Dispute.

This dispute, which has been ongoing since 2017, is, at its core, a familial matter, wherein one family member has been taking advantage of, and continues to attempt to take advantage of, another family member. Benjamin Golshani ("***Golshani***") is the sole manager and member for CLA. *See* Declaration of Shawn Bidsal, attached hereto as **Exhibit "1"** and incorporated herein by this reference. *See also* a true and correct copy of Golshani's January 31,

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

2020 Affidavit attached hereto as **Exhibit "2"**. Golshani is the first cousin of Bidsal. *See* **Exhibit "1"**. Golshani's professional experience is primarily in the textile industry. *Id*. As Bidsal's family member, Golshani had witnessed firsthand that Bidsal was a successful businessman in the area of commercial real estate. *Id.* Seeking to benefit and profit from his cousin's knowledge and experience, Golshani approached Bidsal in or around 2010 seeking guidance on real estate business opportunities. *Id.*

At that time, Bidsal had approximately 15 years of experience in the real estate investment and management business, and had an infrastructure in place for purchasing, selling, and managing commercial real estate. *See* **Exhibit "1"**. Bidsal, agreed to partner with Golshani, a real estate novice, to invest in real estate properties as well as real property secured promissory notes (the "***Joint Venture***"). *Id. See also* Second Arbitration Final Award attached at **Exhibit "20"** at p. 2.

Bidsal and Golshani were to make contributions of equal value to the Joint Venture, with Golshani putting up more money than Bidsal, but with Bidsal putting in significantly more sweat equity in the form of finding deals, acquiring opportunities for the Joint Venture, converting mortgaged-backed notes into fee simple title to the underlying properties (if needed), subdividing the properties to maximize value and managing the properties, given those were and are his areas of expertise. *See* **Exhibit "1"**; **Exhibit "20"** at p. 2. Thus, the parties agreed that their respective contributions to the Joint Venture were equal in value and profits from the Joint Venture were to be divided equally, although Golshani was to provide seventy percent (70%) and Bidsal was to provide thirty percent (30%), of the money for the Joint Venture. See **Exhibit "1"**; **Exhibit "20"** at p. 2.

The parties formed a limited liability company ("***Company***") for this Joint Venture, which owned and operated commercial real estate. Bidsal ran the Company and managed its real estate holdings for over 10-years and divided all profits of the Company equally between the members in a completely transparent manner, as evidenced by the ongoing financial, accounting and tax records he provided to Golshani, all of which clearly reflected and disclosed all of Bidsal's actions.

Later, a dispute arose between Golshani and Bidsal over the interpretation and enforceability of a "buy-sell" provision through which CLA attempted to force Bidsal to sell his interest in the Company to CLA, at a fraction of its value. This resulted in a binding arbitration, (the "***Original***

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Arbitration" described below), through which it was determined CLA had the right to purchase Bidsal's interest in the Company. However, at the conclusion of this Original Arbitration, (the award from which was confirmed by this Court), Golshani made no attempt to exercise his purchase right by actually paying Bidsal for his interest in the Company. Until Golshani performed by paying the purchase price, Bidsal had no obligation to transfer his interest in the Company, as payment is a prerequisite to the transfer obligation (as it is in any purchase transaction).

This ultimately led to the parties' participation in a second, binding arbitration ("***Second Arbitration***") before David Wall, a former and very well-respected judge of the Eighth Judicial District Court of Nevada. The purpose of the Second Arbitration was to determine: (i) the purchase price due by CLA to purchase Bidsal's interest in the Company; (ii) whether CLA was entitled to assert any offsets against that purchase price; (iii) when the effective date of the purchase would be (because CLA had never exercised its right to complete the purchase by paying for Bidsal's interest); (iv) what amount Bidsal was entitled to be paid for managing the Company and its property up to the date CLA actually exercised his purchase right by paying Bidsal for his interest in the Company; and (v) if the effective date for the purchase of Bidsal's interest was at any point before actual payment by CLA was made, what amount of interest was due to Bidsal (i.e. what amount of interest had accrued on the purchase price between the date it should have been paid to Bidsal and the date it was actually paid). All of these issues were decided by Judge Wall in the Second Arbitration after a lengthy evidentiary hearing lasting more than two weeks. CLA lost the Second Arbitration, and its arguments were found by Judge Wall to be overreaching, unreasonable and without credibility.

Having lost the Second Arbitration, CLA now asks this Court to overturn the binding decision of Judge Wall. CLA is making the same arguments to this Court which were rejected by Judge Wall in the Second Arbitration. With no explanation of how this Court would have authority to reach a different decision from Judge Wall (given the language of the Company Operating Agreement that the arbitrator has the exclusive right to interpret any provision of the Operating Agreement and decide the performance obligations thereunder), CLA asks this Court to endorse a distribution of profits that Judge Wall found to be both unreasonable and improper, and asks this Court to set aside Judge Wall's well-reasoned and well-supported factual findings.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CLA's efforts to take advantage of Bidsal have been plainly on display since it filed its Answer and Counterclaim to Bidsal's Second Arbitration Demand in the Second Arbitration. *See* CLA's Answer and Counterclaim to Bidsal's Second Arbitration Demand attached as **Exhibit "19".** Although Golshani was given the right to purchase Bidsal's interest in the Company through the Original Arbitration, Golshani failed to exercise this right by making payment to Bidsal. Until Bidsal was paid, he had no obligation to transfer his membership interest, he remained a member of the Company, and he continued as the manager of the Company. While a member of the Company, Bidsal is entitled to his share of all profits of the Company. As the property manager, Bidsal would be entitled to compensation if he was no longer an owner (he had never charged for his management services while an owner as that was part of his contribution to the Company).

In its Answer and Counterclaim, CLA asserted that Bidsal is not entitled to payment for management services or owner distributions, during the five-year period from 2017 to 2022 (based upon an argument CLA owned the Company from 2017 forward despite having never paid Bidsal for his interest in the Company). *See* **Exhibit "19"**. Judge Wall rejected this patently ridiculous argument. If Golshani had paid Bidsal the amount Golshani claimed to be the appropriate purchase price, Golshani could argue that Bidsal was no longer an owner from the date of the payment and thus entitled to no further distributions from the Company, **but this never happened**. As Judge Wall determined, Bidsal is an owner until he is paid for his interest and is entitled to his 50% share of distributions from the Company until Golshani properly exercises his purchase right by **paying the purchase price.** Likewise, Judge Wall determined that Bidsal was not entitled to interest on the purchase price that should have been paid by Golshani five years ago, because he remained a member until Golshani paid the purchase price and was thus only entitled to his share of distributions from the Company. *See* **Exhibit "20"** at p. 22-24.

This Motion is nothing more than Golshani attempting to reargue to this Court what was explicitly rejected by Judge Wall.

2. <u>The Formation of Green Valley Commerce, LLC.</u>

The facts related to the formation of the Company, its purpose, its acquisition and partial sale of real property, and the purchase price CLA would be required to pay to acquire

Bidsal's interest therein, was determined in the Second Arbitration Final Award. However, a recitation of the basic facts is necessary to arrive at an understanding of why the Second Arbitration Final Award is neither arbitrary nor capricious.

After agreeing to the Joint Venture, Bidsal located and successfully bid to purchase a promissory note secured by commercial real property located at 3 Sunset Way, Henderson, Nevada 89014 (the "***Green Valley Commerce Center***"). *See* **Exhibit "1"**; **Exhibit "20"** at p. 2. The Green Valley Commerce Center was security for a loan in default, which presented an opportunity to obtain the loan and potentially the underlying collateral at an exceptional value due to the risk associated with a note that is subject to potential defenses or a bankruptcy before it is foreclosed. *See* **Exhibit "1"**. This type of deal, while possessing great upside, requires a great deal of work and experience to convert the note to fee simple title—experience that Bidsal possessed. *Id.*

On May 26, 2011, Bidsal formed Green Valley Commerce, LLC ("***GVC***"). *Id*. *See* Articles of Organization for GVC, attached as **Exhibit "3"**. On June 3, 2011, GVC purchased the note secured by a deed of trust against the Green Valley Commerce Center for $4,048,959.00 (the "***Purchase Price***"). No real property was purchased during this transaction. *See* Final Settlement Statement attached as **Exhibit "4"**. Bidsal was ultimately successful, in converting the note into a deed-in-lieu of foreclosure for the underlying property. *See* **Exhibits "1","4"** and **"20"** at p. 3.

Solely as a result of Bidsal's efforts, on September 22, 2011, GVC obtained title to the Green Valley Commerce Center. *See* Grant, Bargain, Sale Deed attached as **Exhibit "5"** and **Exhibit "20"** at p. 3. As part of the deal, Bidsal was also able to obtain $295,258.93 of net rents that the previous owner had collected from tenants. *See* Estimated Settlement Statement dated September 22, 2011 attached as **Exhibit "6"** and **Exhibit "20"** at p. 3. This large windfall was an astonishing achievement by Bidsal for the benefit of the Company. *See* **Exhibit "1"**.

After the purchase of the Green Valley Commerce Center, Bidsal (without any assistance from Golshani, but with Golshani's approval), subdivided the property into nine (9) individual parcels, designated by alphabetical designators. *See* Exhibit "B" to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, attached as **Exhibit "7"**, **Exhibit "1"** and **Exhibit "20"** at p. 3. The nine parcels included one parcel for all of Green Valley Commerce

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Center's common areas and parking lots (the "***Common Areas***"). *Id*. The other eight parcels corresponded with the eight buildings in the Green Valley Commerce Center and were designated Buildings "A" through "H" respectively. *Id*.

Once the subdivision was completed, a cost segregation study was performed which allocated a portion of the original purchase price for the secured promissory note among each of the nine parcels by placing a value (or cost basis) for each parcel. *See* **Exhibit "1"**; **Exhibit "20"** at p. 3. These cost basis allocations were thereafter utilized by the Company for tax purposes and for all other purposes. To manage the Common Areas used by each of the parcels, Bidsal created a declaration of covenant, conditions and restrictions and formed the Green Valley Owner's Association (the "***GVC HOA***"). *See Id.*, **Exhibit "7"**. The owners both agreed to subdivide the Green Valley Commerce Property and allocate a portion of the purchase price to each parcel, as it created tax advantages and increased the overall value of the parcels. *See* **Exhibit "20"** at p. 3. During the years that followed, three of the eight buildings were sold by the Company. *Id.*

3. Sale of Building C and Purchase of the AZ Greenway Property.

On September 10, 2012, the Company sold Building C for $1,025,000.00, with net proceeds of $898,629.23 ("***Building C Proceeds***"). *Id. See* Building C Final Settlement Statement attached as **Exhibit "8".** The sales price was 250% of what GVC originally paid for this parcel approximately one year earlier, based upon its allocated cost basis. *See* **Exhibits "1"** and **"8"**.

These proceeds were initially deposited with a 1031 Exchange Accommodator. *See* **Exhibit "1"; Exhibit "20"** at p. 3. Ultimately, all but $95,272.65 of the Building C Proceeds were used to purchase property in Arizona located at 3342 East Greenway Road, Phoenix, AZ (the "***AZ Greenway Property***"). *Id*. The remaining $95,272.65 was distributed to the members as a return of capital, with seventy percent (70%) being distributed to CLA and thirty percent (30%) being distributed to Bidsal, pursuant to the terms of the Green Valley Commerce, LLC Operating Agreement (the "***GVC OA***") (which Bidsal interpreted as requiring proceeds equal to the cost basis of each parcel to be distributed 70% to CLA and 30% to Bidsal, and the profit [amount exceeding the cost basis] to be distributed equally between Bidsal and CLA). *See* GVC OA attached as **Exhibit "9"**, **Exhibit "20"** at p. 9-18. The Schedule sent by Bidsal to Golshani, along with the

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

check, describing these distributions is attached as **Exhibit "10".** *See also* **Exhibit "1", Exhibit "20"** at p. 10-11.

4. Sale of Building E.

On November 14, 2014, the Company sold Building E, for $850,000.00, with net proceeds of $797,794.03. The Building E Final Settlement Statement is attached as **Exhibit "11".** *See also* **Exhibit "1", Exhibit "20"** at p. 4. The sales price was 200% of the cost basis allocated to this parcel. *See* **Exhibits "1"** and **"11"**. The proceeds from the sale of Building E were divided per the GVC OA, as interpreted by Bidsal, by distributing proceeds equal to the cost basis of Building E 70% to CLA and 30% to Bidsal, and by distributing the profit [amount exceeding the cost basis] equally between Bidsal and CLA. The Schedule sent by Bidsal to Golshani, along with the checks, describing these distributions is attached as **Exhibit "12".** *See also* **Exhibit "1", Exhibit "20"** at p. 10-11.

5. Sale of Building B.

On September 4, 2015, the Company sold Building B, for $617,760.00, with net proceeds of $584,019.39. The Building B Final Settlement Statement is attached as **Exhibit "13"; Exhibit "20"** at p. 4, 10-11**.** The proceeds from the sale of Building B were divided in accordance with GVC OA in the same manner as had been done with Building E. The sales proceeds equal to the cost basis of Building B was distributed 30% to Bidsal and 70% to CLA and the proceeds which exceeded the Company's cost basis in Building B were distributed equally between the members. *See* **Exhibit "1"**; **Exhibit "20"** at p. 10-11.

B. THE GVC OPERATING AGREEMENT DOES NOT CLEARLY DEFINE WHEN ANY FORCED SALE BECOMES EFFECTIVE ("EFFECTIVE DATE"), SO NEVADA LAW DETERMINES THE EFFECTIVE DATE.

Section 4 of the GVC OA governs and controls how and under what circumstances CLA can force Bidsal to sell his membership interest to CLA. See **Exhibit "9"** at § 4. Section 4 makes it clear that any forced sale is a **cash sale** which is expected to be closed within 30 days. *Id.* at p. 11 ("The terms to be all cash and close escrow within 30 days of the acceptance."). It has long been

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

the law that a **cash sale** requires payment as a condition of any obligation to transfer title or an interest in property.

> A cash sale is generally regarded as one in which neither title nor possession is to be delivered until payment in full has been made.

See Ellis v. Nelson, 68 Nev. 410, 416, 233 P.2d 1072, 1075 (1951); *Duprey v. Donahoe*, 52Wash.2d 129, 323 P.2d 903 (1958) ("[a] cash sale has been defined as "one conditioned on payment concurrent with delivery of the deed." *Hecketsweiler v. Parrett*, 185 Ore. 46, 200 P. (2d) 971 (1948). *See also, Loewi v. Long*, 76 Wash. 480, 486, 136 Pac. 673 (1913)"); Ballentine's Law Dictionary, "cash sale" (2010 Ed.) ("Upon such a sale the owner is not bound to deliver the goods until the price is paid."); Black's Law Dictionary, "cash sale" (11th Ed. 2009) ("A sale in which cash payment is concurrent with the receipt of the property sold").

Thus, the GVC OA clearly states that this is a cash sale, and in any cash sale the delivery of what is being purchased is not required until the purchase price is paid. *Ellis* at 416. This is precisely what was determined by Judge Wall in the Second Arbitration Final Award, which stated:

> D. Effective Date of Sale
>
> In addition to the purchase price under the formula in Section 4.2 of the OA, it is necessary to determine an effective date of the sale of Bidsal's interest in GVC. Respondent avers that the effective date of sale is September of 2017, the time when Respondent contends his counteroffer transaction should have been consummated. **This contention is without merit**.
>
> **The transaction has never been completed**. Judge Haberfeld, in his award in April of 2019, directed that the transaction take place forthwith. He did not find an effective date of the transaction to have occurred over a year earlier. The OA provides for a procedure for completing a sale of a membership interest, **which procedure has not yet been completed**. Claimant has continued to act as a member (and manager) of GVC since September of 2017, and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA. Bidsal has appropriately received distributions since 2017, and since he remains a member of GVC, he cannot be required to divest himself of those distributions. He has also been treated as a member for GVC for tax purposes since 2017 and paid taxes on the distributions that Respondent now seeks to claw back. Additionally, treating the sale as having an effective date of September of 2017 would require Respondent to compensate Bidsal for his services a property manager over the past four years.

See **Exhibit "20"** at p. 22-23.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CLA's arguments in this motion are patently ridiculous and run counter to established and controlling Nevada law. There can be no Effective Date until payment has been made by CLA. Neither Judge Haberfeld, nor this Court, established an "effective date" for the closing of this transaction, because it could not close until CLA made payment to Bidsal, which did not happen until March 24, 2022. *See* **Exhibit "24"**.

While Nevada law makes it clear the effective date can only be when payment is made by CLA, the GVC OA is both vague and ambiguous with respect to how any forced sale was to be completed. This ambiguity is demonstrated below (and is the reason that both parties included this issue as one to be decided in the Second Arbitration). CLA's Answer and Counterclaim to Bidsal's Second Arbitration Demand requested that Judge Wall decide "[w]hat the closing date should have been should be established [sic]…" *See* **Exhibit "19"** at 4:4-6. If the effective date of the forced sale had already been decided by Judge Haberfeld in the Original Arbitration (as CLA is now arguing to this Court), CLA would not have asked Judge Wall to determine when the sale became effective. Judge Wall did exactly as CLA requested and decided that the effective date of the transfer of Bidsal's interest would be the date when CLA actually made payment, which is consistent with the controlling Nevada law.

Despite the fact that CLA asked Judge Wall to determine what the closing date should be, after a decision had been issued with an answer that did not please CLA, it seeks to attack the decision by arguing that it had already been made prior to the Second Arbitration. However, CLA's own actions in requesting that the effective date of the sale be decided in the Second Arbitration, should act as an estoppel of the argument being made now that somehow this issue was already decided, or that the GVC OA requires a different result than that decided by Judge Wall. Although Nevada law controls the outcome of this argument (as described above), the GVC OA likewise does not support CLA's argument, as demonstrated by the following ambiguities in the GVC OA.

1. <u>Ambiguity Number One.</u>

The GVC OA, uses the term "Effective Date" only once, referring to the effective date of the operating agreement itself. *See* **Exhibit "9"** at BIDSAL000001. Although it seems utterly ridiculous, if CLA is concerned that "…the Arbitrator [Judge Wall] has in effect, under the

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

guise of construing the operating agreement, ignored a material term of the contract between the parties…," then why is CLA not asking this Court to use the term "Effective Date" as it is stated in the GVC OA, rather than trying to read into the Operating Agreement language that clearly is not there, in violation of Nevada law.

> In interpreting an agreement a court may not modify it or create a new or different one. A court is not at liberty to revise an agreement while professing to construe it. Reno Club, Inc. v. Young Investment Co., 64 Nev. 312, 323-324, 182 P.2d 1101, 173 A.L.R. 1145 (1947). On the other hand, a contract should be construed, if logically and legally permissible, so as to effectuate valid contractual relations, rather than in a manner which would render the agreement invalid, or render performance impossible. Reno Club, Inc. v. Young Investment Co., supra, 64 Nev. 325, 182 P.2d 1011. See also, 4 Williston, Contracts, §620 (3d Ed. 1961) wherein it stated: 'The Writing Will Be Interpreted If Possible So That It Shall Be Effective and Reasonable. An interpretation which makes the contract or agreement lawful will be preferred over one which would make it unlawful; an interpretation which renders the contract or agreement valid and its performance possible will be preferred to one which makes it void or its performance impossible or meaningless; an interpretation which makes the contract or agreement fair and reasonable will be preferred to one which leads to harsh or unreasonable results.' A court should ascertain the intention of the parties from the language employed as applied to the subject matter in view of the surrounding circumstances.

Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107, 111 (1967) (cited by Judge Wall in **Exhibit "20"** at p. 7). The term "Effective Date" used in the GVC OA refers to June 15, 2011. *See* Motion to Vacate at 15:2-6. *See also* **Exhibit "9"** at BIDSAL000001. Clearly the "Effective Date" referenced in the GVC OA was never intended to define the effective date for closing the forced sale at issue, the option for which was not even elected until six years later in 2017. The GVC OA must be interpreted in a manner that would not "render the agreement invalid, or performance impossible", (*Reno Club* at 323-324), which would be the case if the defined "Effective Date" in the GVC OA was applied to the forced sale provision.

2. <u>Ambiguity Number Two.</u>

The second ambiguity is created by the language of Section 4.2 of the GVC OA which describes the options available for a member to respond to an offer to purchase made by the other member (which is the provision relied upon by CLA to force Bidsal to sell his interest to CLA). This language states, in pertinent part, "[t]he Remaining Member(s) shall have 30 days

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

within which to respond in writing to the Offering Member by… [r]ejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula." *See* **Exhibit "9"** at BIDSAL000011.

CLA successfully argued in the Original Arbitration that it did not reject Bidsal's purchase offer, it did not make a counteroffer, and it did not accept the purchase offer (meaning what CLA did within the first 30-day window following receipt of Bidsal's offer to purchase CLA's interest, was never even contemplated by Section 4.2). *Id.* Regardless, the Original Arbitrator determined that when CLA responded to Bidsal's offer within this 30-day window, it triggered a forced sale (a term that was never contained in the GVC OA) (the "***Forced Sale***") whereby CLA could now compel Bidsal to sell his interest upon payment by CLA. *See* **Exhibit "9"**. *See also* Motion to Vacate at 5:8-10. However, the GVC OA provides no timeline or deadlines by which this Forced Sale must be completed. *See* **Exhibit "9"**. The only timeline provided by the GVC OA applies to when the originally offering member is to close a purchase transaction if the other member accepts the initial offer. This timeline is found in Section 4.2 of the GVC OA, which provides: "[a]ny Member…may give notice to the Remaining Member(s) that he or it is **ready, willing and able** to purchase the Remaining Members' Interests for **a price** the Offering Members thinks is the fair market value. **The terms to be all cash and close escrow within *30 days of the acceptance*.**" *See* **Exhibit "9"** at BIDSAL000010-11. (emphasis added). Clearly, CLA did not accept Bidsal's initial offer. Rather, CLA rejected this offer and elected to purchase Bidsal's interest on the same terms, creating a forced sale. As there was no "acceptance", it is impossible to calculate 30 days past an event that never took place.

On August 3, 2017, CLA informed Bidsal that it intended to force him to sell his interest in GVC (the "***Forced Sale Letter***"). The Forced Sale Letter is attached as **Exhibit "14".** However, CLA **never performed by making payment of the purchase price to acquire Bidsal's membership interest**. It cannot be disputed that Bidsal had no obligation to transfer his membership interest unless payment was received for his interest. *Ellis* at 416. Yet, this is precisely the argument being made by CLA to this Court in an effort to prove that Judge Wall's decision as to "effective date" exceeded his powers. Judge Wall recognized the absurdity of CLA's argument

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

and applied very straight-forward concepts of controlling Nevada law in rendering his decision. CLA was determined by Judge Haberfeld to have the right to purchase Bidsal's membership interest by a date certain, ***but until CLA performed its obligation by paying the purchase price there was no obligation of Bidsal to transfer his interest, and thus no completed and effective Forced Sale***.

CLA now argues that the formula listed at Section 4.2, to determine the purchase price of the Offering Member, contained only one ambiguous term, "FMV." *See* Motion to Vacate at 15:21-23. The GVC OA formula reads, "(FMV – COP) x 0.5 + capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." *See* **Exhibit "9"** at BIDSAL000022. CLA asserts that other than "FMV" "[a]ll of the other elements of the formula were objective and matters of accounting…" *See* Motion to Vacate at 15:21-23.

Assuming CLA is correct, it could have and should have calculated the purchase price and paid it to Bidsal to establish a date the transaction should have closed. However, CLA neither identified what it believed the purchase price to be, nor paid what it believed the purchase price to be. Instead, CLA's Forced Sale Letter replaced the buy/sell language from Section 4.2 changing it from:

"**The terms to be all cash and close escrow within *30 days of the acceptance*.**" to

"The purchase will be all cash, with escrow to close within *30 days from the date hereof*."

CLA attempted to unilaterally modify the language of the GVC OA, which ironically is the same thing they are incorrectly complaining Judge Wall did to warrant a vacation of his decision. Assuming for a moment that CLA's ludicrous argument is valid (which assumes CLA could either (i) unilaterally modify the operating agreement, or (ii) read into the contract language which is not there), the effective date for CLA's performance would be September 2, 2017. But the September 2, 2017 date is legally irrelevant **unless and until CLA performed by making payment of the purchase price because Bidsal had no obligation to transfer his interest until he was paid the purchase price by CLA**. *Ellis* at 416. Once again, payment by CLA controls the actual effective date. CLA cannot establish any effective date until it can show that it performed its purchase obligations.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

According to the Original Arbitration Award, CLA properly and timely elected to purchase Bidsal's membership interest in GVC. *See* **Exhibit "17"**. However, this simply meant CLA had the right to purchase Bidsal's interest by making payment of the purchase price. The Original Arbitration Award never determined that any sale had been completed, which would be legally impossible as CLA paid nothing for Bidsal's interest until March 24, 2022, when CLA made payment to Bidsal **based upon the purchase price determined by Judge Wall in the Second Arbitration**. *See* CLA's Cashier's Check attached as **Exhibit "24".**

CLA attempts to avoid Nevada law by claiming that it was ready and able to pay the purchase price when it sent an August 28, 2017 letter with what CLA claims was proof of funds to complete the purchase (**"*Solvency Letter*"**). The Solvency Letter attached as **Exhibit "15".** However, this was a cash sale, as specified in the GVC OA. Demonstrating the ability to make payment did not put any money in Bidsal's hands, and Bidsal was not required to convey his membership interest until he was actually paid. *Ellis* at 416.

3. <u>Ambiguity Number Three.</u>

It is true that on August 28, 2017, CLA sent Bidsal the Solvency Letter, which attached bank records allegedly for the purpose of establishing that CLA was able to purchase Bidsal's interest in GVC. *See* **Exhibit "15"**. However, the Solvency Letter was not even proof of an ability to perform, and it certainly did not relieve CLA of the obligation to perform. First, this letter did not identify a purchase price or any amount CLA claimed it was required to pay for Bidsal's interest. Second, this letter was not accompanied by any financial statements or check registers showing the liabilities of CLA that would have to be offset against the bank account balances to determine if CLA truly had an ability to perform. Finally, CLA **never made any payment** after sending this letter rendering it useless as support for CLA's argument. CLA did not open an escrow or deposit any funds to purchase Bidsal's membership interest at any time. The lack of a deadline in the GVC OA for CLA to perform by making payment meant CLA had not breached by failing to make payment and Bidsal had not breached by not transferring the interest, as he was not required to transfer his interest until he was paid.

\ \ \

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

This is precisely the situation described in *Maloff v. B-Neva, Inc.*, 85 Nev. 471, 456 P.2d 438 (Nev. 1969), which states, "[i]f ***neither party repudiates, or makes tender***, no breach has occurred. How long this situation might continue, and yet both parties remain conditionally bound has not been established by the law. It probably would be a rather long time, since the two parties are exactly on a par and neither is in default." 85 Nev. 471, 456 P.2d 438 (Nev. 1969) *citing* Vol. 1A Corbin on Contracts § 264 at 513--514; *see also Finnell v. Bromberg,* 79 Nev. 211, 381 P.2d 221 (1963). Here, CLA failed to pay the purchase price, which is a condition precedent to Bidsal's obligation to transfer his membership interest, forcing the parties to remain conditionally bound, but allowing for a rather long time to pass before the purchase of Bidsal's membership interest was actually closed.

If CLA is unhappy about this situation, it has only itself to blame. There was nothing stopping CLA from identifying a purchase price and paying the purchase price or opening an escrow and depositing the purchase price into the escrow account. CLA wants to blame its failures on Bidsal, as if Bidsal had any control over CLA making payment.

C. PROCEDURAL HISTORY.

1. Arbitration No. _1260004569 – the Original Arbitration.

After CLA's Solvency Letter, demanding that Bidsal sell his interest in GVC to CLA, CLA filed an Arbitration Demand on September 26, 2017, stating "[t]he relief sought is as follow [sic]: Respondent ***be ordered to transfer*** his interest in Green Valley Commerce, LLC ('Green Valley') to Claimant ***upon payment of the price*** determined in accordance with Section 4 of the Operating Agreement for Green Valley using five million dollars at the fair market value of Green Valley." See the arbitration demand in Arbitration 1260004569 (the "***Original Arbitration***") is attached as **Exhibit "16"** (emphasis added). Even CLA did not believe that Bidsal was required to transfer his interest until he received payment of the purchase price. Notably the Original Arbitration demand *did not request* a determination of the effective date of transfer of Bidsal's Membership Interest *nor request a determination of the purchase price to be paid,* therefore Judge Wall's decision in determining an effective date and a purchase price could not have contradicted any Judgment of this Court as is alleged by CLA. *See* **Exhibits "16"** and **"21"**.

On May 8-9, 2018, the Original Arbitration was heard. *See* **Exhibit "1"**. Approximately one year later, on April 5, 2019, Judge Haberfeld rendered a final arbitration order (the "***Original Final Award***"), ruling in favor of CLA. The Original Arbitration Final Award is attached hereto as **Exhibit "17"**.

2. Ambiguity Number Four.

The Original Arbitration Award included the following language, not found at any place in the GVC OA:

> **Within ten (10) days of the issuance of this Final Award…Mr. Bidsal….shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC…, free and clear of all liens and encumbrances, to Claimant CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents…and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.**

See **Exhibit "17"** at p. 19. Although Judge Haberfeld's Award deviated from the language of the GVC OA, CLA did not complain that Judge Haberfeld had acted arbitrarily, capriciously, irrationally or that he exceeded his authority and in fact argued vociferously against Bidsal's allegations that he did so. *See* Case No. A-19-795188-P.

As the Original Final Award was issued on April 5, 2019, ten days from that date would have been April 15, 2019. The Original Arbitration Award made no reference to an escrow being used and it added a requirement that the transfer must be free and clear of encumbrances, but it ***failed to identify a purchase price*** (and for good reason, as neither party had requested the Arbitrator to do so). This presented a significant problem to closing the transaction, as CLA had never identified what it believed the proper purchase price to be, and most importantly the transaction could not be closed until CLA paid the purchase price, which it made no attempt to do.

3. Ambiguity Number Five.

This Court confirmed the Arbitration Award for the Original Arbitration on December 16, 2019 (the "***Confirmation Order***"). *See* Case No. A-19-795188-P [Doc ID#31]. The Confirmation Order changed the terms for closing the cash sale transaction from the Original

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Arbitration Award (in wavy underline above) to this Court's Confirmation Order language (in dotted underline), as follows:

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

See Case No. A-19-795188-P [Doc ID#31].

The Confirmation Order created further ambiguity as to an effective date for the closing of sale, by introducing yet another deadline, December 20, 2019. *Id*. A deadline which was again ignored by CLA when it failed to pay the purchase price by December 20, 2019.

4. Appeal of Confirmation of the Original Arbitration.

After the Confirmation Order was entered, Bidsal filed a Motion for Stay Pending Appeal, *see* Case No. A-19-795188-P at [Doc ID#40], which motion was granted on March 10, 2020 (the "***Stay Order***"), *see* Case No. A-19-795188-P at [Doc ID#54]. Bidsal recognized that CLA's Forced Sale Letter, the Original Arbitration Final Award, and the Confirmation Order, all failed to identify a price that CLA would be required to pay for his membership interest in GVC. *See* **Exhibit "1"**. It became apparent that there was a dispute regarding what price CLA would be required to pay to purchase Bidsal's membership interest in GVC, in the event that his appeal was not successful. To resolve this and other issues between the parties that was not part of the Original Arbitration, Bidsal filed a Demand for Arbitration on February 7, 2020 (the "***Second Arbitration***"). The Second Arbitration Demand is attached as **Exhibit "18"**.

5. Arbitration No. 1260005736 – the Second Arbitration.

Bidsal's Demand initiating the Second Arbitration asked the arbitrator to resolve disagreements between the members relating to the proper calculation of purchase price, among other things. *See* **Exhibit "18"**. On March 4, 2020, CLA filed its Answer to the Second Arbitration contending that the purchase price should be calculated as follows:

(5,000,000.00 - $4,049,290.00) x 0.5 + $1,250,000.00 = $1,725,355.00.

See **Exhibit "19"**.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

This Answer in 2020, was the first time that CLA had ever identified what it believed the purchase price should be to effectuate the Forced Sale. Yet despite this identification CLA NEVER made any payment to Bidsal or deposited this amount into escrow. **CLA also asked that the Second Arbitration define "[w]hat the closing date** should have been **should be** [sic]**…"** despite its admission in the Original Arbitration demand that Bidsal was required to transfer his membership interest upon payment from CLA, which had yet to occur. CLA also asked Judge Wall to determine that Bidsal had received excess distributions from the Company (more than he was entitled to receive) which CLA asked Judge Wall to offset against any purchase price which might be owed to Bidsal. *See* **Exhibit "19"** at 4:4-7, **Exhibit "16"**.

On March 23, 2022, Judge Wall issued the Final Award in the Second Arbitration (the "***Second Arbitration Final Award***"). The Second Arbitration Final Award is attached as **Exhibit "20"**. Judge Wall accepted Bidsal's argument on how the sales price should reasonably be calculated and established the purchase price that CLA would be required to pay Bidsal at $1,889,010.50, ("***Cash Sale Price***"), for his membership interest, which was $163,655.50 more than what CLA's Answer claimed was the correct amount. *See* **Exhibit "20"** at pg. 31, **Exhibit "19"**. CLA does not seek to vacate Judge Wall's determination of the Sales Price.

Judge Wall rejected CLA's unreasonable argument that Bidsal had received excessive distributions from the Company and determined Bidsal had treated CLA more favorably than was required under the GVC OA. *See* **Exhibit "20"** at p. 19-20. Judge Wall also found Golshani's testimony, related to how money was to be distributed, to lack credibility. *Id*. at p. 14. Ultimately, Judge Wall determined Bidsal was the prevailing party and awarded Bidsal attorney fees in the amount of $300,000.00 and costs in the amount of $155,644.84, for a total monetary award of $455,644.84. *See* **Exhibit "20".**

The Second Arbitration Final Award also resolved the issue of an effective date, which had been *requested by CLA*. *Id*. Judge Wall determined that CLA's failure to tender the purchase price did not terminate CLA's right to do so, which was consistent with the Mohr Park Manor case which required the arbitrator to construe the contract, if logically and legally permissible, so as to effectuate valid contractual relations, rather than in a manner which would render the agreement

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

invalid or render performance impossible." *Id*. However, Judge Wall also determined that CLA's effective date arguments (that the effective date was in 2017) were "without merit" because "[CLA] has not yet paid [Bidsal] for his interest pursuant to the OA." See **Exhibit "20"** at p. 22-23. His decision is consistent with controlling Nevada law which holds that in a cash sale, title is not delivered until payment in full has been made. *See Ellis v. Nelson*, 68 Nev. 410, 416, 233 P.2d 1072, 1075 (1951). It is also consistent with Maloff v. B-Neva, Inc., 85 Nev. 471, 456 P.2d 438 (Nev. 1969), wherein the Nevada Supreme Court cited Professor Corbin, Vol.1A Corbin on Contracts § 264 at 513-514 in stating: "If neither party repudiates, or makes tender, no breach has occurred. How long this situation might continue, and yet both parties remain conditionally bound has not been established by law. It probably would be a rather long time, since the two parties are exactly on a par and neither is in default". So, while CLA's failure to tender the purchase price did not breach or repudiate the contract, the sale clearly could not be consummated, based on the lack of tender. The Maloff Court went on to state "[f]airness demands that liability should not at this time be assessed to either party for the impasse thus reached." *Id*.

Judge Wall's ultimate determination is found below (in bold dashed underline), which can easily be compared to Judge Haberfeld's Award, (in red) and this Court's Confirmation Order (in dotted underline):

> **"Within ten (10) days of the issuance of this Final Award…Mr. Bidsal….shall (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC…., free and clear of all liens and encumbrances, to Claimant CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents…and, further, (B) execute any and all documents necessary to effectuate such sale and transfer."**
>
> **"Within fourteen (14) days of the Judgment, (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC… free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents…and, further, (B) execute any and all documents necessary to effectuate such sale and transfer."**
>
> **"Respondent [CLA] avers that the effective date of sale is September of 2017, the time when Respondent contends his [sic] counteroffer transaction should have been consummated. This contention is without merit. The transaction has**

> **never been completed…The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed.**

As the forgoing demonstrates, Judge Wall did not change a single term contained within the GVC OA because the GVC OA provides no procedure for payment and closing a forced sale, and Judge Wall's Award is entirely consistent with the Original Arbitration Award and the Confirmation Order. The Original Arbitration Award stated that within ten days Bidsal was required to transfer his membership interest at a price computed with the contractual formula in the GVC OA, and Judge Wall's decision (for the first time) determined the value of Bidsal's membership interest. Importantly, Judge Haberfeld's Award does not say Bidsal is required to transfer his interest prior to being paid, which would be inconsistent with Nevada law. This Court's Confirmation Order likewise implies a transfer upon payment by CLA of the purchase price. **There is no order or arbitration decision indicating this cash sale would be treated as completed before CLA had actually paid the purchase price**. The Original Arbitration Award is very similar to a decision awarding specific performance to a buyer when a seller is unwilling to proceed with a binding purchase agreement. An award granting specific performance still requires the buyer to perform by paying the purchase price. It is no different here.

6. Resolution of the Original Arbitration.

On March 17, 2022, the Supreme Court of Nevada affirmed the Confirmation Order from the Original Arbitration (the "***Affirmation***"). The Order of Affirmance is attached as **Exhibit "21"**. A remittitur was issued on June 1, 2022. The Remittitur is attached as **Exhibit "22"**.

Given that the stay pending appeal was lifted upon the Supreme Court entering its Affirmation on March 17, 2022, the ten days referenced in the final award to the Original Arbitration (the "***Ten-Day Period***") began to run as of March 17, 2022 and ended on March 27, 2022. The Final Award in the Second Arbitration determined the amount that CLA would be required to pay Bidsal was $1,889,010.50. *See* **Exhibit "20"**. On March 25, 2022, CLA delivered a check to Bidsal in the amount of $1,889,010.50, and Bidsal transferred his membership interest to CLA on the same date. *See* Motion to Vacate at 12:5. Thus, Bidsal fully complied with the timeline set forth in the Confirmation Order once the purchase price had been paid.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

The simple fact is that until CLA paid Bidsal, Bidsal remained a member of GVC and had all rights as a member of GVC. This means that Bidsal was entitled to all of his distributions as a member until the date CLA finally paid the purchase price.

III.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD FOR JURISDICTION.

According to NRS 38.244(2), "[a]n agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under NRS 38.206 to 38.248, inclusive." As was already resolved in the Confirmation Order, "…the parties agreed that this Court has jurisdiction to review the Arbitrator's Award pursuant to NRS 38.244(2). Although the Second Arbitration is separate and distinct from the Original Arbitration, the provision contained within the GVC OA compelling arbitration is the same provision previously analyzed by this Court in arriving at the Confirmation Award, making any new analysis redundant. Importantly, the GVC OA states in pertinent part, "[t]he award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction." *See* **Exhibit "9"**at BIDSAL00008.

B. ARBITRATION UNDER THE GVC OA IS GOVERNED BY THE U.S. ARBITRATION ACT, 9 U.S.C. § 9.

As was found in the Confirmation Order, "…the parties agreed the Court's decision to vacate the Award is properly governed by United States Arbitration Act, 9 U.S.C. § 9." *See* Case No. A-19-795188-P at [Doc ID#31 at pg. 6]. To that end, the United States Arbitration Act, 9 U.S.C. § 9 provides that the Court shall confirm the arbitration award unless the award is vacated, modified, or corrected. *See* 9 U.S.C. § 9.

C. THE "SALES PRICE" FORMULA WAS SO VAGUE AS TO REQUIRE EXPERT CERTIFIED PUBLIC ACCOUNTANTS TO DETERMINE "COP".

The vague nature of the GVC OA sales price formula required an interpretation by an arbitrator. CLA asserted in its Second Arbitration Answer, that there was no dispute over what the purchase price should be, which is disingenuous because Bidsal certainly does not agree with

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CLA's interpretation of the sales price formula and CLA admitted during the Second Arbitration that the language of the purchase price formula is ambiguous. *See* **Exhibit "20"** at p. 19 ("Like the language of Exhibit B to the OA, the parties agree that the language contained in the [purchase price] formula is ambiguous."). The formula for determining the purchase price was: "(FMV – COP) x0.5 + capital contribution of the Offering Member at the time of purchasing the property minus prorated liabilities". *See* **Exhibit "9"** at BIDSAL000011. The term "COP" means cost of purchase as specified in the escrow closing statement at the time or purchase of each property owned by the Company. *Id.* at BIDSA000010. Judge Wall found that "[t]he definition of COP is unclear and ambiguous. Read literally, it would require taking information from an escrow closing statement at the time of purchase of Company property. However, the parties agree that there is no escrow closing statement reflecting a purchase of the GVC properties, which were acquired by GVC pursuant to a Deed in Lieu Agreement. This factual scenario was obviously not contemplated by the OA formula." *See* **Exhibit "20"** at p. 19.

If the sales price was so easily ascertained, as CLA now argues, it begs the question of why CLA didn't simply identify it and pay it. The answer to that question is that it was not easily ascertained. The language of the formula was vague as to what to do if GVC owned more than one property or no properties at all, whether the seller's entire capital contribution was to be included in the calculation or just the capital contribution that had not already been reimbursed, and whether or not "COP" applied to the purchase of a note (as only the purchase of property was mentioned).

D. <u>A TRANSFER OF PERSONAL PROPERTY IS NOT COMPLETE UNTIL THE PROPERTY IS EXCHANGED FOR THE PRICE OFFERED.</u>

CLA argues that the effective date contained in the Forced Sale Letter, was the effective date of the Forced Sale of Bidsal's membership interest, and that in recognizing that a cash sale is never completed until the purchase price has been paid, Judge Wall disregarded the law, exceeded his power and acted "partially completely" irrational. However, CLA readily admits that "CLA consummated the purchase on March 28, 2022, paying Bidsal $1,889,010.50…" for his membership interest and that Bidsal transferred the interest as soon as he was paid. *See* Motion to Vacate at 9:9.

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CLA admits that the GVC OA states "[t]he terms to be **all cash** and **close escrow** within 30 days of acceptance." *Id*. at 9:9-15 (emphasis added). The GVC OA states, "The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same ***offered price***…and according to the procedure set forth in Section 4." *See* **Exhibit "9"**. The obvious problem is that Bidsal did not offer a price for CLA's membership interest in GVC in his initial offer, so it was impossible to close the transaction without identification of a sales price. Bidsal's Initial Offer is attached as **Exhibit "23"**. What is not in dispute, is that the GVC OA references an escrow closing to occur to complete any purchase of membership interest. According to NRS 645A.010:

> "'Escrow' means any transaction wherein ***one person***, for the purpose of effecting or closing the sale, purchase, exchange, transfer, encumbering or leasing of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to be held by such third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such third person, in compliance with instruction under which he or she is to act…" (emphasis added).

Notably NRS 645A.010 does not require two parties to open escrow. In CLA's Solvency Letter, they misstate the requirement of the GVC OA when they state that "[a]ll that remains is that we agree upon escrow and your client performs…" *See* **Exhibit "15"**. CLA's argument should be called out for what it is: a desperate attempt to avoid responsibility for its failure to perform by paying the purchase price. CLA could have performed at any time by sending payment, or by opening an escrow and depositing payment into escrow. The irony of this situation should not be lost on the Court, CLA claims Judge Wall ignored Nevada law, yet it is CLA that is taking a position that is contrary to the Nevada law followed by Judge Wall. The date the sale became effective was the date CLA delivered payment of the purchase price, on March 24, 2022. Using any other date would run contrary to established Nevada law. *See Ellis v. Nelson*, 68 Nev. 410, 416, 233 P.2d 1072, 1075 (1951).

Essentially, by demanding that the effective date be determined to be September 2, 2017 instead of March 24, 2022, CLA seeks to take advantage of Bidsal by receiving his membership interest and all associated benefits (5 years of distributions) without paying Bidsal a penny for the

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

interest. If the effective date was September 2, 2017, then CLA would owe interest on the $1,889,010.50 purchase price for nearly five years. Likewise, if Judge Wall had agreed with CLA as to the effective date, CLA would have been unjustly enriched if it did not also pay for Bidsal's management services that were rendered over a five-year period after CLA's asserted effective date. Bidsal also paid taxes on his share of profits, which cannot be easily reversed. Judge Wall rejected these patently unreasonable arguments, which are inconsistent with Nevada law.

CLA, in the Forced Sale Letter set a deadline to close escrow of 30 days from the date of the letter (August 3, 2017). Despite unilaterally setting the 30-day escrow deadline, not only did CLA fail to pay Bidsal the purchase price, but it also failed to open escrow and deposit any funds. As of September 2, 2017 (the 30-day deadline) CLA still had not performed as promised in the Forced Sale Letter. CLA could have preserved its right to argue for an earlier effective date had it paid Bidsal for his interest by its own deadline. However, CLA did nothing, and thus Judge Wall's Award is completely in accord with Nevada law.

E. A CHANGE IN THE EFFECTIVE DATE WOULD REQUIRE JUDGE WALL TO AMEND THE FINAL AWARD.

Judge Wall did not award interest to Bidsal on the purchase price, because he was still a member of GVC until the purchase price was paid. If an earlier effective date was determined by this Court rewriting the Second Arbitration Award (which Bidsal respectfully submits is beyond this Court's authority), the matter would need to be returned to Judge Wall to award Bidsal interest on the $1,889,010.50 purchase price from September, 2017 until March 24, 2022, because Bidsal never received the purchase price until that date. Judge Wall would also then need to award Bidsal a reasonable fee for managing this entire project for nearly five years while he was no longer a member. These combined damages will likely exceed the amount of the distributions Bidsal received as he was still a member of the Company and would not change in any manner the fact that Bidsal would still be the prevailing party and still entitled to his attorney's fees and costs.

F. LEGAL STANDARD FOR VACATUR OF ARBITRATION AWARDS.

According to 9 U.S.C. § 10, arbitration awards may be vacated only as follows:

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

> **(a)** In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> **(1)** where the award was procured by corruption, fraud, or undue means;
>
> **(2)** where there was evident partiality or corruption in the arbitrators, or either of them;
>
> **(3)** where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> **(4)** where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
>
> **(b)** If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.
>
> **(c)** The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

See 9 U.S.C. § 10. The Ninth Circuit Court of Appeals has held that arbitrators "exceed their powers" when the award is (1) "completely irrational" or (2) exhibits a "manifest disregard of the law." *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003).

In this case, all of CLA's arguments are based upon Judge Wall's determination that the Effective Date had yet to occur because CLA had not performed by paying the purchase price. However, there was nothing irrational about how Judge Wall determined the Effective Date would not occur until payment was made. Judge Wall followed controlling Nevada law in determining there could be no transfer of ownership until the purchase price had been paid. Thus, none of the grounds available for vacating the Sales Price Award are applicable in this matter.

G. LEGAL STANDARD ON MODIFYING AND CORRECTING ARBITRATION AWARDS.

Under 9 U.S.C. § 11, an arbitration award may be modified or corrected as follows:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

> **(a)** Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> **(b)** Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> **(c)** Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

See 9 U.S.C. § 11. Again, the sole basis for arguing that the Second Arbitration Final Award should be modified or corrected is based upon Judge Wall not agreeing with CLA that the Effective Date should have been five years before CLA paid the purchase price. Yet there was nothing irrational about how Judge Wall handled this issue as it follows controlling Nevada law. Thus, none of the grounds available for modifying or correcting the Sales Price Award are applicable in this matter.

H. <u>THE SECOND ARBITRATION FINAL AWARD IS NOT IRRATIONAL.</u>

CLA complains that the Second Arbitration Final Award was "completely irrational…[because] the price is determined as of 2017 but the effective date…" did not occur until 2022. CLA's argument misses the obvious point, that the purchase price was supposed to be determined as of 2017, but the effective date could not occur ***until payment of the purchase*** **price**. It also mistakenly assumes that the purchase price was known in 2017.

The purchase price was a matter of dispute and wasn't determined until the Second Arbitration Final Award, which was not issued until 2022. *See* **Exhibit "20"**. CLA certainly adopted Bidsal's estimate of the fair market value of the properties held by GVC back in 2017, but CLA never paid the purchase price until 2022. CLA now seeks the benefit of forcing the sale based on Bidsal's estimate of fair market value as of 2017, while divesting Bidsal of membership shares that were never purchased by CLA and/or transferred by Bidsal until March 24, 2022, thereby obtaining the benefits without paying the purchase price until five years later. It is clear that the only irrational position is the one CLA is proffering, not the decision of Judge Wall.

/ / /

/ / /

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

I. THE SALES PRICE AWARD DID NOT MANIFESTLY DISREGARD THE LAW.

CLA completely fails to explain how Judge Wall manifestly disregarded the law. CLA may not agree with Judge Wall's Award, but that does not mean Judge Wall disregarded the law. CLA has the burden of providing some law which was not followed by Judge Wall, but CLA completely fails to do so.

The Original Arbitration Award does not establish any effective date, and certainly did not find an effective date of September 2, 2017 as argued by CLA. Judge Haberfeld merely determined that CLA did indeed have the right to force a sale of Bidsal's interest, and that this right arose in September, 2017. However, there is no finding of an effective date in Judge Haberfeld's Award and Judge Haberfeld acknowledged that performance must still occur by determining that the transaction should close within 10 days of his award. Instead of paying the purchase price within 10 days of the Original Final Award, CLA did nothing.

J. THE SALES PRICE AWARD WAS NEITHER ARBITRARY NOR CAPRICIOUS.

CLA also argues that Judge Wall acted completely irrationally and capriciously in relying upon expert witness testimony to determine the purchase price to be paid by CLA. This argument is laughable because CLA presented its own expert witness (a Certified Public Accountant) to determine and testify about what the purchase price should be. Bidsal did the same. The purpose of expert witnesses is to "assist the trier of fact to understand the evidence or to determine a fact in issue...". NRS 50.275. These experts prepared extensive reports and testified for nearly two days at the arbitration. Each expert started with the premise that the FMV (fair market value) component of the sales price formula was fixed at $5,000,000 by the Original Arbitration Award. Judge Wall's decision regarding the purchase price is detailed in nearly 4 ½ pages of the Award, is well reasoned and is explained in great detail. All of the experts and Judge Wall relied upon the historical numbers from the Company's business records to calculate the purchase price. All of the calculations utilized by the experts and Judge Wall were fully supported by the Company's business records. CLA fails to explain how the passage of time, from when CLA offered to purchase Bidsal's interest in 2017 until the date CLA actually paid the purchase price, would change any of the purchase price calculations. The costs allocated to these properties were set well before 2017 and would not

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

change anytime between 2017 and 2022. Additionally, Judge Wall decreased Bidsal's capital contribution figure by the amount of capital returned by the sales of various properties owned by GVC from 2011-2017. As the only number that could have increased over time would have been the FMV (a number fixed from the Original Arbitration), CLA's argument that it was irrational to use the Company's records to establish a 2017 valuation as of the date CLA elected to force a sale, is exactly what the GVC OA required. That CLA chose not to close the sale until 2022 does not change the date of valuation, which must be tied to the forced sale election.

K. THE SECOND ARBITRATION AWARD DOES NOT CONTRADICT THE CONFIRMATION ORDER.

Ironically, CLA states "The sale contemplated by the [Second Arbitration] Award has now taken place and the price has been paid from CLA to Bidsal, and CLA does not here try to unring that bell by challenging the determination of price and does not seek to have that portion of the Award vacated." *See* Motion to Vacate at 12:4-8. So, essentially CLA's argument is that even though the price (which they accept) was not determined until the Second Arbitration Award, and not paid until after the Second Arbitration Award, the date of the transfer should relate back to a date before the sales price was even known, and nearly five years before the purchase price was paid. Such an argument makes no sense and is inconsistent with the controlling Nevada law.

L. WHO BREACHED THE CONTRACT FIRST…DID ANYONE BREACH?

CLA's Motion relies heavily on a finding that was never made by either arbitrator. CLA states, "…a seller who breaches a contract for the sale of property should not be allowed to retain the benefits generated from the property, such as rental income or other income/profits, during the time before a court orders the seller to transfer ownership…" *See* Motion to Vacate at 18:11-15. However, neither of the arbitrator's final awards, states that either Bidsal or CLA breached the GVC OA. It is unclear how, absent such a finding, CLA can apply a body of case law regarding breach of contract to divest Bidsal of his profits.

1. Bidsal Never Breached the GVC OA

CLA argues that Bidsal breached the GVC OA (which Bidsal denies) and that "the breaching party must place the nonbreaching party in as good a position as if the contract were

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

performed." Motion to Vacate at 18:7-9. However, if anyone breached the GVC OA, it was clearly CLA because CLA **never** performed. CLA never (1) identified a purchase price for the forced sale, (2) never opened an escrow for the forced sale, (3) never deposited the purchase price into escrow, and (4) never paid Bidsal the purchase price (let alone within the 30-day window it asserts was the controlling time period). So, the question should be what is CLA doing to put Bidsal in as good a position as if CLA had performed and not the other way around. However, this matter has already been considered and dismissed by Judge Wall. Neither Judge Haberfeld nor Judge Wall made any finding that either party breached the GVC OA.

CLA argues that the Second Arbitration Final Award is irrational based on Judge Wall's decision that CLA's failure to timely tender payment was not a breach of the GVC OA. However, Judge Wall explained that it would not be reasonable to eliminate CLA's forced sale rights in light of the pending appeal and stay of enforceability of the Confirmation Order. However, Judge Wall also explained that CLA cannot claim an earlier effective date because it never performed its obligation to make payment. See **Exhibit "20"** at p. 8, 22-24. Judge Wall's decision regarding the effective date is not contradictory to his decision regarding voiding the sale. Simply put, CLA could not divest Bidsal of his membership interest because CLA had not paid for the interest. The fact that CLA hadn't actually paid for the item it was purchasing prevented the sale from becoming final, placing the parties into limbo. If a man walked into a car dealership and said to the dealer, "I promise to pay you the whole purchase price for this vehicle, even though I don't know what it is" but then didn't provide a single cent to the dealer, the dealer certainly wouldn't consummate the sale by letting the man drive off with the car. Likewise, CLA's promise to pay Bidsal an undefined amount for his membership interest did not entitle CLA to Bidsal's membership interest. CLA was not entitled to Bidsal's membership interest until it actually paid for the interest. To suggest otherwise is contrary to Nevada law and simply illogical.

2. There was Never a Breach to Address.

As mentioned above, the situation between the Parties created an impasse, not a breach, a fact that was recognized by Judge Wall. The Second Arbitration Award comports with the case of *Maloff v. B-Neva, Inc.*, 85 Nev. 471, 456 P.2d 438 (Nev. 1969), wherein the Nevada

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Supreme Court *citing* Professor Corbin, Vol.1A Corbin on Contracts § 264 at 513-514, found, "If neither party repudiates, or makes tender, ***no breach has occurred***. How long this situation might continue, and yet both parties remain conditionally bound has not been established by law. It probably would be a rather long time, since the two parties are exactly on a par and neither is in default". (emphasis added). CLA's failure to tender the purchase price may not have breached the contract, but certainly the payment did not occur. Bidsal's refusal to transfer his membership interest without being paid did not repudiate the contract, as nowhere in the contract did it say that he was required to transfer his interest before being paid. This impasse did not relieve the parties from being bound by the GVC OA, but it did create a situation similar to the impasse in the *Maloff* matter. The *Maloff* Court went on to state "[f]airness demands that liability should not at this time be assessed to either party for the impasse thus reached." *Id*. Judge Wall did not assess liability to either party for the impasse reached, rather he logically and carefully assessed the facts and applied the law in determining that the transfer date could not occur in the past when CLA had never performed. *See* **Exhibit "20"** at p. 22-24.

3. The GVC OA Addresses Retention of Income and Profits.

While CLA seeks to bring irrelevant case law into this matter to strip Bidsal of his earned profits based upon a fictional finding of breach, CLA ignores the GVC OA. The GVC OA has a provision regarding who is entitled to distributions of profits and when that entitlement is earned. This matter was considered by Judge Wall and a decision thoughtfully rendered. The GVC OA, is clear that "[t]he Record Date for determining Members entitled to receive payment of any distribution of profits shall be the day in which the Manager adopts the resolution for payment of a distribution of profits. Only Members of record on the date so fixed are entitled to receive the distribution notwithstanding any transfer or assignment of Member's interest or the return of contribution to capital to the Member after the Record Date fixed as aforesaid, except as otherwise provided by law." *See* **Exhibit "9"** at BIDSAL000012. CLA is picking and choosing which portions of the GVC OA should be adhered to and which should be ignored. The fact of the matter is that the transfer of membership interest DID NOT happen until March 24, 2022. In accordance with the language above, and with the Second Arbitration, Bidsal was entitled to the distribution of

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

profits that were made and that is exactly how Judge Wall ruled. The case law cited by CLA applies only where a breach has occurred, but Judge Wall specifically determined Bidsal acted appropriately and has done nothing wrong.

M. CLA'S ARGUMENT AS TO VACATION OF THE ATTORNEY FEE AWARD.

CLA's argument that Bidsal is not entitled to the $455,644.84 awarded to him for attorney fees and costs in the Second Arbitration, is conditioned upon this Court vacating the Second Arbitration Final Award as to Effective Date. As the above case law and argument prove, such a vacation is not proper and should in no way effect the award of attorney fees and costs.

N. THE SECOND ARBITRATION FINAL AWARD SHOULD BE CONFIRMED AND REDUCED TO JUDGMENT.

The Federal Arbitration Act provides that the court shall confirm the Second Arbitration Final Award unless the award is vacated, modified, or corrected. 9 USC § 9. Because CLA's arguments regarding why the Second Arbitration Final Award should be vacated, modified, or corrected are without merit, Bidsal is entitled to an order confirming the Second Arbitration Award and reducing it to judgment.

IV.

CONCLUSION

For the aforementioned reasons, Bidsal respectfully requests that this Court deny CLA's Motion to Vacate in its entirety and Grant Bidsal's Countermotion to Confirm Award.

Dated this 1st day of September, 2022.

SMITH & SHAPIRO, PLLC
/s/ James E. Shapiro
James E. Shapiro, Esq. (NV Bar #7097)
Aimee M. Cannon, Esq. (NV Bar #11780)
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for Shawn Bidsal

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 1st day of September, 2022, I served a true and correct copy of the foregoing **BIDSAL'S OPPOSITION TO CLA PROPERTIES, LLC'S MOTION TO VACATE ARBITRATION AWARD (NRS 38.241) AND FOR ENTRY OF JUDGMENT AND COUNTERMOTION TO CONFIRM ARBITRATION AWARD**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey File & Serve, the Court's on-line, electronic filing website.

/s/ Jennifer Bidwell
An employee of Smith & Shapiro, PLLC

SMITH & SHAPIRO, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

Attachment 3

3/20/2023 Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award

Attachment 3

3/20/2023 Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award

ELECTRONICALLY SERVED
3/20/2023 11:18 AM

Electronically Filed
03/20/2023 10:43 AM
CLERK OF THE COURT

ORDR
TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
KENNEDY & COUVILLIER
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
702-605-3440
Tkennedy@kclawnv.com

Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 Date: February 7, 2023 Time: 9:15 a.m.

ORDER GRANTING BIDSAL'S COUNTERMOTION TO CONFIRM ARBITRATION AWARD AND DENYING CLA PROPERTIES, LLC'S MOTION TO VACATE ARBITRATION AWARD

THIS MATTER came on before the Court on CLA PROPERTIES, LLC's ("***CLA***" or "***Movant***") Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (the "***Motion***") and on SHAWN BIDSAL's ("***Bidsal***" or "***Respondent***") Countermotion to Confirm Arbitration (the "***Countermotion***") on February 7, 2023. Respondent appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC and Movant appeared through its attorneys of record, REISMAN SOROKAC and KENNEDY & COUVILLIER.

The Court having entertained arguments of counsel, having held a hearing on the matters, having reviewed the papers and pleadings on file herein, the Court being fully advised in the premises, and good cause appearing:

Case Number: A-22-854413-B

PROCEDURAL AND RELEVANT FACTUAL BACKGROUND

A. The First Arbitration

This is the second proceeding in the Eighth Judicial District Court arising out of arbitrations between the parties in connection with a Buy-Sell provision in the Operating Agreement in a company for which CLA and Bidsal were the sole members, Green Valley Commerce, LLC ("***GVC***" or **"*Company"***), a Nevada limited liability company, which owns and manages real property.

The first arbitration ("Arbitration 1") arose from the activation by Bidsal of Article V, Section 4 of the Operating Agreement permitting one member to initiate a purchase of the other member's interest ("***Buy-Sell Provision***") Arbitration 1 concluded with a Final Award issued by the Hon. Stephen E. Haberfeld on April 5, 2019.

CLA commenced an action to confirm that first arbitration award, and Bidsal responded opposing confirmation and counter-moving to vacate the award. The Court, in Case No. A-19-795188-P, confirmed the award on December 6, 2019, ordering that Bidsal perform within 14 days of this Court's confirmation order, allowing an additional four (4) days more than the ten (10) days Judge Haberfeld allowed for Bidsal to consummate the transaction. Bidsal appealed and sought and obtained a stay of the Court's order pending that appeal. The Supreme Court affirmed on March 17, 2022

B. The Second Arbitration

After confirmation by this Court of Arbitration 1 (but before any determination on appeal to the Supreme Court) Bidsal commenced a second arbitration, assigned to the Hon. David Wall (Ret.), on February 7, 2020 (JAMS Ref No. 1260005736) ("Arbitration 2"). That Arbitration 2 involved, among other things not pertinent to this Court's determination of the issues before it, a determination of what numbers should be plugged into the formula for calculation of a final sale price to be paid by CLA to Bidsal for his 50% ownership interest as ordered by Judge Haberfeld, *assuming* that award and the court's confirmation were affirmed on appeal by the Nevada Supreme Court and CLA's contention that the ultimate purchase consideration should be reduced

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

or CLA awarded damages for profit distributions to Bidsal after what CLA contended was the date the Buy-Sell transaction should have closed under the Operating Agreement (30 days from the CLA election to buy rather than sell) in the amount of $500,500.00 as of the time of Judge Wall issuing the final award based on CLA's argument that the required closing date of the transaction under the Operating Agreement was required to be September 3, 2017.

Judge Wall issued his final award in the second arbitration on March 12, 2022. In addition to determining the formula purchase price consideration to be paid to Bidsal by CLA to be $1,889,010.50, the final award determined that the "effective date" of the agreement had not yet occurred because of the intervening litigation and the purchase price had not yet been paid and the transaction closed and, as a consequence, Bidsal remained a full member of the Company and entitled to the $500,500.00 in profit distributions he had paid himself after September 3, 2017 (the date CLA contended that Bidsal's ownership interest should have transferred under the Operating Agreement and CLA would have been entitled to all of the distributions), rejecting CLA's contention that it receive a credit against the purchase price for that amount or repayment of those funds. Judge Wall's final award in the second arbitration also found Bidsal to be the prevailing party and awarded $455,644.84 in fees and costs.[1]

C. Proceedings In This Action

On June 17, 2022, CLA filed its Motion to Vacate which only challenges two aspects of Judge Wall's Arbitration 2 Final Award and is actually a motion only for *partial* vacation. The Motion only seeks an order vacating the determination in the final award that the "effective date" of sale did not occur until Bidsal's appeal was concluded and the purchase price as determined in Arbitration 2 actually paid to Bidsal, and that Bidsal was entitled to distributions paid to him from the Company after September 3, 2017, the date CLA contends the transaction was contractually required to close and CLA was entitled to the benefit of its bargain. CLA's Motion to (partially) Vacate also argues that if the Court grants the relief and vacates that portion of the

[1] Judge Wall did not discuss or award interest on the attorneys' fees award, nor did Bidsal raise that issue or request interest on that attorneys' fees award as part of its Counter-Motion to Confirm.

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

final award, the award of attorneys' fees and costs should also be vacated because that would make CLA, not Bidsal the prevailing party.[2]

CLA's Motion to (partially) Vacate does not challenge any other aspect of Judge Wall's Arbitration 2 Final Award. Further, in its Opposition to Bidsal's Counter-Motion to confirm, CLA only raised the limited challenges articulated in its Motion to (partially) Vacate. In discussing the procedural and factual background and the issue for determination, the Court has accordingly limited the discussion to those issues and facts relevant to the actual issue before the Court—the merits of the Motion to (partially) Vacate as the determination of CLA's Motion to (partially) Vacate necessarily determines the counter-motion.

ANALYSIS AND DECISION

The question before the Court for decision today is whether Judge Wall's arbitration award meets the standards in which the court should vacate or partially vacate the award. The Court finds that he did not and that it is appropriate to confirm the arbitration award as an order and deny the Motion to (partially) Vacate.

Both parties agreed on inquiry by the Court that the Operating Agreement provides that the arbitration shall proceed under the FAA but that outcome is the same whether analyzed under the Federal Arbitration Act or Nevada state law standards. A motion to partially vacate an arbitration award is allowable and properly before the court pursuant to *Comedy Club, Inc. v. Improv. W. Assocs.,* 553 F3d 1277, 1293 (9th Cir. 2009).

Each Arbitration Act recognizes a ground for vacating or partially vacating an arbitration award where the arbitrator exceeds his or her powers and provides various excesses for their definition of those excesses, including the arbitrator's award being completely irrational or a manifest disregard of the law. *Kyocera Corp. v. Prudential-Bache Trade Servs.,* 341 F.3d 987, 997 (9th Cir. 2003). Additionally, review is not limited to statutory grounds. *Graber v. Comstock Bank,* 111 Nev. 1421, 1426, 905 P.2d 1112, 1115 (1995).

[2] The transaction in fact closed shortly after the Supreme Court affirmed the Court's confirmation of Arbitration 1, with the purchase price paid to Bidsal by CLA in the amount determined by Judge Wall in Arbitration 2.

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. ◆ Las Vegas, NV 89120
Ph. (702) 605-3440 ◆ FAX: (702) 625-6367
www.kclawnv.com

As Judge Wall noted in his award, there were certain aspects, such as tender, that were outside of his scope of authority, and Judge Wall was looking at the issues specifically before him. Whether one phrases the term as "effective date" or applying back to when the letter putting into play the triggering of the sale of the membership interest under Operating Agreement Section 4.2 that date being in 2017, or some other date, the Court must look to the underlying issues presented and decided in the two arbitration awards and the underlying agreement between the parties.

Considering the underlying award by Judge Haberfeld in Arbitration 1, the Court notes that the reference by CLA to his statement of a closing within 30 days on page 11 of his award was under the section specifically entitled "'Core' Arbitration Issues" commencing on page 4 and continuing to paragraph C on page 11, which is a subparagraph of paragraph 20 which commenced on page 10 of Judge Haberfeld's award. Section C states:

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

That paragraph is discussing specifically the appraisal provision of Section 4.2 and the background in regards to the appraisal provision. The Court does not view that discussion and the discussion of a September 3, 2017, closing to be an affirmative ruling by Judge Haberfeld that the date for calculating damages would be September 3, 2017. Indeed, in Section V "Relief

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

Granted and Denied," in paragraph 1, the specific relief provided states:

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

Paragraph 2 of that sections states that Mr. Bidsal shall take nothing by his Counterclaim. When the Court looks at what was actually the relief granted, it was prospective, to be done within 10 days at a price to be computed by the formula in Section 4.2 of the Operating Agreement, but not actually determining the price. If it was the intention of Judge Haberfeld to have this calculation done at the 2017 price and that formula price had already been calculated, that would have been in the award. Accordingly, the actual relief awarded is what this Court confirmed in the prior arbitration and the Supreme Court affirmed, and it was not confirming any specific date for performance or calculation of damages in 2017.

Turning to the Second Arbitration Final Award, attached to the Motion To Vacate and also included in the Appendix, the analysis with regards to distributions commences at page 10. Judge Wall discussed the language of Exhibit B to the Operating Agreement regarding preferred allocations and other allocations, then he moves to 2017 onward, quoting the correct ambiguous contractual provisions which an arbitrator can do being fair and reasonable, and cites to *Mohr Park Manor, Inc. v. Mohr*, 83 Nev. 107, 424 P.2d 101 (1967) and Williston on Contracts for the pertinent legal authority. At Paragraph D, commencing on page 22, Judge Wall addresses the Effective Date of Sale. The Court recognizes that "Effective Date" is not a defined term or term of art within the Operating Agreement that the parties agreed to, it is a term that arose during the Second Arbitration and wasn't utilized in the First Arbitration because the fixing of a date in

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

2017 or otherwise for the triggering of any damages was not addressed by Judge Haberfeld in the First Arbitration. In his determination, Judge Wall made the following determination:

> In addition to the purchase price under the formula in Section 4.2 of the OA, it is necessary to determine an effective date of the sale of Bidsal's interest in GVC. Respondent avers that the effective date of sale is September of 2017, the time when Respondent contends his counteroffer transaction should have been consummated. This contention is without merit.[] The transaction has never been completed. Judge Haberfeld, in his award in April of 2019, directed that the transaction take place forthwith. He did not find an effective date of the transaction to have occurred over a year earlier. The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed. Claimant has continued to act as a member (and manager) of GVC since September of 2017, and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA. Bidsal has appropriately received distributions since 2017, and since he remains a member of GVC, he cannot be required to divest himself of those distributions. He has also been treated as a member for GVC for tax purposes since 2017 and paid taxes on the distributions that Respondent now seeks to claw back. Additionally, treating the sale as having an effective date of September of 2017 would require Respondent to compensate Bidsal for his services a property manager over the past four years.
>
> It is the determination of the Arbitrator, based upon all of the relevant evidence in this matter, that the effective date of the purchase of Bidsal's interest has not yet come to pass. Pursuant to Judge Haberfeld's final award, the transfer is to take place ten days of the effective issuance thereof. As that award (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement Judge Haberfeld's award requiring the sale is effectively postponed. The instant Award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective and the instant Final Award has now used a reasonable interpretation of the formula in Section 4.2 to arrive at purchase price.

At footnote 12, Judge wall notes that his analysis "presumes, of course, that Judge Kishner's Order Confirming Award is upheld by the appellate court. This presumption is not based on any consideration of the merit of such an appeal, but any other presumption effectively makes this Award moot." Judge Wall further determined at the top of page 24 of the Arbitration 2 Final Award:

> In closing argument, counsel for Claimant has requested interest be awarded from September of 2017 forward on the purchase price, arguing that Bidsal has lost the right to use those funds over the last four years based on CLA's failure to perform. It is the determination of the Arbitrator that Bidsal is not entitled to recover interest on funds he would've received for a transaction which has not yet occurred. Judge Haberfeld did not rule that Respondents inappropriately utilized

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. ◆ Las Vegas, NV 89120
Ph. (702) 605-3440 ◆ FAX: (702) 625-6367
www.kclawnv.com

> the arbitration provision in the OA to determine that Bidsal must sell his interest in GVC. Similarly, the undersigned Arbitrator does not find that Bidsal inappropriately utilized the arbitration provision in the OA to institute this proceeding to arrive at a purchase price and an effective date of the sale.

The Court concludes that Judge Wall's Effective Date determination does not fall within the standards under federal or state law for vacating or partially vacating an arbitration award for exceeding his authority. The Court does not substitute its judgment for that of the arbitrator. What Judge Wall determined on this point was a well-reasoned explanation, looking at the opinions by the arbitrator/judge in the First Arbitration and whether or not that issue was directly attended, finding that the use of the dispute resolution process was not an abuse of the arbitration provision, finding that Judge Haberfeld did not rule the respondent (Bidsal) inappropriately used the arbitration provision to determine that Bidsal must sell his interest in the entity and therefore and because of the proper use of the arbitration provision for Arbitration 1, there had to be determinations made by Judge Haberfeld in Arbitration 1 whose rulings were confirmed by this Court and affirmed by the Nevada Supreme Court that the transaction would take place once there was a calculation of the formula in Section 4.2.

While the Court is appreciative that CLA contends that the formula was always there and nobody believed that was an issue, Judge Haberfeld stated there still must be a formula calculation. Therefore the date cannot be retroactive back to 2017 because there still needs to have a formula. Realistically, if the parties thought the formula was so clean and clear, it could have been part of Arbitration 1. While the Court is not stating it should have or should not have been part of Arbitration 1, that arbitrations final award said the transaction was to take place in 10 days and the parties were to use the formula which was a prospective aspect of the award.

Then the issue arose, determined Arbitration 2, concerning to what was the elements and how to do the formula. Hence, considering the totality, the analysis provided by Judge Wall, the case authority cited by Judge Wall, the reliance of Judge Wall on Judge Haberfeld, Judge

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

Kishner and the Nevada Supreme Court, this Court cannot find that the standards for vacating an award under NRS 38.241 or 9 USC §9 have been met.

Accordingly, cause appearing,

IT IS HEREBY ORDERED:

1. The Motion to Partially Vacate the Award (Doc. 1) by CLA is DENIED, and

2. The Counter-Motion by Respondent Bidsal to Confirm the Final Award is GRANTED and the Final Award issued on March 12, 2022 in JAMS Ref. No. 1260005736 is CONFIRMED.

Dated this 20th day of March, 2023

Joanna S Kishner

30B 6E8 86E9 AB1C
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
Nevada Bar No. 6014
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
(702) 605-3440
Attorneys for CLA PROPERTIES, LLC

Approved as to Form:

SMITH & SHAPIRO, PLLC

COMPETING ORDER
James E. Shapiro, Esq.
Nevada Bar No. 7907
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

CLA Properties, LLC, Petitioner(s) vs. Shawn Bidsal, Respondent(s)	CASE NO: A-22-854413-B DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 3/20/2023

James Shapiro	jshapiro@smithshapiro.com
Jennifer Bidwell	jbidwell@smithshapiro.com
Todd Kennedy	tkennedy@kclawnv.com
Aimee Cannon	acannon@smithshapiro.com
America Gomez-Oropeza	aoropeza@smithshapiro.com
Melanie Bruner	mbruner@rsnvlaw.com
Louis Garfinkel	lgarfinkel@rsnvlaw.com

Attachment 4

3/21/2023 Notice of Entry of Order

Attachment 4

3/21/2023 Notice of Entry of Order

NEO
TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
KENNEDY & COUVILLIER
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
702-605-3440
Tkennedy@kclawnv.com

Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the Court entered the attached Order on March 20, 2023.

/s/ Todd E. Kennedy, Esq.
TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
KENNEDY & COUVILLIER
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
702-605-3440
Tkennedy@kclawnv.com

Attorneys for Movant CLA Properties, LLC

CERTIFICATE OF SERVICE

I certify that I caused to be served the above Notice of Entry of Order on all counsel of record who have appeared in this matter using the Court's electronic filing and service facility on March 21, 2023.

/s/ Todd E. Kennedy
An employee of Kennedy & Couvillier

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. ◆ Las Vegas, NV 89120
Ph. (702) 605-3440 ◆ FAX: (702) 625-6367
www.kclawnv.com

ELECTRONICALLY SERVED
3/20/2023 11:18 AM

Electronically Filed
03/20/2023 10:43 AM
CLERK OF THE COURT

ORDR
TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
KENNEDY & COUVILLIER
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
702-605-3440
Tkennedy@kclawnv.com

Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA Properties, LLC, a California limited Liability company, Movant (Respondent in Arbitration) v. SHAWN BIDSAL, an individual Respondent (Claimant in Arbitration).	Case No: A-22-854413-B Dept.: 31 Date: February 7, 2023 Time: 9:15 a.m.

ORDER GRANTING BIDSAL'S COUNTERMOTION TO CONFIRM ARBITRATION AWARD AND DENYING CLA PROPERTIES, LLC'S MOTION TO VACATE ARBITRATION AWARD

THIS MATTER came on before the Court on CLA PROPERTIES, LLC's ("***CLA***" or "***Movant***") Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (the "***Motion***") and on SHAWN BIDSAL's ("***Bidsal***" or "***Respondent***") Countermotion to Confirm Arbitration (the "***Countermotion***") on February 7, 2023. Respondent appeared by and through his attorneys of record, SMITH & SHAPIRO, PLLC and Movant appeared through its attorneys of record, REISMAN SOROKAC and KENNEDY & COUVILLIER.

The Court having entertained arguments of counsel, having held a hearing on the matters, having reviewed the papers and pleadings on file herein, the Court being fully advised in the premises, and good cause appearing:

Case Number: A-22-854413-B

PROCEDURAL AND RELEVANT FACTUAL BACKGROUND

A. The First Arbitration

This is the second proceeding in the Eighth Judicial District Court arising out of arbitrations between the parties in connection with a Buy-Sell provision in the Operating Agreement in a company for which CLA and Bidsal were the sole members, Green Valley Commerce, LLC ("***GVC***" or **"*Company"***), a Nevada limited liability company, which owns and manages real property.

The first arbitration ("Arbitration 1") arose from the activation by Bidsal of Article V, Section 4 of the Operating Agreement permitting one member to initiate a purchase of the other member's interest ("***Buy-Sell Provision***") Arbitration 1 concluded with a Final Award issued by the Hon. Stephen E. Haberfeld on April 5, 2019.

CLA commenced an action to confirm that first arbitration award, and Bidsal responded opposing confirmation and counter-moving to vacate the award. The Court, in Case No. A-19-795188-P, confirmed the award on December 6, 2019, ordering that Bidsal perform within 14 days of this Court's confirmation order, allowing an additional four (4) days more than the ten (10) days Judge Haberfeld allowed for Bidsal to consummate the transaction. Bidsal appealed and sought and obtained a stay of the Court's order pending that appeal. The Supreme Court affirmed on March 17, 2022

B. The Second Arbitration

After confirmation by this Court of Arbitration 1 (but before any determination on appeal to the Supreme Court) Bidsal commenced a second arbitration, assigned to the Hon. David Wall (Ret.), on February 7, 2020 (JAMS Ref No. 1260005736) ("Arbitration 2"). That Arbitration 2 involved, among other things not pertinent to this Court's determination of the issues before it, a determination of what numbers should be plugged into the formula for calculation of a final sale price to be paid by CLA to Bidsal for his 50% ownership interest as ordered by Judge Haberfeld, *assuming* that award and the court's confirmation were affirmed on appeal by the Nevada Supreme Court and CLA's contention that the ultimate purchase consideration should be reduced

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

or CLA awarded damages for profit distributions to Bidsal after what CLA contended was the date the Buy-Sell transaction should have closed under the Operating Agreement (30 days from the CLA election to buy rather than sell) in the amount of $500,500.00 as of the time of Judge Wall issuing the final award based on CLA's argument that the required closing date of the transaction under the Operating Agreement was required to be September 3, 2017.

Judge Wall issued his final award in the second arbitration on March 12, 2022. In addition to determining the formula purchase price consideration to be paid to Bidsal by CLA to be $1,889,010.50, the final award determined that the "effective date" of the agreement had not yet occurred because of the intervening litigation and the purchase price had not yet been paid and the transaction closed and, as a consequence, Bidsal remained a full member of the Company and entitled to the $500,500.00 in profit distributions he had paid himself after September 3, 2017 (the date CLA contended that Bidsal's ownership interest should have transferred under the Operating Agreement and CLA would have been entitled to all of the distributions), rejecting CLA's contention that it receive a credit against the purchase price for that amount or repayment of those funds. Judge Wall's final award in the second arbitration also found Bidsal to be the prevailing party and awarded $455,644.84 in fees and costs.[1]

C. Proceedings In This Action

On June 17, 2022, CLA filed its Motion to Vacate which only challenges two aspects of Judge Wall's Arbitration 2 Final Award and is actually a motion only for *partial* vacation. The Motion only seeks an order vacating the determination in the final award that the "effective date" of sale did not occur until Bidsal's appeal was concluded and the purchase price as determined in Arbitration 2 actually paid to Bidsal, and that Bidsal was entitled to distributions paid to him from the Company after September 3, 2017, the date CLA contends the transaction was contractually required to close and CLA was entitled to the benefit of its bargain. CLA's Motion to (partially) Vacate also argues that if the Court grants the relief and vacates that portion of the

[1] Judge Wall did not discuss or award interest on the attorneys' fees award, nor did Bidsal raise that issue or request interest on that attorneys' fees award as part of its Counter-Motion to Confirm.

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

final award, the award of attorneys' fees and costs should also be vacated because that would make CLA, not Bidsal the prevailing party.[2]

CLA's Motion to (partially) Vacate does not challenge any other aspect of Judge Wall's Arbitration 2 Final Award. Further, in its Opposition to Bidsal's Counter-Motion to confirm, CLA only raised the limited challenges articulated in its Motion to (partially) Vacate. In discussing the procedural and factual background and the issue for determination, the Court has accordingly limited the discussion to those issues and facts relevant to the actual issue before the Court—the merits of the Motion to (partially) Vacate as the determination of CLA's Motion to (partially) Vacate necessarily determines the counter-motion.

ANALYSIS AND DECISION

The question before the Court for decision today is whether Judge Wall's arbitration award meets the standards in which the court should vacate or partially vacate the award. The Court finds that he did not and that it is appropriate to confirm the arbitration award as an order and deny the Motion to (partially) Vacate.

Both parties agreed on inquiry by the Court that the Operating Agreement provides that the arbitration shall proceed under the FAA but that outcome is the same whether analyzed under the Federal Arbitration Act or Nevada state law standards. A motion to partially vacate an arbitration award is allowable and properly before the court pursuant to *Comedy Club, Inc. v. Improv. W. Assocs.,* 553 F3d 1277, 1293 (9th Cir. 2009).

Each Arbitration Act recognizes a ground for vacating or partially vacating an arbitration award where the arbitrator exceeds his or her powers and provides various excesses for their definition of those excesses, including the arbitrator's award being completely irrational or a manifest disregard of the law. *Kyocera Corp. v. Prudential-Bache Trade Servs.,* 341 F.3d 987, 997 (9th Cir. 2003). Additionally, review is not limited to statutory grounds. *Graber v. Comstock Bank,* 111 Nev. 1421, 1426, 905 P.2d 1112, 1115 (1995).

[2] The transaction in fact closed shortly after the Supreme Court affirmed the Court's confirmation of Arbitration 1, with the purchase price paid to Bidsal by CLA in the amount determined by Judge Wall in Arbitration 2.

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. ◆ Las Vegas, NV 89120
Ph. (702) 605-3440 ◆ FAX: (702) 625-6367
www.kclawnv.com

As Judge Wall noted in his award, there were certain aspects, such as tender, that were outside of his scope of authority, and Judge Wall was looking at the issues specifically before him. Whether one phrases the term as "effective date" or applying back to when the letter putting into play the triggering of the sale of the membership interest under Operating Agreement Section 4.2 that date being in 2017, or some other date, the Court must look to the underlying issues presented and decided in the two arbitration awards and the underlying agreement between the parties.

Considering the underlying award by Judge Haberfeld in Arbitration 1, the Court notes that the reference by CLA to his statement of a closing within 30 days on page 11 of his award was under the section specifically entitled "'Core' Arbitration Issues" commencing on page 4 and continuing to paragraph C on page 11, which is a subparagraph of paragraph 20 which commenced on page 10 of Judge Haberfeld's award. Section C states:

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

That paragraph is discussing specifically the appraisal provision of Section 4.2 and the background in regards to the appraisal provision. The Court does not view that discussion and the discussion of a September 3, 2017, closing to be an affirmative ruling by Judge Haberfeld that the date for calculating damages would be September 3, 2017. Indeed, in Section V "Relief

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

Granted and Denied," in paragraph 1, the specific relief provided states:

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

Paragraph 2 of that sections states that Mr. Bidsal shall take nothing by his Counterclaim. When the Court looks at what was actually the relief granted, it was prospective, to be done within 10 days at a price to be computed by the formula in Section 4.2 of the Operating Agreement, but not actually determining the price. If it was the intention of Judge Haberfeld to have this calculation done at the 2017 price and that formula price had already been calculated, that would have been in the award. Accordingly, the actual relief awarded is what this Court confirmed in the prior arbitration and the Supreme Court affirmed, and it was not confirming any specific date for performance or calculation of damages in 2017.

Turning to the Second Arbitration Final Award, attached to the Motion To Vacate and also included in the Appendix, the analysis with regards to distributions commences at page 10. Judge Wall discussed the language of Exhibit B to the Operating Agreement regarding preferred allocations and other allocations, then he moves to 2017 onward, quoting the correct ambiguous contractual provisions which an arbitrator can do being fair and reasonable, and cites to *Mohr Park Manor, Inc. v. Mohr*, 83 Nev. 107, 424 P.2d 101 (1967) and Williston on Contracts for the pertinent legal authority. At Paragraph D, commencing on page 22, Judge Wall addresses the Effective Date of Sale. The Court recognizes that "Effective Date" is not a defined term or term of art within the Operating Agreement that the parties agreed to, it is a term that arose during the Second Arbitration and wasn't utilized in the First Arbitration because the fixing of a date in

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

2017 or otherwise for the triggering of any damages was not addressed by Judge Haberfeld in the First Arbitration. In his determination, Judge Wall made the following determination:

> In addition to the purchase price under the formula in Section 4.2 of the OA, it is necessary to determine an effective date of the sale of Bidsal's interest in GVC. Respondent avers that the effective date of sale is September of 2017, the time when Respondent contends his counteroffer transaction should have been consummated. This contention is without merit.[] The transaction has never been completed. Judge Haberfeld, in his award in April of 2019, directed that the transaction take place forthwith. He did not find an effective date of the transaction to have occurred over a year earlier. The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed. Claimant has continued to act as a member (and manager) of GVC since September of 2017, and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA. Bidsal has appropriately received distributions since 2017, and since he remains a member of GVC, he cannot be required to divest himself of those distributions. He has also been treated as a member for GVC for tax purposes since 2017 and paid taxes on the distributions that Respondent now seeks to claw back. Additionally, treating the sale as having an effective date of September of 2017 would require Respondent to compensate Bidsal for his services a property manager over the past four years.
>
> It is the determination of the Arbitrator, based upon all of the relevant evidence in this matter, that the effective date of the purchase of Bidsal's interest has not yet come to pass. Pursuant to Judge Haberfeld's final award, the transfer is to take place ten days of the effective issuance thereof. As that award (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement Judge Haberfeld's award requiring the sale is effectively postponed. The instant Award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective and the instant Final Award has now used a reasonable interpretation of the formula in Section 4.2 to arrive at purchase price.

At footnote 12, Judge wall notes that his analysis "presumes, of course, that Judge Kishner's Order Confirming Award is upheld by the appellate court. This presumption is not based on any consideration of the merit of such an appeal, but any other presumption effectively makes this Award moot." Judge Wall further determined at the top of page 24 of the Arbitration 2 Final Award:

> In closing argument, counsel for Claimant has requested interest be awarded from September of 2017 forward on the purchase price, arguing that Bidsal has lost the right to use those funds over the last four years based on CLA's failure to perform. It is the determination of the Arbitrator that Bidsal is not entitled to recover interest on funds he would've received for a transaction which has not yet occurred. Judge Haberfeld did not rule that Respondents inappropriately utilized

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. ◆ Las Vegas, NV 89120
Ph. (702) 605-3440 ◆ FAX: (702) 625-6367
www.kclawnv.com

> the arbitration provision in the OA to determine that Bidsal must sell his interest in GVC. Similarly, the undersigned Arbitrator does not find that Bidsal inappropriately utilized the arbitration provision in the OA to institute this proceeding to arrive at a purchase price and an effective date of the sale.

The Court concludes that Judge Wall's Effective Date determination does not fall within the standards under federal or state law for vacating or partially vacating an arbitration award for exceeding his authority. The Court does not substitute its judgment for that of the arbitrator. What Judge Wall determined on this point was a well-reasoned explanation, looking at the opinions by the arbitrator/judge in the First Arbitration and whether or not that issue was directly attended, finding that the use of the dispute resolution process was not an abuse of the arbitration provision, finding that Judge Haberfeld did not rule the respondent (Bidsal) inappropriately used the arbitration provision to determine that Bidsal must sell his interest in the entity and therefore and because of the proper use of the arbitration provision for Arbitration 1, there had to be determinations made by Judge Haberfeld in Arbitration 1 whose rulings were confirmed by this Court and affirmed by the Nevada Supreme Court that the transaction would take place once there was a calculation of the formula in Section 4.2.

While the Court is appreciative that CLA contends that the formula was always there and nobody believed that was an issue, Judge Haberfeld stated there still must be a formula calculation. Therefore the date cannot be retroactive back to 2017 because there still needs to have a formula. Realistically, if the parties thought the formula was so clean and clear, it could have been part of Arbitration 1. While the Court is not stating it should have or should not have been part of Arbitration 1, that arbitrations final award said the transaction was to take place in 10 days and the parties were to use the formula which was a prospective aspect of the award.

Then the issue arose, determined Arbitration 2, concerning to what was the elements and how to do the formula. Hence, considering the totality, the analysis provided by Judge Wall, the case authority cited by Judge Wall, the reliance of Judge Wall on Judge Haberfeld, Judge

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

Kishner and the Nevada Supreme Court, this Court cannot find that the standards for vacating an award under NRS 38.241 or 9 USC §9 have been met.

Accordingly, cause appearing,

IT IS HEREBY ORDERED:

1. The Motion to Partially Vacate the Award (Doc. 1) by CLA is DENIED, and

2. The Counter-Motion by Respondent Bidsal to Confirm the Final Award is GRANTED and the Final Award issued on March 12, 2022 in JAMS Ref. No. 1260005736 is CONFIRMED.

Dated this 20th day of March, 2023

Joanna S Kishner

30B 6E8 86E9 AB1C
Joanna S. Kishner
District Court Judge

Prepared and Submitted by:

KENNEDY & COUVILLIER

/s/ Todd E. Kennedy
Todd E. Kennedy, Esq.
Nevada Bar No. 6014
3271 E. Warm Springs Rd.
Las Vegas, Nevada 89120
(702) 605-3440
Attorneys for CLA PROPERTIES, LLC

Approved as to Form:

SMITH & SHAPIRO, PLLC

COMPETING ORDER
James E. Shapiro, Esq.
Nevada Bar No. 7907
3333 E. Serene Ave., Suite 130
Henderson, Nevada 89074
Attorneys for SHAWN BIDSAL

KENNEDY & COUVILLIER, PLLC
3271 E. Warm Springs Rd. Las Vegas, NV 89120
Ph. (702) 605-3440 FAX: (702) 625-6367
www.kclawnv.com

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

CLA Properties, LLC, Petitioner(s) vs. Shawn Bidsal, Respondent(s)	CASE NO: A-22-854413-B DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 3/20/2023

James Shapiro	jshapiro@smithshapiro.com
Jennifer Bidwell	jbidwell@smithshapiro.com
Todd Kennedy	tkennedy@kclawnv.com
Aimee Cannon	acannon@smithshapiro.com
America Gomez-Oropeza	aoropeza@smithshapiro.com
Melanie Bruner	mbruner@rsnvlaw.com
Louis Garfinkel	lgarfinkel@rsnvlaw.com