IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**No. 86438**
CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**No. 86817**

APPELLANT'S APPENDIX

VOLUME 14

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CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

EXHIBIT 56

EXHIBIT 56

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12/16/2019 9:22 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
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Attorneys for Petitioner CLA Properties LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES LLC, a limited liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

Case No.: A-19-795188-P
Dept.: 31

NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD

PLEASE TAKE NOTICE that on December 6, 2019, the Court entered its Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's

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Opposition and Counter-petition to Vacate the Arbitrator's Award, a copy of which is attached as Exhibit "1."

Dated this 16th day of December, 2019

LEVINE & GARFINKEL

By: Louis E. Garfinkel

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of LEVINE & GARFINKEL, and that on the 16th day of December, 2019, I caused the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD** to be served as follows:

[ ] by placing a true and correct copy of the same to be deposited for mailing in the US Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

[ ] by hand delivery to the parties listed below; and/or

[X] pursuant to N.E.F.C.R. Rule 9 and Administrative Order 14-2, by sending it via electronic service to:

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EXHIBIT "1"

EXHIBIT "1"

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE MATTER OF THE PETITION OF CLA PROPERTIES LLC	Case No.: A-19-795188-P Dept. No.: XXXI **ORDER GRANTING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD**

This matter came on for hearing for Petitioner's Confirmation of Arbitration Award and Entry of Judgement and Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgement and Counterpetition to Vacate Arbitration Award, on November 12, 2019. Present at the hearing was, Louis E. Garfinkel Esq. for Petitioner; and James E. Shapiro, Esq. for Respondent. Respondent Shawn Bidsal was also present.

The issues before the Court were whether the Award in favor of Petitioner should be upheld or whether the Arbitrator erroneously interpreted Section 4.2 of the Green Valley Operating Agreement and thus the Award should be vacated.

I. PROCEDERAL AND FACTUAL BACKGROUND

CLA Properties, LLC (Petitioner or CLA) and Shawn Bidsal (Respondent or Mr. Bidsal) were the sole members of Green Valley, LLC (Green Valley), a Nevada limited

liability company, which owns and manages real property in Las Vegas, Nevada. CLA Properties, LLC is solely owned by its principal Benjamin Golshani (Mr. Golshani). Petitioner and Respondent each owned a 50% membership interest in Green Valley.

It is undisputed that Mr. Golshani on behalf of CLA, along with Respondent executed an Operating Agreement for Green Valley (Operating Agreement) on June 15, 2011. Section 4 of Article 5 (Section 4) of the Operating Agreement contained provisions regarding how the membership interest of one member could be purchased and/or sold to the other member. The Operating Agreement allows members to initiate the purchase or sale of one member's interest by the other. These provisions were drafted by third party attorney, David LeGrand, and then were modifications made. More specifically, Section 4 allowed the offering member to buy out the remaining member at a price based upon a valuation of the fair market value of Green Valley. It is then that the remaining member is given the option to buy or sell pursuant to the valuation or demand an appraisal.

Section 4 of Article V commences on page 10 and the relevant portions read as follows:

> **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 the cost of purchase" as it is 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 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 appraiser to appraise the property and furnish a copy to all Members. The Offering Member also must provide the Remaining Member with the complete information of 2 MIA approved appraiser. The Remaining Member must pick one of the appraiser 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 detem1ined 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....

On July 7, 2017, Respondent sent Petitioner a written offer to buy Petitioner's 50% membership interest based on an estimate valuation of $5 million. On August 3, 2017, Petitioner instead elected to buy Respondent's 50% membership interest based on the $5 million valuation and without an appraisal. On August 7, 2019, Respondent

refused to sell his interest to Petitioner and instead stated that he had a right to have a fair market value appraisal of his membership interest. The parties disputed whether the Operating Agreement provided that Respondent had a right to seek a fair market valuation of his interest or whether the Agreement provided that Respondent had to sell his share at the $5 million dollar price.

On May 8, 2018 through May 9, 2018, the parties arbitrated the dispute in Las Vegas, Nevada, pursuant to Article III, Section 14.1 of the Operating Agreement.

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 the dispute 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

Arbitrator Stephen E. Haberfeld (Arbitrator) was appointed in JAMS Arbitration Number 1260004569. On April 5, 2019, the Arbitrator entered the Award in favor of Petitioner and ordered Respondent to transfer his 50% membership interest in Green Valley to Petitioner, free and clear of all liens and encumbrances. Further, the Award ordered the transfer by sale at a price computed at $5 million, in accordance with Section 4. Lastly, the Award granted Petitioner $298,256.00 plus attorneys' fees and costs. Conversely, Respondent was awarded nothing on the counterclaim.

On May 21, 2019, Petitioner filed the Petition for Confirmation of Arbitration Award and Entry of Judgment, which asserted that Respondent failed to comply with the Arbitrator's Award. On July 15, 2019, Responded filed an Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award.

Petitioner argued that Respondent is required to transfer his fifty (50%) percent Membership Interest in Green Valley Commerce, LLC (Green Valley), free and clear of all liens and encumbrances, to CLA Properties, LLC. Petitioner further argued the price is specifically to be computed pursuant to Section 4.2 of the Operating Agreement, and with the Fair Market Value portion of the formula fixed as five million dollars. Petitioner contends that the ruling of the Arbitrator both as to the sale price and the attorney fees awarded is correct and should be affirmed.

Respondent argued the Court should vacate the Award because the Arbitrator interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement. Further, Respondent disagrees with the Arbitrator's findings that the subject contract provision was drafted by Respondent, rather than third-party, David LeGrand. Lastly,

Respondent contends the Arbitrator exceeded his authority by ignoring the plain language definition of "FMV" (fair market value), as stated in the Operating Agreement.

The parties also litigated this matter in Federal Court. On April 9, 2019, Respondent filed a Motion to Vacate an Arbitration Award in United States District Court, District of Nevada. On April 25, 2019, Petitioner filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. On June 24, 2019, the United States District Court, District of Nevada, granted Petitioner's Motion to Dismiss because the case did not present a federal question. Petitioner filed the present action with the Court.

II. ANALYSIS

At the November 12, 2019 hearing, the parties agreed that this Court has jurisdiction to review the Arbitrator's Award pursuant to Nevada Revised Statute 38.244(2). Moreover, the parties agreed the Court's decision to vacate the Award is properly governed by United States Arbitration Act, 9 U.S.C. § 9. Respondent also analyzed the Motions pursuant to Nevada Revised Statute 38. The parties further agreed that regardless if the Court utilized the federal or state standard, the result would be the same. The dispute is whether the Court should affirm or vacate the Arbitrator's award.

Having reviewed the papers and pleadings on file herein, including, but not limited to, exhibits and affidavits; having heard oral arguments of the parties in excess of ninety minutes, the Court finds that the Arbitration award should be affirmed. The language of the Operating Agreement supports the decision of Arbitrator Haberfeld. (Ex. MM, App 1088). 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.

Although Respondent contends that the Arbitrator interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement, the decision sets forth that the labeling of the Agreement was not the controlling factor, but instead it was the language of the Agreement as supported by the evidence presented at the Arbitration. The fact that the final provision in the Agreement was not the same language initially drafted by Mr. LeGrand has not been shown by Respondent to merit setting aside the Arbitrator's findings under either the federal or state standards. Further, the Arbitrator said that his decision would be the same, even if Mr. Golshani had been the draftsman. See, e.g, 17 of Ex. MM pg 9, APP 1088 at 1097. Thus, whether both parties modified the language in some respect or if Respondent's position is adopted that it was only Mr. Golshani, the outcome is the same–there was not sufficient evidence that the Arbitrator's decision should be vacated based on his interpretation of who drafted the provision.

Further, while Respondent contends the Arbitrator exceeded his authority by ignoring the plain language definition of "FMV" (fair market value), as stated in the Operating Agreement, there is insufficient support or evidence to support that contention. Instead, Arbitrator's Haberfeld's decision clearly articulates the evidence he relied on in making his decision and he supported that decision to the extent necessary to have it affirmed both under state and federal law. While Respondent disagrees with the decision, he has not established pursuant to the plethora of case law cited in both

party's briefs, that his disagreement merits vacating the award. Moreover, to the extent his decision was not as timely as the parties would have wished has not been shown to invalidate the decision. Accordingly, as Petitioner has met its burden to have the award affirmed and Respondent has not met his burden to vacate the award. Thus, the Court must affirm the Arbitrator's award in its entirety.

ORDER

IT IS **HEREBY ORDERED, ADJUDGED, and DECREED** that pursuant to the Operating Agreement, 9 U.S.C. § 9 and Nevada Revised Statute 38.244(2), Petitioner's Confirmation of Arbitration Award and Entry of Judgement is GRANTED. Accordingly, the Court ORDERS Judgment in favor of Petitioner CLA Properties, LLC and against Respondent Shawn Bidsal in accordance with the Award, confirming that Bidsal shall take nothing by his Counterclaim and ordering Bidsal to:

A. Within fourteen (14) days of the Judgment, (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), 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 ($5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer.

B. Pay CLA as the prevailing party on the merits of the Arbitration Claim, the sum awarded by the Arbitrator. Specifically, CLA shall recover from Bidsal the sum and amount of $298,256.00 plus interest from April 5, 2019 at the

legal rate, and as and for contractual attorneys' fees and costs reasonably incurred in connection with the Arbitration.

IT IS FURTHER ORDERED ADJUDGED, and DECREED that Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award is DENIED.[1]

Dated this 5th day of December, 2019.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

[1] Any request for fees and/or costs for the present action before the state District Court is not presently before the Court and thus, if any request were to be made it would need to be by separate Motion.

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below via one, or more, of the following manners: via email, via facsimile, via US mail, via Electronic Service if the Attorney/Party has signed up for Electronic Service, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

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James E. Shapiro, Esq.
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for TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

EXHIBIT 57

EXHIBIT 57

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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-19-795188-P Dept. No. 31

SMITH & SHAPIRO, PLLC
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CASE APPEAL STATEMENT

1. Name of appellants filing this case appeal statement: Respondent SHAWN BIDSAL.

2. Identify the judge issuing the decision, judgment, or order appealed from: The Honorable JOANNA S. KISHNER, Dept. No. 31.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant:	SHAWN BIDSAL
Appellant's counsel:	JAMES E. SHAPIRO, ESQ. SMITH & SHAPIRO, PLLC 3333 E. Serene Ave., Suite 130 Henderson, NV 89074.

4. Identify each respondent and the name and address of respondent counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that cross-respondent's trial counsel):

\ \ \

Respondent:	CLA, PROPERTIES, LLC, a California limited liability company,
Respondent's appellate counsel:	Unknown
Respondent's trial counsel:	LOUIS E. GARFINKEL, ESQ. LEVINE & GARFINKEL 1671 W. Horizon Ridge Pkwy., Suite 230 Henderson, NV 89012

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): N/A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: retained counsel.

7. Indicate whether respondent is represented by appointed or retained counsel on appeal: retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): May 21, 2019.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: The underlying dispute revolves around the attempted break-up of a limited liability company, Green Valley Commerce, LLC ("Green Valley"), by its members, under the buy-sell provisions of Green Valley's operating agreement (the "OPAG"). On September 26, 2017, Respondent, CLA, PROPERTIES, LLC ("CLAP"), filed a Demand for Arbitration, which ultimately resulted in a Final Award being entered on April 5, 2019, in JAMS Arbitration No. 1260004569 (the "Arbitration Award"). On April 9, 2019, Appellant SHAWN BIDSAL ("Bidsal") filed a Motion to Vacate Arbitration Award in the United States District Court for the District of Nevada (the "Federal Case"). The Federal Case was dismissed for lack of subject matter jurisdiction on June 24, 2019. On May 21, 2019, CLAP filed a Petition for Confirmation of Arbitration Award and Entry of Judgment

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in the Eighth Judicial District Court, in and for, Clark County, Nevada. On July 15, 2019, Bidsal filed his Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award. On December 6, 2019, the district court entered its Order Granting Petition for Conformation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award (the "District Court's Order"), wherein the district court upheld and confirmed the Arbitration Award. The Notice of Entry of the District Court's Order was filed December 16, 2019. Appellant Bidsal is appealing the District Court's Order.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: This case has *not* previously been the subject of an appeal to or original writ proceedings in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation: This case does *not* involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: This is a civil case and settlement is possible.

Dated this 9th day of January, 2020.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 9th day of January, 2020, I served a true and correct copy of the foregoing **CASE APPEAL STATEMENT**, 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, pursuant to Administrative Order 14-2, entered on May 9, 2014.

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

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EXHIBIT 58

EXHIBIT 58

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company,

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

Case No. **A-19-795188-P**
Dept. No. 31

Hearing Requested

RESPONDENT'S MOTION FOR STAY PENDING APPEAL

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, hereby submits his Motion for Stay Pending Appeal. (the "***Motion***")

This Motion is made and based upon the attached Memorandum of Points and Authorities, the attached affidavit and exhibit and any oral argument the Court may wish to entertain in the premises.

Dated this 17th day of January, 2020

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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Attorneys for Respondent, Shawn Bidsal

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Case Number: A-19-795188-P

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

Petitioner CLA PROPERTIES, LLC ("***CLAP***") and Respondent Bidsal are the sole members of Green Valley Commerce, LLC ("***GVC***"). *See* Declaration of Shawn Bidsal, a true and correct copy of which is attached hereto as ***Exhibit "A"*** and incorporated herein by this reference. GVC owns and manages commercial property in Las Vegas, Nevada. *Id*. CLAP is solely owned by its principal Benjamin Golshani ("***Golshani***"). *Id*. On or about June 15, 2011 CLAP and Bidsal entered into an Operating Agreement ("***OPAG***") for GVC. *Id*. From its inception, GVC's primary business has been the ownership and operation of commercial properties. *See* Exhibit "A".

On or about July 7, 2017 Bidsal sent CLAP a written offer to purchase CLAP's share of GVC. After that July 7, 2017 correspondence was received, CLAP and Bidsal reached an impasse as to how the OPAG directed a buy-out of interests for GVC (the "***Impasse***").

From on or about May 8, 2018 to May 9, 2018 Bidsal and CLAP participated in an arbitration to resolve the Impasse. Arbitrator Stephen E. Haberfeld ("***Arbitrator***") was appointed to hear the matter. Nearly eleven months later, on or about April 5, 2019, the Arbitrator entered an arbitration award in favor of CLAP (the "***Arbitrator's Award***"). Under the Arbitrator's Award, CLAP is required to pay well over One Million Dollars ($1,000,000) to Bidsal for Bidsal's membership interest in GVC. *See* Exhibit "A".

On May 21, 2019, CLAP filed a Petition for Confirmation of Arbitration Award and Entry of Judgment (the "***Petition***"). Bidsal, filed an Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and filed a Counterpetition to Vacate Arbitration Award on July 15, 2019 (the "***Counterpetition***").

The Petition and the Counterpetition were heard on November 12, 2019 in the District Court. On December 6, 2019 the District Court rendered a decision granting the Petition ("***District Court Order***"). The Notice of Entry of the District Court Order was entered on December 16, 2019.

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On January 9, 2020 Bidsal filed a Notice of Appeal of the District Court Order. For the reasons set forth below, Bidsal requests that the Court enter a stay pending appeal of the District Court Order.

II.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD.

NRAP 8 allows a party to seek a stay of any order pending an appeal of the same and requires that the motion be first brought in front of the district court judge. NRCP 62, which governs requests for a stay pending appeal, states in pertinent part:

> (d) Stay Pending an Appeal.
>
> (1) By Supersedeas Bond. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.
>
> (2) By Other Bond or Security. If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

NRCP 62(d).

As NRCP 62(d) indicates, a stay pending appeal is granted as a matter of routine so long as a supersedeas bond has been posted. NRCP 62(d). Further, a supersedeas bond is not required before a stay will be granted, so long as some other bond or other security is provided. *Id*.

The amount of the bond is left to the discretion of the Court, but ordinarily is in an amount equal to the amount of the judgment. McCulloch v. Jeakins, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983). However, "[a] district court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, when unusual circumstances exist and so warrant." *Id*.

In deciding whether to issue a stay, the Nevada Supreme Court considers the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. Hansen v.

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Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). *See also* NRAP Rule 8(c).

B. A STAY OF ENFORCEMENT OF THE ORDER IS APPROPRIATE.

Considering the four factors identified in Hansen, a stay would be appropriate in this case. First, the purpose of the appeal is to determine whether Bidsal has an obligation to abide by the Arbitrator's decision, confirmed by the District Court. However, the District Court Order requires the transfer of Bidsal's interest in GVC to occur within 14 days of the Judgment. Thus, the object of the appeal would be defeated absent a stay because Bidsal would be required by the District Court Order to transfer his shares before the court that hears the appeal determines whether such an transfer as ordered by the District Court is required.

Second, Bidsal will suffer irreparable harm if the stay is denied. If the transfer of shares in GVC occurs and the appeal results in a reversal of the Arbitrator's decision, it will be virtually impossible to undo the transfer. *See* Exhibit "A". This is in part, because Bidsal, who is currently managing the property owned by GVC, would lose the ability to manage GVC and its properties if the transfer occurs prior to the appeal. *Id*. The value of any commercial property, including GVC's commercial property, is directly linked to its management. *Id*. By losing the ability to manage GVC and its properties pending the appeal, Bidsal will suffer irreparable harm. *Id*.

Third, respondent will not suffer any injury if the stay is granted. If the Order is confirmed on appeal, Respondent will merely be required to wait a little longer to receive Bidsal's shares. Bidsal has managed the real property that is GVC's primary asset from the beginning, including while this matter has worked its way through the legal system. Bidsal has proven capable and willing to continue to manage the property for GVC. CLAP will not in any way be divested of its shares in GVC simply due to a stay. Further, CLAP will suffer no monetary harm. While the Arbitrator awarded CLAP attorneys fees, CLAP can easily offset the full amount of the award from the purchase price which CLAP ultimately pays to Bidsal for Bidsal's shares (should the Arbitrator's Award be upheld). Because confirming the Arbitrator's Award will require a significant payment of money from CLAP to Bidsal, there is literally no monetary risk to CLAP as CLAP can offset any amounts owed by Bidsal to CLAP from CLAP's ultimate payment to Bidsal.

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Fourth, while no appeal is sure to be successful, under these circumstances, the appeal is warranted, and this appeal has as much chance of success as any other appeal.

Based upon the foregoing, a stay should be granted.

C. THE REQUIREMENT OF SUPERSEDEAS BOND SHOULD BE WAIVED.

While NRCP 62 generally requires the posting of a supersedeas bond before a stay can be imposed, under these circumstances, the requirement of a bond should be waived.

A district court has discretion in identifying the type of security required before a stay will be entered. *See* NRCP 62(d); *See also* McCulloch, 99 Nev. 122. The purpose of requiring a supersedeas bond "is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252(2005); *See also* V-1 Oil Co. v. People, 799 P.2d 1199, 1203 (Wyo. 1990) ("The essence of posting a supersedeas bond by an appellant following judgment entry is to avoid a mootness challenge that might otherwise arise if the judgment is paid before appeal is taken ....") cited by the Nevada Supreme Court in Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 71 P. 3d 1258 (Nev. 2003).

In this case, the Arbitration Award and District Court Order require CLAP to essentially pay Two Million, Five Hundred Thousand Dollars ($2,500,000.00) to Bidsal[1]. Because CLAP is the one who, under the terms of the Arbitration Award, is required to pay $2.5M to Bidsal, CLAP will not be prejudiced by any stay as it will simply give CLAP more time to come up with the money. Further, to the extent that CLAP incurs any harm from the appeal, the monetary amount can simply be deducted from the amount which CLAP ultimately must pay to Bidsal.

Because the purpose of the bond "is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay," and because, under the unique facts of this case, CLAP is already fully

[1] The Arbitration Award found that Bidsal's offer based upon a $5,000,000 fair market value was enforceable against Bidsal by CLAP. Because Bidsal owns 50% of GVC, on its face, CLAP would have to pay Bidsal 50% of the $5,000,000 of the fair market value, or $2,500,000. While there are adjustments which need to be made before the final payment is paid, the point is that at the end of the day, CLAP will owe Bidsal significantly more than any monetary harm CLAP will incur while the appeal is pending.

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protected by virtue of the payment which CLAP will owe to Bidsal should the Arbitration Award be upheld, requiring a bond will not further the reason for the bond in the first place, nor will it provide any additional security to CLAP, who is already fully protected. *See* Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252(2005). In fact, requiring any type of bond at this point will only prejudice Bidsal, without providing any tangible benefit to CLAP.

Because the purpose and intent of a supersedeas bond is entirely missing, Bidsal requests that, under these unique circumstances, the requirement of a supersedeas bond be waived. Alternatively, the amount should be nominal.

III.

CONCLUSION

Based upon the foregoing points and authorities, the Bidsal respectfully requests that the Court grant this Motion for Stay.

Dated this 17th day of January, 2020

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 Respondent, Shawn Bidsal

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 17th day of January, 2020, I served a true and correct copy of the foregoing **RESPONDENT'S MOTION FOR STAY PENDING APPEAL**, 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, pursuant to Administrative Order 14-2, entered on May 9, 2014.

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

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EXHIBIT A

EXHIBIT A

DECLARATION OF SHAWN BIDSAL
IN SUPPORT OF RESPONDENT'S MOTION FOR STAY PENDING APPEAL

I, Shawn Bidsal, do hereby declare under penalty of perjury, under the laws of the State of Nevada in accordance with N.R.S. § 53.045 as follows:

1. I am a resident of the State of California.

2. I am the Managing Member of GREEN VALLEY COMMERCE, LLC ("***GVC***").

3. I am currently the respondent in the petition of CLA Properties, LLC v. Shawn Bidsal., Case No. A-19-795188-P.

4. My counsel is Smith & Shapiro, PLLC ("***Bidsal's Counsel***").

5. GVC owns and manages commercial property in Las Vegas, NV. From its inception, GVC's primary business has been the ownership and operation of commercial properties.

6. Since its inception, I have managed GVC and all of the commercial properties it has owned.

7. If I lose the ability to manage GVC, I will suffer irreparable harm, particularly if Benjamin Golshani ("***Ben***") takes over the manager as Ben is in textile business and has no experience with commercial properties.

8. It is my understanding that Ben is the sole owner and principal of CLA Properties, LLC ("***CLAP***").

9. Ben is the individual I have dealt with who has acted on behalf of CLAP.

10. On or about June 15, 2011, I entered into an Operating Agreement for GVC with CLAP.

11. On or about July 7, 2017, I sent CLAP a written offer to purchase its share of GVC.

12. After my July 7, 2017 correspondence, CLAP and I reached an impasse as to how the GVC operating agreement directed a buy-out of one member's interest.

13. I participated in an arbitration with CLAP from May 8, 2018 to May 9, 2018 in an effort to resolve the buy-out impasse.

14. Stephen E. Haberfeld was the arbitrator during the May 8, 2018 to May 9, 2018 arbitration.

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APPENDIX (PX)002815

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15. Nearly 11 months later, on or about April 5, 2019, Arbitrator Haberfeld entered an arbitration award in favor of CLAP.

16. Under the arbitrator's award, CLAP is required to pay well over a Million Dollars ($1,000,000) to me for my membership interest in GVC.

17. On May 21, 2019 CLAP filed a Petition for Confirmation of Arbitration Award and Entry of Judgment.

18. On July 15, 2019 I filed an Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and filed a Counterpetition to Vacate Arbitration Award.

19. The Petition and Counterpetition were heard on November 12, 2019 in the Eighth Judicial District Court.

20. On December 6, 2019 the District Court rendered a decision grating the Petition. The Notice of Entry of the District Court Order was entered on December 16, 2019.

21. On January 9, 2020 I filed a Notice of Appeal of the District Court Order.

22. If I am required to transfer my shares in GVC, prior to the Supreme Court of Nevada considering my appeal I will suffer irreparable harm, as I will lose the ability to manage GVC's commercial properties.

23. By losing the ability to manage GVC and its properties, I will suffer irreparable harm.

24. I make this Declaration freely and of my own free will and choice and I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16 day of January, 2020.

Shawn Bidsal

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APPENDIX (PX)002816

EXHIBIT 59

EXHIBIT 59

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No. A-19-795188-P Dept. No. 31 DEPARTMENT XXXI NOTICE OF HEARING DATE 6/9/20 TIME 9:00am APPROVED BY PLEASE FILE WITH MASTER CALENDAR Date: February 18, 2020 Time: 9:00am

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ORDER GRANTING RESPONDENT'S MOTION FOR STAY PENDING APPEAL

THIS MATTER having come before the Court on Respondent SHAWN BIDSAL's ("***Bidsal***") Motion for Stay Pending Appeal (the "***Motion***"), Petitioner CLA PROPERTIES, LLC's ("***CLA Properties***") appearing by and through their attorneys of record, LEVINE & GARFINKEL; Respondent Bidsal appearing by and through his attorneys of record, SMITH & SHAPIRO, PLLC; the Court having reviewed the papers and pleadings on file herein, having heard the arguments of counsel, the Court being fully advised in the premises, and good cause appearing, the Court finds and concludes as follows:

1. In deciding whether to issue a stay, the Court considered the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

2. After considering the evidence and arguments presented by the parties, the Court finds that the first three Hansen factors weigh in favor of granting the requested stay, and that while the fourth Hansen factor weighs against the requested stay, when considering all of the facts together as a whole, a stay is proper and warranted.

3. After considering the evidence and arguments presented by the parties, the Court finds that a supersedeas bond is required as provided for in NRCP 62, and that, in light of the totality of the circumstances, the amount of the supersedeas bond should equal the amount of attorneys fees awarded by the arbitrator in the underlying arbitration award, which was $298,256.00.

NOW THEREFORE:

4. IT IS HEREBY ORDERED that Bidsal's Motion is GRANTED on the terms set forth herein.

5. IT IS FURTHER ORDERED that, upon the posting of the Bond, the Court's ORDER CONFIRMING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD entered on December 6, 2019 (the "***Confirmation Order***"), and all enforcement thereof, is hereby STAYED, pending a final resolution of the pending appeal, identified as Supreme Court case number 804727.

6. IT IS FURTHER ORDERED that the scope of the stay being imposed is limited solely to a stay of the Confirmation Order.

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7. IT IS FURTHER ORDERED that Respondent Bidsal shall post a supersedeas bond, or cash in lieu of a bond, in the amount of $298,256.00 (the "***Bond***") within fourteen (14) days of entry of this order. The stay imposed by this order shall be effective only upon the posting of the Bond or cash in lieu of the Bond. A Status Check on the Stay has been set for June 9, 2020, at 9:00am

IT IS SO ORDERED this 3 day of ~~February~~, 2020.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Respectfully Submitted by:

SMITH & SHAPIRO, PLLC

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Approved as to Form:

LEVINE & GARFINKEL

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EXHIBIT 60

EXHIBIT 60

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA, PROPERTIES, LLC, a California limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	Case No. A-19-795188-P Dept. No. 31

RESPONDENT'S OPPOSITION TO CLA'S PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND COUNTERPETITION TO VACATE ARBITRATION AWARD

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, hereby opposes CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and submits his Counterpetition for the Arbitration Award to be Vacated.

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This Opposition and Counterpetition is made and based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities, and any oral argument set for this matter.

Dated this 15th day of July, 2019

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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Shawn Bidsal

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This case is about the attempted break-up of a limited liability company, Green Valley Commerce, LLC ("***Green Valley***"), by its members, under the buy-sell provisions of Green Valley's operating agreement (the "***OPAG***"). It is also about the unfair advantage taken by one of the LLC members, CLA Properties, LLC ("***CLAP***"), of the other member, Bidsal, through a twisted interpretation of the OPAG which was never contemplated by either member. The Arbitration Proceeding was brought to sort out the parties' differences in interpretation of the OPAG, yet the arbitrator committed plain error, blatantly recognized, but disregarded the law, misconstrued the undisputed facts, and exceeded his powers when rendering the Award in favor of CLAP. In other words, the Arbitrator's ruling ignores the evidence, makes up evidence that does not exist, and interprets the parties' agreement in a way that is expressly contradicted by the plain words of the agreement and the documents that can be used to interpret the agreement. Therefore, intervention by the Court has become necessary.

The OPAG, Section 14, paragraph 14.1 states that arbitration arising out of the contract shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 *et seq.* On or about April 9,

2019, Bidsal filed a motion to vacate an arbitration award in United States District Court, District of Nevada. On or about April 25, 2019 CLAP filed a motion to dismiss for lack of subject matter jurisdiction. On or about June 24, 2019 the United States District Court, District of Nevada, determined that there was no independent federal-question, in that, the Federal Arbitration Act does not create an independent federal question that would grant jurisdiction and there is no diversity jurisdiction. *See* a true and correct copy of the order granting motion to dismiss (the "***Federal Order***") attached hereto as ***Exhibit "A"*** and incorporated by this reference herein. *See* (App. Part 1: APP 001-003).

Well before the Federal Order was issued, CLAP filed the present action with this Court. Based upon the Federal Order, Bidsal now seeks the same relief from this Court that it originally sought from the Federal Court.

II.

STATEMENT OF FACTS

A. BIDSAL'S PAST INVESTMENT EXPERIENCE.

Since November 1996 (a period of over twenty (20) years), Bidsal has been investing in and managing real property on a full-time basis. *See* a true and correct copy of pertinent portions of the transcript from the Arbitration Proceeding (the "***Merits Hearing***") attached hereto as ***Exhibit "B"*** and incorporated by this reference herein at 346:15-20 (Appendix Part 1: APPENDIX0053[1]). As a result of Bidsal's business activities and extensive experience, he has developed a strong infrastructure to facilitate the purchase, management and sale of real property. *See* Exhibit "B" at 346:21 – 347:13 (App. Part 1: APP0053-0054).

B. BIDSAL'S AND GOLSHANI'S BUSINESS VENTURE.

CLAP's principal and owner, Benjamin Golshani ("***Golshani***"), is Bidsal's cousin with a background in the textile industry. *See* Exhibit "B" at 349:14-16 and 359:1-8 (App. Part. 1: APP0058, 0068). Recognizing the opportunities available in real estate (an area that Golshani did not have any experience), in 2009-10, Golshani approached Bidsal about investment

[1] For brevity sake, all future references to "APPENDIX" will be simply made to "APP".

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opportunities. *See* Exhibit "B" at 349:18-23 (App. Part 1: APP0056). Bidsal agreed to partner with Golshani.

Bidsal's infrastructure was already in place when Golshani first approached him, and, over a period of time, they formulated terms of a joint investment. *See* Exhibit "B" at 350:4-8 and 351:9-17 (App. Part 1: APP0059-0060). Ultimately, Golshani, through his entity CLAP, invested with Bidsal in Green Valley Commerce, LLC ("***Green Valley***") because of Bidsal's expertise, experience, knowledge, and infrastructure. *See* Exhibit "B" at 395:3-9 (App. Part 1: APP0094).

Golshani and Bidsal agreed that Golshani would put up more money than Bidsal, but that Bidsal would put in sweat equity in the form of the management of the property. *See* Exhibit "B" at 115:3-6 (App. Part 1: APP0014). Golshani was more than willing to invest 70% of the funds needed, but that the profit would be split 50/50. *See* Exhibit "B" at 51:6-12 & 216:9-13 (App. Part 1: APP00011 & 0029).

C. THE FORMATION OF GREEN VALLEY COMMERCE.

Bidsal located commercial real property at 3 Sunset Way, Henderson, Nevada 89014 (the "***Green Valley Commerce Center***"). *See* Exhibit "B" at 353:6-8 (App. Part 1: APP0062). The Green Valley Commerce Center was subject to a defaulted note, which was an exceptional value because there is greater risk with a note that is subject to potential defenses before it is foreclosed, and a great deal is involved in converting the note to fee simple title. *See* Exhibit "B" at 353:14-354:2 (App. Part 1: APP0062-0063).

On May 26, 2011, Bidsal formed Green Valley. *See* Exhibit "B" at 356:13 - 357:5 (App. Part 1: APP0065-0066). *See also* a true and correct copy of the Articles of Organization for Green Valley, attached hereto as ***Exhibit "C"*** and incorporated by this reference herein (App. Part 1: APP00101-102).

Ultimately, Bidsal and Golshani were successful in purchasing the note secured by a deed of trust against the Green Valley Commerce Center. *See* Exhibit "B" at 357:21-358:6 (App. Part 1: APP0066-0067). Bidsal was ultimately successful, in converting the note into a deed-in-lieu of foreclosure. *See* Exhibit "B" at 358:4-6 and 363:20-25 (App. Part 1: APP0067, 00671). On September 22, 2011, Green Valley obtained title to the Green Valley Commerce Center. *See* a

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true and correct copy of the Grant, Bargain, Sale Deed for the Green Valley Commerce Center, attached hereto as ***Exhibit "D"*** and incorporated by this reference herein (App. Part 1: APP0103-0107).

D. THE HISTORY, PROPOSAL AND DRAFTING OF GOLSHANI'S BUY-SELL PROVISIONS IN SECTION 4 OF THE OPERATING AGREEMENT.

The Operating Agreement of Green Valley was not agreed upon and signed until after the Green Valley Commerce Center was purchased by Green Valley.

1. The Initial Draft OPAG.

One of the commercial real estate brokers with whom Bidsal had developed a business relationship and who had assisted Bidsal in finding different opportunities, Jeff Chain ("***Chain***"), provided Bidsal and Golshani with a form operating agreement for Bidsal and Golshani to use with Green Valley. *See* Exhibit "B" at 360:11-18 (App. Part 1: APP0069). *See also* a true and correct copy of Chain's June 17, 2011 email with the form operating agreement, attached hereto as ***Exhibit "E"*** and incorporated by this reference herein (App. Part 1: APP0108-0133). Chain also introduced Bidsal and Golshani to a transaction attorney, David LeGrand ("***LeGrand***"), to assist them in drafting an operating agreement for Green Valley. *See* Exhibit "B" at 360:23-361:8 (App. Part 1: APP0069-0070).

LeGrand made changes to the draft operating agreement before providing it to CLAP and Bidsal; however, neither the original form operating agreement from Chain, nor LeGrand's revised version, contained any buy-sell language. *See* Exhibit "E" (App. Part 1: APP105-30). *See also* true and correct copies of LeGrand's June 17, 2011 and June 27, 2011 emails with attachments, attached hereto as ***Exhibits "F" and "G"*** respectfully and incorporated by this reference herein (App. Part 1: APP0134-0209).

2. LeGrand's Initial Operating Agreement Drafts that the Arbitrator Inexplicably Relied Upon for His Ruling, Were Undeniably Not Used in the Final Operating Agreement.

LeGrand's first couple of drafts of the operating agreement did not contain any language even remotely similar to the Section 4 that ultimately ended up in the OPAG. *See*

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Exhibits "F" and "G". Id. *See also* a true and correct copy of LeGrand's July 22, 2011 email, attached hereto as ***Exhibit "H"*** and incorporated by this reference herein (App. Part 2: APP0210-0211). The first buy-sell language appeared in LeGrand's July 22, 2011 draft in the form of right of first refusal ("***ROFR***") language, but was nothing like Section 4. *See* a true and correct copy of LeGrand's July 25, 2011 emails, attached hereto as ***Exhibit "I"*** and incorporated by this reference herein at DL137 & 148-150 (App. Part 2: APP0262-0292 at 0262, 0271-0273).

On August 18, 2011, LeGrand introduced new buy-sell language which LeGrand referred to as "Dutch Auction" language (the "***Dutch Auction language***")[2]. *See* a true and correct copy of LeGrand's August 18, 2011 email is attached hereto as ***Exhibit "J"*** and incorporated by this reference herein at DL211-212 (App. Part 2: APP0293-0351). This is the first time that true buy-sell language was proposed. LeGrand's Dutch Auction buy-sell language specifically provided that an appraisal would be obtained to set the price at which the membership interest would be sold. *See* Exhibit "J" at DL211. Id. at APP0306. LeGrand testified that this language did ***not*** end up in the final executed OPAG. *See* Exhibit "B" at 316:12-15 (App. Part 1: APP0048). Rather, the parties continued to negotiate the terms of the proposed operating agreement, and in LeGrand's September 16, 2011 draft of the operating agreement (the 5th iteration), the Dutch Auction buy-sell language had been removed, leaving only the ROFR language. *See* a true and correct copy of LeGrand's September 16, 2011 email, attached hereto as ***Exhibit "K"*** and incorporated by this reference herein (App. Part 2: APP0352-0380).

On September 19, 2011, LeGrand sent an email expressing his opinion that "[a] simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price **does *not* appear sensible to me**." *See* a true and correct copy of LeGrand's September 19, 2011 email, attached hereto as ***Exhibit "L"*** and incorporated by this reference herein at DL288 *(emphasis added)* (App. Part 2: APP0380). Consistent with the first buy-sell language that required an appraisal, LeGrand's email confirmed that the "Dutch Auction"

[2] LeGrand readily admitted that his use of the phrase "Dutch Auction" is different than how a "Dutch Auction" is currently defined. *See* Exhibit "B" at 315:13-15 (App. Part 1: APPENDIX0047). However, LeGrand repeatedly uses the phrase "Dutch Auction" to refer to his proposed buy-sell concept.

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concept was not sensible nor what the parties were looking for. Id. Attached to that email was a new draft of the operating agreement, which included some new buy-sell language, but which is not even close to what ultimately ended up in Section 4. *See* a true and correct copy of LeGrand's September 20, 2011 email, attached hereto as ***Exhibit "M"*** and incorporated by this reference herein at DL301 *(emphasis added)* (App. Part 2: APP0383-0414 at APP0394). LeGrand testified that Golshani and Bidsal wanted a buy-sell provision in the OPAG, but LeGrand refused to confirm that it was a "forced buy/sell" even after counsel for Golshani pressed him to do so. *See* Exhibit "B" at 273:8-13 (App. Part 1: APP0044). Rather, LeGrand stated that he was trying to draft a "vanilla style" buy-sell provision. *See* Exhibit "B" at 274:15-17 (App. Part 1: APP0045).

3. Golshani Drafted Buy-Sell Language For The OPAG.

Golshani was not happy with any of the language proposed by LeGrand, and as such, on September 22, 2011, Golshani emailed Bidsal some buy-sell language that Golshani himself came up with. *See* a true and correct copy of Golshani's September 22, 2011 email, attached hereto as ***Exhibit "N"*** and incorporated by this reference herein (App. Part 2: APP0415-0418). To be clear, this was language that Golshani drafted and was proposing to Bidsal. Id. Golshani called his initial draft of the proposed language a "ROUGH DRAFT", which, after some modifications, ultimately ended up in Section 4. Id.; *See also* a true and correct copy of the OPAG ultimately executed by the parties, attached hereto as ***Exhibit "O"*** and incorporated by this reference herein at pp. 10-11 (App. Part 2: APP0419-0447 at APP0429-0430). On October 26, 2011, Golshani emailed Bidsal a revised version of his earlier "ROUGH DRAFT", which Golshani identified as "ROUGH DRAFT 2". *See* a true and correct copy of Golshani's October 26, 2011 email, attached hereto as ***Exhibit "P"*** and incorporated by this reference herein (App. Part 2: APP0448-0451). Again, Golshani, not Bidsal, was the one who made the changes, and it is this language that was used in the final Operating Agreement. Id.

The changes between ROUGH DRAFT and ROUGH DRAFT 2 are important in helping understand the negotiations and intent of the parties. There is no dispute that Golshani drafted the ROUGH DRAFT, nor that he made all of the changes to ROUGH DRAFT 2. See Exhibits "N" and "P" (App. Part 2: APP0415-0418 & Part 2: APP0448-0451). One of the changes made by

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Golshani was intentionally changing the triggering event for a buy-sell transaction from an offer by one member "***to sell his or its Member's Interest*** in the Company to the other Members" to an offer by that member "***to purchase the Remaining Member's Interest*** in the Company." *See* Exhibit "N" and "P" (App. Part 2: APP0415-04168, 0448-0451). *See also* a true and correct copy of a demonstrative exhibit used at the Merits Hearing which explained the proper procedure for a company break-up, attached hereto as ***Exhibit "Q"*** and incorporated by this reference herein (App. Part 2: APP0452-453). *See also* Exhibit "B" at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part 1: APP0079-0082). It is also significant to note that there is no draft that includes both "sell" and "purchase" in the same sentence. Id.

A short time later, Golshani sent a fax to LeGrand containing his ROUGH DRAFT 2 buy-sell language. *See* a true and correct copy of LeGrand's November 10, 2011 email referencing Golshani's fax, attached hereto as ***Exhibit "R"*** an incorporated by this reference herein (App. Part 2: APP0454-455). *See also* Exhibit "B" at 318:7-9 (App. Part 1: APP0049). LeGrand then made a few minor changes to Golshani's ROUGH DRAFT 2, renamed it "DRAFT 2", and circulated the DRAFT 2 to Bidsal and Golshani. *See* Exhibit "O" and "P" (App. Part 2: APP0419-0451, 0446-0449). *See also* a true and correct copy of DRAFT 2, attached hereto as ***Exhibit "S"*** and incorporated by this reference herein (App. Part 3: APP0456-0458). *See also* Exhibit "B" at 318:10-14 and 318:23-319:5 (App. Part 1: APP0049-0047). However, the differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. *See* Exhibits "P" and "S" (App. Part 2: APP0448-0451, 0456-0458). *See also* a true and correct copy of a demonstrative exhibit from the Merits Hearing comparing the two drafts, attached hereto as ***Exhibit "T"*** and incorporated by this reference herein (App. Part 3: APP0262-0292). *See also* Exhibit "B" at 320:11-17 and 321:19-22 (App. Part 1: APP0051-0052). Rather, LeGrand simply took Golshani's language and inserted it almost untouched into the Operating Agreement. Id.

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4. Golshani Added an Appraisal Process to the Buy-Sell for Fairness Purposes.

During the course of their discussions, both Bidsal and Golshani wanted to have protections for both parties in equity and fairness. *See also* Exhibit "B" at 381:18-22 (App. Part 1: APP0083). Consequently, an appraisal process was added to the buy-sell provision. *See also* Exhibit "B" at 31:8-14 (App. Part 1: APP0010). Bidsal and Golshani discussed the what-ifs while the OPAG was being prepared and that the buy-sell procedure would begin when one member makes an offer to purchase. *See also* Exhibit "B" at 381:16-25 (App. Part 1: APP0083).

Bidsal explained the mechanics of what they discussed: the initial offer is made on the member's estimate of value. *See also* Exhibit "B" at 382:1-5 (App. Part 1: APP0084). The other side looks at it. *See also* Exhibit "B" at 382:6-7 (App. Part 1: APP0084). If he is willing to sell at that number, they are done. Id. If he is not happy with the number, they go to an appraisal process. *See also* Exhibit "B" at 382:12-15 (App. Part 1: APP0084). Initially, they talked about three appraisers, but it was too cumbersome so they went with two appraisers. *See also* Exhibit "B" at 382:12-383:1 (App. Part 1: APP0083-84). If the other side decided to make a counteroffer, then they would go through the appraisal process to determine FMV, fair market value, by appraisal. *See also* Exhibit "B" at 385:14-17 (App. Part 1: APP0082). At the same time, there was no scenario where one side made an offer to purchase and the other side twisted it around to make a counteroffer to purchase at that number. *See also* Exhibit "B" at 227:13-19 and 383:21-25 (App. Part 1: APP0036, 0082). Not only was that not discussed, but Golshani's changes from ROUGH DRAFT to ROUGH DRAFT 2 intentionally made it clear that the triggering event would be an "offer to *purchase*…" as opposed to "an offer to *sell*…". *See* Exhibits "N", "P", and "Q" (App. Part 2: APP0415-0418, 0449-0451, and 0452-0453). *See also* Exhibit "B" at 226:1-5, 376:17-25, 377:6-8, 378:13-17, 379:1-4, and 384:1-4 (App. Part 1: APP0035, 0079-0082, 0086).

As more fully described below, if the Remaining Member chose the first option (roman numeral "i"), by accepting the Offering Member's offer to purchase, then they would go to the specific intent provision. *See* Exhibit "B" at 257:11-24 (App. Part 1: APP0040). *See also* Exhibit "O" (App. Part 2: APP0419-0447). If the Remaining Member chose the second option (roman numeral "ii"), by making a counteroffer, then they would go through the appraisal process and go

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back to the same specific intent provision. *See* Exhibit "B" at 257:25-258:16 (App. Part 1: APP0040-0041). *See also* Exhibit "O" (App. Part 2: APP0419-0447). As soon as the Remaining Member made an election to make a counteroffer, they would have to continue with the rest of the sentence and complete an appraisal based on FMV. *See* Exhibit "B" at 262:15-19 (App. Part 1: APP0039). *See also* Exhibit "O" (App. Part 2: APP0419-0447).

FMV is a defined word in Section 4.2 as the medium of two appraisals, and it is further defined in Section 4.1 (which refers back to Section 4.2). *See* Exhibit "B" at 263:20-24 (App. Part 1: APP0043). *See also* Exhibit "O" (App. Part 2: APP0419-0447). This interpretation is the only logical interpretation and explains why the last paragraph of Section 4.2 uses "this provision" and separately the phrase "…according to the procedure set forth in Section 4." It also explains why the "specific intent" language appears at the end of the buy-sell procedure contained in Section 4.2 as opposed to appearing at the beginning of Section 4.

All told, Bidsal, Golshani, and LeGrand spent more than 6 months negotiating the terms of the proposed OPAG and produced at least seven different revisions before it was ultimately signed. *See* Exhibits "F", "G", "H", "I", "J", "K", "L", "M", "N" and "O" (App. Part 1: APP0134-0209; Part 2: APP0210-0447). Bidsal never drafted any of the revisions. *See* Exhibit "B" at 208:6-7, 384:18-23 and 387:13-15 (App. Part 1: APP0025, 0086, 0088). Rather, Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. *See* Exhibit "B" at 385:8-12 and 19-21 (App. Part 1: APP0087). To the extent any changes were not made by LeGrand, they were made by Golshani. *See* Exhibit "B" at 152:20-22 (App. Part 1: APP0001).

By August 3, 2012, the OPAG had been signed by Bidsal and Golshani. *See* Exhibit "O" (App. Part 2: APP0419-0447). *See also* a true and correct copy of an August 3, 2012 email sent to Bidsal, attached hereto as ***Exhibit "U"*** and incorporated by this reference herein (App. Part 3: APP0461-0491). *See also* Exhibit "B" at 213:22-25 (App. Part 1: APP0027). While the language of Section 4 in the signed OPAG was slightly different than Golshani's ROUGH DRAFT 2, the changes are minor and were made by Golshani prior to signing. *See* Exhibit "B" at 214:4-11 (App. Part 1: APP0027). *See also* Exhibits "O" and "P" (App. Part 2: APP0419-0450). More

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importantly, the intent of the parties that the initial offer ***not be*** an offer to buy or sell, but solely an offer to buy, remained unchanged.

E. THE MANAGEMENT AND OPERATION OF GREEN VALLEY.

After Green Valley acquired the Green Valley Commerce Center, Bidsal and Golshani decided to sell some of the buildings. *See* Exhibit "B" at 365:3-7 (App. Part 1: APP0073). As part of this process, Bidsal subdivided the Green Valley Commerce Center into separate buildings, creating a building association, conducting a reserve study for the building association, and commissioning survey work. *See* Exhibit "B" at 365:18 - 366:11 (App. Part 1: APP0073-0074). Bidsal did "most of the work" in handling the subdivision process and working with the surveyors. Bidsal, alone, handled the management and leasing of the Green Valley Commerce Center. *See also* Exhibit "B" at 114:9-15 & 19-21 (App. Part 1: APP0013).

Ultimately, Bidsal, as part of his management activities, was able to sell buildings B, C, and E of the Green Valley Commerce Center for a profit. *See* Exhibit "B" at 369:4-5 (App. Part 1: APP0076). Further, when the buildings sold, the proceeds from one of the properties were used to purchase a new property through a 1031 exchange. *See* Exhibit "B" at 369:17 - 370:1 (App. Part 1: APP0076-0077). The proceeds from the sale of the other two buildings were paid to Golshani and Bidsal for their respective capital percentages. Id. The formula used to determine the allocation of proceeds is contained in Exhibit B of the OPAG. *See* Exhibit "B" at 389:19-24 (App. Part 1: APP0089). *See also* Exhibit "O" (App. Part 2: APP0419-0447).

Even though Golshani took a very limited personal role in the sale of a property, every sale was done with Golshani's approval. *See* Exhibit "B" at 373:18-20 (App. Part 1: APP0078). Golshani admitted that Bidsal would send him emails with information about the properties and their values "all the time." *See* Exhibit "B" at 175:19-23 (App. Part 1: APP0024). *See also* a true and correct copy of Chain's August 3, 2012 email, attached hereto as ***Exhibit "V"*** and incorporated by this reference herein (App. Part 3: APP0492-0520). Following the sales, Green Valley still owns five buildings in the Green Valley Commerce Center, and another property in Arizona. *See* Exhibit "B" at 370:18-23 (App. Part 1: APP0077).

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F. MISSION SQUARE.

If there was any doubt left as to who drafted Section 4 of the OPAG, that doubt was resolved in early 2013. In April 2013, Golshani and Bidsal formed another company, Mission Square, LLC ("***Mission Square***"), using the Green Valley OPAG as the starting point, which, according to LeGrand "**is based upon the GVC OPAG *that has Ben's language on buy sell***." *See* a true and correct copy of LeGrand's June 19, 2013 email, attached hereto as ***Exhibit "X"*** and incorporated by this reference herein. *(emphasis added)* (App. Part 3: APP0528-0586). LeGrand's reference to "Ben's language" is based, in part, on the fact that Golshani, over the course of several drafts, perfected the buy-sell language and spearheaded the corrections with LeGrand. *See* Exhibit "B" at 389:8-14 (App. Part 1: APP0089). No testimony was presented by Golshani to undermine the parties' understanding at that time.

G. THE INITIATING BUY-OUT OFFER AND GOLSHANI'S ATTEMPT TO CHANGE THE TERMS OF THE TRANSACTION.

Consistent with ROUGH DRAFT 2, on July 7, 2017, Bidsal made a written offer ***to purchase*** CLAP's Membership Interest in the Company pursuant to Section 4, at a price based upon an estimate of the Company's total value of $5,000,000.00, which Bidsal *thought* was the fair market value, derived without the benefit of a formal appraisal (the "***Initial Offer***"). *See* Exhibit "B" at 331:15-20 (App. Part 1: APP0053). *See also* a true and correct copy of Bidsal's July 7, 2017 letter, attached hereto as ***Exhibit "Y"*** and incorporated by this reference herein (App. Part 3: APP0587-0588). The $5,000,000 value was Bidsal's estimate of the value of Green Valley. *See* Exhibit "B" at 390:1-5, and 390:21-22 and Exhibit "OO" at 333:10-12 (App. Part 1: APP0090, App. Part 5: APP1149). Bidsal initiated the process to buy Green Valley because he wanted to finish the deal and move on. *See* Exhibit "B" at 390:14-20 (App. Part 1: APP0089). Bidsal did not obtain an appraisal before making the offer.

Notwithstanding Bidsal's openness to Golshani during the entire ownership period, behind the scenes, on July 31, 2017, Golshani obtained an appraisal from Petra Latch, MAI indicating that the Green Valley Commerce Center was worth more than originally thought. *See* Exhibit "OO" at 156:7-10 (App. Part 5: APP1146). *See also* a true and correct copy of the appraisal

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attached hereto as ***Exhibit "Z"*** and incorporated by this reference herein (App. Part 3: APP0589-0828).

As a result of Petra Latch's appraisal, and notwithstanding the fact that Golshani specifically changed the language of Section 4 from an offer to <u>*sell*</u> to an offer to <u>*purchase*</u> when the Operating Agreement was being negotiated, Golshani attempted to take advantage of Bidsal by trying to twist Bidsal's offer to <u>*purchase*</u> into an offer to <u>*sell*</u>. *See* Exhibits "N", "P", and "Q" (App. Part 2: APP00415-00418; APP0448-0453). *See also* Exhibit "B" at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part 1: APP0079-0082). Specifically, on August 3, 2017, Golshani / CLAP provided a response in which Golshani inappropriately attempted to convert Bidsal's Initial Offer to *purchase* into an offer by Bidsal to *sell* Bidsal's membership interests in the Company without the benefit of Bidsal obtaining an appraisal. *See* a true and correct copy of CLAP's August 3, 2017 response letter, attached hereto as ***Exhibit "AA"*** and incorporated by this reference herein (App. Part 4: APP0826-0827).

Golshani specifically agreed that the Initial Offer would not be an offer to <u>*sell*</u>, but instead, solely an offer to <u>*purchase*</u>. This is evidenced by the language that Golshani drafted and which ultimately ended up in Section 4.2 of the OPAG. Given the plain language of paragraph one of Section 4.2, CLAP's options were clear, either the offered price was acceptable and CLAP could accept Bidsal's offer or the price was unacceptable and paragraph 2 of Section 4.2 would be invoked, calling for appraisals to be performed. *See* Exhibit "O", (App. Part 2: APP00429-00430). CLAP failed to abide by paragraph two, electing to veer away from the requirements of the OPAG. Instead, CLAP sought its own appraisal, clearly indicating it thought one was necessary. *See* Exhibit "Z" (App. Part 3: APP0589-0717; App. Part 4 APP0718-0825). CLAP after "conveniently" skipping the requirements of paragraph two of Section 4.2 landed on OPAG, Section 4.2(ii). By skipping paragraph two of Section 4.2 and going to Section 4.2(ii) CLAP inappropriately and prematurely relied on the option to reject Bidsal's offer and make a counteroffer. *See* Exhibit "O" (App. Part 2: APP00430). Section 4.2(ii) clearly comes after paragraph two of Section 4.2, thus contemplating that the FMV assessment resulting from two appraisals had already been completed, which in this situation, had not occurred. The premature

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counter-offer came in the form of the CLAP August 3, 2017 letter. *See* Exhibit "AA". On August 5, 2017, Bidsal sent a letter back to CLAP, requesting that the appraisal process contemplated from the beginning be utilized. *See* a true and correct copy of Bidsal's August 5, 2017 letter attached hereto as ***Exhibit "BB"*** and incorporated by this reference herein (App. Part 4: APP0828-0829). Bidsal informed Golshani that he needed to initiate the appraisal process because if a counteroffer is made, then they need to go to the FMV and it is defined as the medium of two appraisals in Section 4.2. *See* Exhibit "B" at 391:4-11 (App. Part 1: APP0091). If one were to give CLAP the benefit of the doubt that it was trying to abide by the terms in Section 4 of the OPAG, when it drafted the August 3, 2017 letter, it could be seen as CLAP's expression that it was not interested in selling at that time. In that situation, the August 3, 2017 letter could be seen as an offer to purchase made to Bidsal, forcing Bidsal to either accept the offer or request that a FMV be established. *See* Exhibit O (App. Part 2: APP0430).

On August 28, 2017, Golshani and CLAP sent another letter to Bidsal, continuing to insist on an option not contemplated by Section 4 of the OPAG. *See* a true and correct copy of CLAP's August 28, 2017 letter, attached hereto as ***Exhibit "CC"*** and incorporated by this reference herein (Part 4: APP0830-0834).

H. THE ARBITRATION PROCEEDING.

1. Demand for Arbitration.

On or about September 26, 2017, CLAP filed a Demand for Arbitration with JAMS, requesting an arbitration proceeding before a JAMS arbitrator, with a hearing to take place in Las Vegas, Nevada (the "***Arbitration Demand***"). A true and correct copy of the Demand is attached hereto as ***Exhibit "DD"*** and incorporated by this reference herein (App. Part 4: APP0835-0840).

In the Arbitration Demand, CLAP described its interpretation of the buy-sell provisions of the OPAG, recited Bidsal's July 7, 2017 initial break-up letter, and identified the issue as Bidsal "has refused to sell his interest, but instead has demanded an appraisal to determine FMV." *See* Exhibit "DD" at 2 (end of the second paragraph) (App. Part 4: APP0835-0840 at 837). Thus, CLAP brought the Arbitration Proceeding to get an Arbitrator to endorse CLAP's interpretation

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of the buy-sell provisions of the OPAG, and to force Bidsal to sell his interest in Green Valley to CLAP at a price based upon Bidsal's initial estimate as to the value of Green Valley. CLAP did not articulate any other issues to be decided by the Arbitrator. *See* Exhibit "DD" (App. Part 4: APP0835-0840).

2. Arbitration Merits Hearing.

On or about May 8-9, 2018, the Arbitrator conducted the Merits Hearing in the Arbitration Proceeding. *See* Exhibit "B" (App. Part 1: APP1-97). The Arbitrator then took the matter under advisement, to render a decision at a later time.

3. Merits Order and Objections to Proposed Awards.

On or about October 9, 2018, *five months* after the Merits Hearing[3], the Arbitrator entered his Merits Order No. 1. A true and correct copy of the Merits Order No. 1 is attached hereto as ***Exhibit "EE"*** and incorporated by this reference herein.

In the Merits Order, the Arbitrator defined the entirety of the dispute in the case in Section 3 of the Merits Order, as follows:

> 3. The arbitration --- as briefed, tried, argued and resolved as a business/legal dispute involving "pure" issues of contractual interpretation, between an entity and an individual . . .
>
> The "core" of the parties' dispute is whether or not Bidsal contractually agreed to sell and can be legally compelled to sell his 50% Membership Interest in Green Valley to CLA at a price computed via a contractual formula not in dispute, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 written offer to purchase CLA's 50% Membership Interest in Green Valley --- without regard to a formal appraisal of Green Valley, which Mr. Bidsal has contended the parties agreed Mr. Bidsal has the contractual right to demand as a "counteroffered seller" under Section 4.2 of the Green Valley Operating Agreement.

See Exhibit "EE" at 2 (App. Part 4: APP0841-0856 at 0843).

On or about October 30, 2018, CLAP submitted a proposed Interim Award (the "***Interim Award***"). A true and correct copy of the Interim Award is attached hereto as ***Exhibit "FF"*** and

[3] The Arbitrator was supposed to issue his decision much earlier, but granted his own motion to extend the time. Exhibit "B" (APP 5-100), Exhibit "O" § 14 (APP 426), Exhibit "EE" (APP 841-856) It is likely that the significant amount of time that elapsed between the Merits Hearing and the issuance of his decision may have contributed to the error's identified in the Motion.

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incorporated by this reference herein (App. Part 4: APP0857-0872). On the same date, CLAP also submitted an application for an award of attorneys' fees and costs (the "***Attorneys' Fees Application***"). A true and correct copy of the Attorneys' Fees Application is attached hereto as ***Exhibit "GG"*** and incorporated by this reference herein (App. Part 4: APP0873-0965). In the Attorneys' Fees Application, CLAP sought an award of $255,403.75 for attorneys' fees and $29,200.07 in costs.

On or about November 20, 2018, Bidsal filed an objection to the Interim Award (the "***Award Objection***"). A true and correct copy of the Award Objection is attached hereto as ***Exhibit "HH"*** and incorporated by this reference herein (App. Part 4: APP0966-0979). On the same date, Bidsal filed an objection to the Attorneys' Fees Application (the "***Attorneys' Fees Objection***"). A true and correct copy of the Attorneys' Fees Objection is attached hereto as ***Exhibit "II"*** and incorporated by this reference herein (App. Part 5: APP0980-1030).

On or about January 21, 2019, the Arbitrator delivered his Interim Award (the "***Interim Award***"). A true and correct copy of the Interim Award is attached hereto as ***Exhibit "JJ"*** and incorporated by this reference herein (App. Part 5: APP1031-1053). In spite of Bidsal's Award Objection and Attorneys' Fees Objection, in the Interim Award, the Arbitrator maintained the same critical incorrect findings as he did in the Merits Order, and awarded to CLAP the incredible sum of $249,078.75 for attorneys' fees and costs, which was 95% of the inflated amounts sought by CLAP in its Attorneys' Fees Application (App. Part 5: APP1029-1051 at APP1034, APP1035, and APP1048).

The Arbitrator further permitted CLAP until February 28, 2019 within which to submit additional declarations and billing statements for attorneys' fees and costs incurred after September 5, 2018 (the "***Attorneys' Fees Supplement***"). Bidsal was given until March 7, 2019 within which to file any objection to the Attorneys' Fees Supplement. The parties were also given until March 7, 2019 within which to submit any proposed corrections to the Interim Award not inconsistent with the determinations or relief granted in the Interim Award.

On or about February 28, 2019, CLAP submitted an Attorneys' Fees Supplement, seeking additional attorneys' fees and costs for a total of $304,061.03 in attorneys' fees and costs. A true

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and correct copy of the Attorneys' Fees Supplement is attached hereto as ***Exhibit "KK"*** and incorporated by this reference herein (App. Part 5: APP1054-1083). On or about March 7, 2019, Bidsal served his objection to the Interim Award (the "***Interim Award Objection***"). A true and correct copy of the Interim Award Objection is attached hereto as ***Exhibit "LL"*** and incorporated by this reference herein (App. Part 5: APP1084-1086).

4. Final Award.

On or about April 5, 2019, the Arbitrator entered the final Award. A true and correct copy of the Award is attached hereto as ***Exhibit "MM"*** and incorporated by this reference herein (App. Part 5: APP1087-1108). The Award contained essentially the same content as the Interim Award, and granted to CLAP the outrageous sum of $298.256.00 for attorneys' fees and costs. Id.

III.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD FOR VACATUR OF ARBITRATION AWARDS.

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

> **(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

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> 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.

9 U.S.C. § 10.

Likewise, N.R.S Chapter 38 governing Mediation and Arbitration also allows for Courts to vacate an arbitration award under nearly identical circumstances as the Federal Arbitration Act.

B. THE ARBITRATOR EXCEEDED HIS POWERS.

Under 9 U.S.C. § 10(a)(4), an arbitration award will be vacated if the arbitrator "exceeded [his or her] powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4).

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).

Thus, when an arbitrator strays from interpretation and application of the agreement and effectively '***dispense[s] his own brand of industrial justice***' his or her decision may be unenforceable. Stolt-Nielsen, S.A. v. AnimalFeeds International, 130 S. Ct. 1758, 1767 (2010) (*quoting* Major League Baseball Players Ass'n. v. Garvey, 532 U.S. 504, 509, 121 S. Ct. 1724 (2001))(emphasis added); *See also* ASPIC Eng'g & Constr. Co. v. ECC Centcom Constructors LLC, Case No. 17-16510 (9th Cir., January 28, 2019) ("Thus, we held that the district court properly vacated the award because the arbitrator 'dispense[d] his own brand of industrial justice' by 'disregard[ing] a specific contract provision to correct what he perceived as an injustice.'").

An arbitration decision may be vacated when the arbitrator exceeds his or her powers because the task of an arbitrator is to "interpret and enforce a contract, not to make public policy." Id. at 1767-68. An arbitrator cannot "simply impose [his or her] own view of sound policy." Id.

The Nevada Supreme Court in Clark County Education Association v. Clark County School District, 122 Nev. 337, 131 P.3d 5 (2006), recognized two common-law grounds to be applied by a court reviewing an award resulting from private binding arbitration. 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)

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whether the arbitrator manifestly disregarded the law." Id. (*Citing* Wichinsky v. Mosa, 109 Nev. 84, 89-90, 847 P.2d at 731 (1993)). Thus an arbitrator can't simply issue an award that metes out his own idea of justice. This is especially true, where the arbitrator disregards a specific contract provision to correct what he or she may perceive as an injustice. In Pacific Motor Trucking Co. v. Automotive Machinists Union, 702 F.2d 176 (9th Cir. 1983), citing Federated 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." Although an arbitrator has great freedom in determining an award, he or she may not "dispense his [or her] own brand of industrial justice." Id. (*quoting* United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 80 S. Ct. 1358, 1361 (1960)).

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1. The Arbitrator Made Factual Findings To Support His Desired Outcome Which Were Directly Contradicted By The Plain, Uncontroverted Evidence.

Apparently having made up his mind how he wanted to rule from the very beginning, the Arbitrator made factual findings to support his desired outcome which was directly contradicted by the plain, uncontroverted evidence. Specifically, the Arbitrator found that: (a) Section 4 of the Operating Agreement was drafted by Shawn Bidsal; (b) a forced buy-sell agreement or "Dutch Auction" was used in Section 4.2, notwithstanding clear evidence to the contrary; and (c) Section 4.2 employed a "form of cost-effective 'rough justice'", when the concept was never part of the drafting of Section 4.2.

The Arbitrator made comments and critiques regarding the case being one of "rough justice" beginning during the Rule 18 Summary Motion hearing and continuously and erroneously relied on his self created notion throughout the arbitration process. The Arbitrator relied upon a crude initial understanding of two terms within the OPAG, Section 4, Purchase or Sell Right among Members. The first term being "Offering Member." "Offering Member" is defined in the OPAG, Section 4.1, Definitions, as "…the member who offers to purchase the Membership Interest(s) of the Remaining Member(s)." "Remaining Members" is defined in the same section as, "…the Members who received an offer (from Offering Member) to sell their shares." Despite the clear language in the OPAG, the Arbitrator misconstrued the definition as

indicating that the "Remaining Member" would be the member that remains the owner of Green Valley, while the "Offering Member" would be member leaving Green Valley, making an offer to sell. This misguided interpretation is in clear contravention of the language of the agreement.

Likewise, the Arbitrator appears to taken the language in Bidsal's July 7, 2017 offer letter and replaced the OPAG Section 4 definitions, with the language used by Bidsal's attorney in the offer letter. *See* Exhibit "Y" (App. Part 3: APP0587-0588.) *See also* Exhibit "O" (App. Part 2: APP0429-0430). *See also* Exhibit "MM" (App. Part 5: APP1087-1108). Specifically, the July 7, 2017 offer letter states, "[t]he Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***")." *See* Exhibit "Y" (App. Part 3: APP0587-0588). The Arbitrator takes the non-binding definition of FMV in the offer letter and uses it to replace the binding and controlling language of the OPAG. The Arbitrator then finds, "[u]nder Section 4.2 of the Green Valley Operating Agreement, the 'Remaining Member' (CLA) has the option to sell or buy 'the [50%] Membership Interest' put in issue by the Offering Member, 'based upon the same fair market value (FMV)' set forth in the Offering Member's Section 4.2-compliant offer." *See* Exhibit "MM" (App. Part 4: APP1087-1108 at 1096). As one can plainly see, the Arbitrator had to cut and paste various sections of the OPAG, Section 4 together to arrive at his twisted version of the definitions. However, the twisting and stretching of the Section 4 language was totally unnecessary, when read in order, the language lays out a clear and unambiguous path to arrive at who the selling party will be, who the purchasing party will be and what the purchase price will be. There was no need for the Arbitrator to create a definition of FMV, when the OPAG, Section 4.2, clearly states "[t]he medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." Neither Bidsal's best estimate of the value of the company, nor his attorney's statement of FMV, constitute the medium of two appraisals as is defined by the controlling OPAG. *See* Exhibit "O" (App. Part 2: APP00430).

The establishment of FMV is especially important, as it is the driving figure in establishing what the Offering Member needs to pay the Remaining Member to purchase the Remaining Member's Interests. The Arbitrator is correct in stating the contractual formula listed in Section 4.2 of the OPAG is not in dispute *See* Exhibit "MM" (App. Part 4: APP1087-1108 at

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1091). The formula is "(FMV-COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." The terms "FMV" and "COP" are both defined in the same section that contains the formula. FMV being defined as "[t]he medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." And COP being defined as, 'cost of purchase' as it [is] specified in the escrow closing statement at the time of purchase of each property owned by the Company." *See* Exhibit "O" (App. Part 2: APP0429-0430). Of paramount importance is that the formula is listed directly after the sentence establishing how to define FMV. A reading separating these two sections, as was done by the Arbitrator, is illogical. The Arbitrator clearly separated the sentences in an effort to arrive at the conclusion he had predetermined before hearing any evidence in this matter.

Additionally, while the contractual formula listed in 4.2 of the OPAG is not in dispute, it is de facto, obsolete. As was addressed in the paragraph above the formula for purchase price to be used after two appraisals have been completed, is stated as "(FMV-COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." However, using this formula negates a fact well known by both Parties and the Arbitrator. The fact is that the capital contributions had changed significantly, as had the properties sold and exchanged by Green Valley. *See* Exhibit "B" (App. Part 1: APP0076-0077). For example, the majority of Golshani's capital contribution had been repaid *See* Exhibit "B" (App. Part 1: APP0077 at (370:8-11)). Additionally, three of the buildings of the original property had been sold. One of the three buildings had been sold and then another purchased using a 1031 exchange. *See* Exhibit "B" (App. Part 1: APP0077).

These erroneous factual findings were important to the Arbitrator's ultimate outcome because of the legal principal that a contract provision is to be construed against the party who drafted it. Williams v. Waldman, 108 Nev. 466, 473, 836 P.2d 614, 619 (1992). In making these incorrect factual findings, the Arbitrator was then able to apply the law to the incorrect facts in a manner that gave him his predetermined result.

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(a) <u>The Undisputed Evidence Clearly Demonstrated That Section 4 of the Operating Agreement was drafted by Golshani, not Bidsal.</u>

Ignoring numerous Exhibits and witness testimony, the Arbitrator astoundingly found that Section 4 of the Operating Agreement was drafted by Bidsal. (*See* Exhibit "MM" at 5 (fn. 5) and 9 (¶ 17) (App. Part 5: APP1092). However, the voluminous evidence presented to the Arbitrator demonstrated exactly the opposite.

The uncontroverted evidence demonstrated that Golshani, who was not happy with any of the language proposed by LeGrand, was the one who drafted and emailed the first iteration of Section 4. *See* Exhibit "B" at 318:7-319:5, 320:11-321:22, 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part: APP0049-0052 & 0079-0082), Exhibit "N" (App. Part 2: APP0415-0418), Exhibit "O" (App. Part 2: APP0419-0447), Exhibit "P" (App. Part 2: APP0448-0451), Exhibit "Q" (App. Part 2: APP0452-0453), Exhibit "R" (App. Part 2: APP0454-0455), Exhibit "S" (App. Part 3: APP04546-0458), and Exhibit "T" (App. Part 3: APP0459-0460). Specifically, the Arbitrator ignored the following in determining that Bidsal was the drafter of Section 4.

1. On September 22, 2011, ***Golshani emailed*** Bidsal some buy-sell language that Golshani proposed and identified as a "ROUGH DRAFT", and which, after some modifications, ultimately ended up in Section 4. *See* Exhibit "N" and "O" at pp. 10-11 (App. Part 2: APP0415-0447);

2. On October 26, 2011, ***Golshani emailed*** Bidsal a revised version of his earlier "ROUGH DRAFT", which Golshani identified as "ROUGH DRAFT 2". *See* Exhibit "P" (App. Part 2: APP0448-0451);

3. One of the changes ***made by Golshani*** was intentionally changing the triggering event for a buy-sell transaction from an offer by one member "***to <u>sell</u> his or its Member's Interest*** in the Company to the other Members" to an offer by that member "***to <u>purchase</u> the Remaining Member's Interest*** in the Company." *See* Exhibits "N", "P", "Q" and Exhibit "B" at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Part 2: APP0415-0418, 0448-0451; App. Part 1: APP0079).

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4. A short time after October 26, 2011, ***Golshani sent*** a fax to LeGrand containing his ROUGH DRAFT 2 buy-sell language. *See* Exhibit "R" and Exhibit "B" at 318:7-9 (App. Part 2: APP0454-0455, App. Part 1: APP49).

5. LeGrand then made a few minor changes to Golshani's ROUGH DRAFT 2, renamed it "DRAFT 2", and circulated the DRAFT 2 to Bidsal and Golshani. *See* Exhibit "O" and "P" (App. Part 2: APP0419-0451). *See also* Exhibit "S" (App. Part 3: APP0456-0458). *See also* Exhibit "B" at 318:10-14 and 318:23-319:5 (App. Part 1: APP49).

6. The differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. *See* Exhibits "P", "S", "T", and Exhibit "B" at 320:11-17 and 321:19-22 (App. Part 2: APP0448-0451; App. Part 3: APP0456-0460; App. Part 1: APP0051-0052).

7. LeGrand simply took ***Golshani's language*** and inserted it almost untouched into the Operating Agreement. Id;

8. Bidsal never drafted any of the revisions. *See* Exhibit "B" at 208:6-7, 384:18-23, and 387:13-15 (App. Part 1: APP0025, 0086, 0088);

9. Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. *See* Exhibit "B" at 385:8-12 and 19-21 (App. Part 1: APP0087);

10. To the extent any changes were not made by LeGrand, they were made by Golshani. *See* Exhibit "B" at 152:20-22 (App. Part 1: APP0015); and

11. LeGrand, himself, stated that nearly identical buy-sell language used two years later in an operating agreement for another entity, Mission Square, contained and consisted of (in LeGrand's words): "Ben's language." *See* Exhibit "X" and Exhibit "B" at 389:8-14 (App. Part 3: APP0528-0586, App. Part 1: APP0089).[4]

Thus, the undisputed evidence showed that Golshani was the drafter of the buy-sell language at issue, yet the Arbitrator ignored the undisputed facts and made up justifications,

[4] The Arbitrator's conclusion that "the substance of [LeGrand's] testimony is essentially the same as, and thus corroborates, CLA's contentions" is dumbfounding, considering LeGrand's own words in Exhibit "X" (App. Part 3: APPENDIX0528-0586). *See* Exhibit "EE" at 5 (Para. 8) (App. Part 4: APPENDIX0841-56 at 846).

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unsupported by the facts, for declaring that Bidsal was the drafter. *See* Exhibit "EE" at 3, fn. 3 (App. Part 4: APP0841-0856 at 0844-0845); *See also* Exhibits "JJ" at 6 (App. Part 5: APP1031-1052 at APP1037). This was done in an obvious attempt at backing into a result the Arbitrator wished to find.

(b) <u>The Undisputed Evidence Clearly Demonstrated that the "Dutch Auction" Concept Was Not Used in Drafting Section 4.</u>

Again ignoring numerous Exhibits and witness testimony, the Arbitrator found that Section 4 of the Operating Agreement was drafted using the "Dutch Auction" concept. *See* Exhibit "MM" at pp. 5, para. 8 (App. Part 5: APP1092). However, as before, this finding is completely unsupported, even contradicted, by the evidence and demonstrates the Arbitrator's bias against Bidsal.

Specifically, David LeGrand clearly and unequivocally made it clear that the "Dutch Auction" concept, which he alone proposed, was ultimately discarded and not used. *See* Exhibit "B" at 273:8-13, 274:15-17, 316:12-15 (App. Part 1: APP 0044-0045 & 0047), Exhibit "J" (App. Part 2: APP0293-0351), Exhibit "K" (App. Part 2: APP0352-380), Exhibit "L" (App. Part 2: APP0381-0382) (wherein LeGrand stated that "[a] simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price **does *not* appear sensible to me**."), Exhibit "M" at DL 301 (App. Part 2: APP0383-0414 at APP0396). No evidence was presented that, after the concept was intentionally and specifically discarded by LeGrand and the parties, that it was somehow resurrected and used. To the contrary, Golshani drafted entirely new language which was ultimately used by the Parties. *See supra*.

(c) <u>The Undisputed Evidence Clearly Demonstrated "Rough Justice" Was Never Part Of The Consideration For Section 4.</u>

Finally, the Arbitrator found that the concept of 'rough justice' was part of the Parties' intent. However, neither the phrase, nor the concept, was part of any of the evidence presented to the Arbitrator[5].

[5] Normally, a citation to the record would be in order. However, since the concept of 'rough justice' simply did not come up at the Merit Hearing, there is nothing to cite to. This, of course, is the point being made--that the Arbitrator created the concept on his own, interjected it into the process, then relied upon it in making his final award.

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2. The Arbitrator's Ruling is Unsupported by the Agreement.

"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, 847 P.2d 727. (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 draws its essence from the agreement if "the award is derived from the agreement, viewed in light of the agreement's language and context, as well as other indications of the parties' intentions." Id.

In this case, the Award, which embraced the terms of the Merits Order was completely irrational, and unsupported by the agreement, because the Arbitrator failed to draw his ruling "from the essence of the agreement." Because the buy-sell provisions in Section 4.2 of the OPAG were ambiguous, the Arbitrator was tasked with the responsibility of interpreting Section 4.2 consistent with the intent of the parties, based upon the evidence before him - the OPAG's "language and context" and "other indications of the parties' intentions." *See* Exhibit "EE" at 2-3, fn.2. (App. Part 4: APP0843-44); *See* Exhibit "JJ" at 5 (fn. 5) (App. Part 5: APP1031-1053); *See* Lagstein at 642.

However, the Arbitrator failed to base his order on the agreement instead relying on: (i) LeGrand's language that did not make its way into the final Operating Agreement, (ii) what "is common among partners in business entities" rather than the actions, words, and course of dealing of the actual parties, and (iii) his own made-up notion of "rough justice" to steer his interpretation of Section 4.2, incorrectly finding that the language had been drafted by Bidsal. *See* Exhibit EE" at 3-4 (App. Part 4: APP0844-0845). This severe departure from the presented facts was a clear example of "***issuing an award that simply reflect[s] [his or her] own notions of justice*** rather than draw[ing] its essence from the contract." *See* Sutter, 569 U.S. at 569, 133 S. Ct. 2064. (emphasis added).

This severe departure from the presented facts was also evident from the fact that the Arbitrator found that Section 4.2 was drafted by Shawn Bidsal, as opposed to Ben Golshani, thereby allowing him to construe Section 4.2 against Bidsal. *See supra*; *See also* Anvui, LLC v. GL Dragon, LLC, 123 Nev. 212, 163 P.3d 405 (2007); Lewis v. Saint Mary's Heath First D. Nev. 2005), 402 F. Supp. 2d 1182.

The departure was also evident from the Arbitrator's finding that Section 4.2 of the OPAG contained a "Dutch Auction". *See* Exhibit "EE" at 3-4 (App. Part 4 APP0841-0856). The undisputed evidence showed that a "Dutch Auction" was initially contemplated by LeGrand, but discarded by the parties long before the final version of the buy-sell provisions of Section 4.2 was set in stone in the OPAG. *See* Exhibit "J" at DL211-212, Exhibit "B" at 316:12-15, and Exhibit "K" (App. Part 2: APP0293-351; Part 1: APP0048; Part 2: APP0352-0380).

The departure was also evident from the Arbitrator's reliance upon what "is common among partners in business entities like partnership, joint ventures, LLC's, close corporations…" instead of the actions, words, and course of dealing of the parties.

These actions are in direct violation of the principles set forth in Wichinsky, Clark County Education Association, Stolt-Nielsen, Suter, and Pacific Motor Trucking. The Arbitrator disregarded the specific buy-sell provisions of Section 4.2, the systematic procedure for Section 4.2 which was illustrated for him at the Merits Hearing with Exhibit "T", and the undisputed evidence which showed that Golshani was the drafter of the buy-sell provisions in Section 4.2. Instead, he dispensed with his own brand of industrial justice, or, as the Arbitrator, himself, put it, the buy-sell provision was simply based on a "form of cost-effective 'rough justice'". *See* Exhibit "EE" at 3-4 and fn. 3 (App. Part 4: APP0841-0856). Because the Arbitrator issued his ruling based upon his own notions of justice, and not from the contract before him, the Award should be vacated.

3. The Arbitrator Recognized the Law, but Manifestly Disregarded it.

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 Education Association, 122 Nev. 337, 131 P.3d 5 (2006) (*citing* Bohlmann v. Printz, 120

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Nev. 543, 96 P.3d 1155 (2004). Collins v. D.R. Horton, Inc., 505 F.3d 874, 879 (9th Cir. 2007) (*quoting* San Maritime Compania De Navegacion, S.A. v. Saguenay Terminals Ltd., 293 F.2d 796, 801 (9th Cir. 1961)) holds that manifest disregard of the law exists where "the arbitrator 'underst[oo]d 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. 2004)).

In this case, the Arbitrator manifestly disregarded the law. The Arbitrator recognized the law that the purpose of contract interpretation was "to discern the intent of the contracting parties." *See* Exhibit "EE" at 6, fn. 7 (*citing to* American First Federal Credit Union v. Soro, 359 P.3d 105, 106 (Nev. 2015) and Davis v. Beling, 128 Nev 301, 279 P.3d 501, 515 (Nev. 2011)) (App. Part 4: APP0841-0856); *See also* Exhibit "EE" at 13 wherein the Arbitrator stated that his decision was based upon "careful consideration . . . of applicable law . . ." (App. Part: APP0841-0856). Undoubtedly, the Arbitrator also reviewed and digested the legal argument and citations to legal authority in the briefs submitted by the parties.

Nonetheless, the Arbitrator disregarded the law by relying upon what "is common among partners in business entities …" instead of the actions, words, and course of dealing of the actual parties and invoking "rough justice" and the principle of a "Dutch Auction", which had nothing to do with discerning the intent of the parties, as reflected in the evidence presented at the Arbitration Hearing.

4. The Arbitrator Exceeded his Authority.

Moreover, the Arbitrator recognized the law of the case with respect to this dispute, which, as he stated, involved only:

> whether or not Bidsal contractually agreed to sell and can be legally compelled to sell his 50% Membership Interest in Green Valley to CLA at a price computed via a contractual formula not in dispute, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 written offer to purchase CLA's 50% Membership Interest in Green Valley --- without regard to a formal appraisal of Green Valley, which Mr. Bidsal has contended the parties agreed Mr. Bidsal has the contractual right to demand as a "counteroffered seller" under Section 4.2 of the Green Valley Operating Agreement.

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See Exhibit "EE" at 2 (App. Part 4: APP0841-0856). However, the Award then adopted the terms of the proposed Interim Award, which included other matters clearly outside the scope of the Arbitration Proceeding. *See* Exhibits "FF", "JJ", and "MM" (App. Part 4: APP0857-0872 and APP1031-1053; APP1087-1108). These included the following:

1. Ordering Bidsal to transfer his membership interests in Green Valley to CLAP "free and clear of all liens and encumbrances";

2. Placing an arbitrary and commercially unreasonable deadline of 10 days for Bidsal to complete the transfer of his membership interests in Green Valley;

See Exhibit "FF" at 15 (App. Part 4: APP0857-0872)

At no time was there ever any evidence or discussion about the nature of Bidsal's membership interest in Green Valley and whether or not it should be transferred "free and clear of all liens and encumbrances." Likewise, the 10 day deadline imposed by the Award is not founded on any of the evidence introduced at the Merit Hearing, but is instead, simply an arbitrary period of time derived solely by the Arbitrator.

Finally, while the Arbitrator recognized his authority derived from the JAMS rules and Article III, Section 14.1 of the OPAG, he went beyond the authority granted by both by granting to himself continuing jurisdiction. *See* Exhibit "LL" at 3; Exhibit "O" at Article III, Section 14.1. (App. Part 5: APP1084-1086; App. Part 2 : APP0419-0447). There is nothing in either the OPAG or the JAMS rules which authorize the Arbitrator to retain any continuing jurisdiction once a final Award is entered but before it is converted into a judgment with the district court. *See* Exhibit "O" at Article III, Section 14.1 and Exhibit "LL". (App. Part: APP00419-0447; App. Part 5: APP1084-1086) Therefore, the Arbitrator exceeded his powers and the Award should be vacated.

The Arbitrator clearly disregarded the law and exceeded his powers in granting relief not set forth in the Arbitration Demand, not the subject of discovery, not briefed by the parties, and not presented via evidence at the Arbitration Proceeding. Therefore, the Arbitrator exceeded his powers and the Award should be vacated.

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5. The Award is Irreconcilable with Undisputed Dispositive Facts.

Courts may review a private arbitration award where the award is arbitrary or capricious. *See* Clark County Education Association, 122 Nev. 337, 131 P.3d 5 (2006). Courts may also vacate an arbitration award that is legally irreconcilable with the undisputed facts. Coutee v. Barrington Capital Group, L.P., 336 F.3d 1128, 1133 (9th Cir. 2003). Because facts and law are often intertwined, "an arbitrator's failure to recognize undisputed, legally dispositive facts may properly be deemed a manifest disregard for the law." Id.

In this case, the Award was arbitrary, capricious, in that it failed to rely on the undisputed facts presented. Specifically, the Award was irreconcilable with the undisputed fact, described above, that Golshani was the drafter of the buy-sell language, a critical point considering any ambiguity in Section 4.2 should be construed against the drafter, which in this case was Golshani, not Bidsal. *See* Anvui, LLC v, 163 P.3d at 407; Lewis, 402 F. Supp. 2d 1182.

Because the Arbitrator's failure went to the very heart of the dispute, the Award should be vacated.

C. THE ARBITRATOR IS GUILTY OF PARTIALITY AND MISBEHAVIOR BY WHICH THE RIGHTS OF BIDSAL HAVE BEEN PREJUDICED.

Similarly, 9 U.S.C. § 10(a)(2) and (3) provide that an arbitration award shall be vacated "where there was evident ***partiality*** or corruption in the arbitrators, or either of them;" or "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***." 9 U.S.C. § 10(a)(3)(emphasis added).

In this case, as described above, rather than follow the law governing the dispute, the Arbitrator, with both eyes open, ignored the actions, words and course of dealing of the parties and instead, relied upon what "is common among partners in business entities" and inserted his own notions of "rough justice." To blatantly do so, rises to the level of misconduct. Bidsal was prejudiced by the Arbitrator's misbehavior because he lost the right to an appraisal before selling his membership interests in Green Valley to CLAP. Instead, Bidsal is stuck with selling his

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membership interests without the benefit of an appraisal. If the Arbitrator had followed the law on interpretation of contracts, rather than inserting his own brand of frontier justice or his own ideas of good public policy, the OPAG would have been interpreted consistent with the parties' intentions. Bidsal was entitled to the proper legal standards and the benefit of his bargain pursuant to the terms of the OPAG. The Arbitrator denied him both.

Second, the Arbitrator committed actions arising to wrongdoing because it appears that he deliberately ignored the express words of the final Operating Agreement and intentional metamorphosis of the buy-sell language, which was clearly illustrated for him in Exhibit "Q" (which was demonstrative Exhibit 360 during the Merits Hearing) (App. Part 2: APP452-0453). The critical aspect of that change was to move from an initiating offer to ***sell*** to an initiating offer to ***purchase***. Thus, the offering member never intended to sell his or its membership interest in Green Valley merely on an estimated value for the company, and an appraisal process was added to protect the actual selling party (whether initial buyer, or seller subject to a counteroffer) so that no one would be forced to sell his or her interest without the chance to lock down a fair price. However, the Arbitrator's blatant disregard for Exhibit "Q" appeared to be deliberate and his final ruling orders Bidsal to "sell" instead of "purchase." (App. Part 2: APP0452-0453).

Third, even though the Arbitrator is now forcing Bidsal to sell his interests to CLAP at a price based upon a ball-park initial estimate of company value, CLAP was ***never*** in jeopardy of having to sell its interest at a price based upon Bidsal's initial estimate, but could have demanded an appraisal and be adequately protected if that initial estimate was inaccurate. Yet, in spite of this, the Arbitrator apparently conjured up sympathy for CLAP and exhibited a bias against Bidsal by painting Bidsal out to be calculating and scheming. This is evident from the Arbitrator's statements in the Merits Order, Interim Award, and Award which impermissibly relies on a contrived motive when Bidsal did not agree to sell without the parties pursuing the express arbitration process set forth in the buy-sell provision of the Operating Agreement:

1. Exhibit "EE" at 4 (Para. 6), Exhibit "JJ" at 6 (Para. 9) "the parties' dispute appears to be a result and expression of 'seller's remorse' by Mr. Bidsal . . ." (App. Part 4: APP0841-0856) (App. Part 5: APP1031-1053);

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2. Exhibit "EE" at 4 (Para. 7B), "Mr. Bidsal's testimony, arguments and position in support of his having contractual appraisal rights appear to be 'outcome determinative' in his favor (App. Part 4: APP0841-0856 at 843);

3. Exhibit "EE" at 7 (Para. 9): "It appears that in this case, Mr. Bidsal attempted to find a contractual 'out' to regain lost leverage to either buy or sell a 50% membership interest in Green Valley at a price and/or terms less favorable that he originally invisaged . . ." (App. Part 4: APP0841-0856).

4. Exhibit "EE" at 7 (Para. 9), "What Mr. Bidsal seems to have settled on for negotiation and arbitration was ignoring, disregarding and, it appeared at the hearing, resisting strict application of the 'specific intent' language quoted and discussed above . . ." (App. Part 4: APP0841-0856).

5. Exhibit "EE" at 7-8 (Para. 9), Exhibit "35" at 10 (Para. 17): "What Mr. Bidsal apparently found and settled on was a drafting ambiguity in Section 4 of the Green Valley Operating Agreement --- i.e., 'FMV' . . . while it apparently was under Mr. Bidsal's control for final revisions . . ." (App. Part 4: APP0841-0856);

6. Exhibit "EE" at 8 (Para. 9), Exhibit "35" at 10 (Para. 17) "Mr. Bidsal used that ambiguity as his justification for refusing to perform as a compelled seller under the Section 4.2 'buy-sell'. . ." (App. Part 4: APP0841-0856);

7. Exhibit "EE" at 8 (Para. 10), ". . . there is an unanswered logical flaw in Bidsal's position - - which the Arbitrator has determined to be 'outcome determinative' . . . " (App. Part 4: APP0841-0856).

8. Exhibit "EE" at 11 (Para. 11D: ". . . [m]iscalculating the intentions, thinking and/or financial resources available to the other party in an arm's length transaction, such as a Section 4.2 'buy-sell,' are not cognizable bases for re-writing or re-interpreting the parties' contractual procedures." (App. Part 4: APP0841-0856).

9. Exhibit "MM" at 16-7 (Para. 28): ". . . Mr. Bidsal, not CLA, was the principal driver of those costs . . . Mr. Bidsal's resistance to complying with his obligations including his conducting a 'no holds barred' litigation . . . " (App. Part 5: APP1087).

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The foregoing examples of statements from the Merits Order show that they were made by the Arbitrator simply as pretext for ruling against Bidsal. The Arbitrator exhibited an open hostility toward Bidsal, and a preference for CLAP. Further, because this hostility to Bidsal and clear preference for Golshani and CLAP resulted in a clearly biased decision in favor of CLAP, Bidsal was clearly prejudiced. The Arbitrator's statements show that he is improperly projecting motive, thoughts and intentions. Essentially, the Arbitrator has taken it upon himself to be an armchair psychologist, presuming to know the thoughts and minds of Bidsal. For this reasons, the resulting Arbitration Award, which is clearly the product of partiality, should be vacated.

D. LEGAL STANDARD ON MODIFYING AND CORRECTING ARBITRATION AWARDS.

As the forgoing demonstrates, the appropriate remedy is to vacate the entire Arbitration Award. However, even if an award is not completely vacated, 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.

9 U.S.C. § 11.

Likewise, N.R.S Chapter 38 governing Mediation and Arbitration also allows for Courts to modify or correct an arbitration award. According to NRS 38.242 arbitration awards may be modified or corrected as follows:

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> 1. Upon motion made within 90 days after the movant receives notice of the award pursuant to NRS 38.236 or within 90 days after the movant receives notice of a modified or corrected award pursuant to NRS 38.237, the court shall modify or correct the award if:
>
> (a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;
>
> (b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or
>
> (c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.
>
> 2. If a motion made under subsection 1 is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.
>
> 3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

As explained below, even if the entire Award was not vacated, it should still be corrected or modified.

1. <u>The Arbitrator Included Matters Not Submitted to Him.</u>

Even if the Court does not vacate the entirety of the Award, it should still modify and correct the Award. Nevada clearly contemplates erroneous arbitration awards needing correction and/or modification, however, as this particular Award was determined under the Federal Arbitration Act, modification should be considered under 9 U.S.C. § 11(b). As stated earlier, 9 U.S.C. § 11(b) is controlling and provides that an arbitration award may be modified and corrected if "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." 9 U.S.C. § 11(b)(in pertinent part).

The Ninth Circuit Court of Appeals agrees that the court may "strike all or a portion of an award pertaining to an issue not at all subject to arbitration." <u>Kyocera</u>, 341 F.3d at 997-98; <u>Schoenduve Corp. v. Lucent Technologies</u>, 442 F.3d 727, 732 (9th Cir. 2006). That is because review by a district court is ultimately still "designed to preserve due process" without unnecessary public intrusion into private arbitration procedures. <u>Id</u>.

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Similarly, arbitrators do not have authority to decide issues not submitted by the parties. Hughes Aircraft Co. v. Electronic Space Technicians, Local 1553, AFL-CIO, 822 F2d 827 (9th Cir. 1987). Thus, an arbitrator exceeds his or her authority if he or she has "considered issues beyond those submitted by the parties or issues prohibited by the terms of their agreement." Jock v. Sterling Jewelers, Inc., 646 F.3d 113, 122 (2nd Cir. 2011).

In this case, as stated earlier, in the Interim Award, CLAP added various provisions involving issues never made an issue in the Arbitration Proceeding by CLAP in its Demand. *See* Exhibit "DD" (App. Part 4: APP0835-038). These provisions were set forth in Section V of the Interim Award, and include:

1. Ordering Bidsal to transfer his membership interests in Green Valley to CLAP "free and clear of all liens and encumbrances";

2. Placing an arbitrary and commercially unreasonable deadline of 10 days for Bidsal to complete the transfer of his membership interests in Green Valley;

See Exhibit "FF" (App. Part 4: APP858-70 at 869-72). *See also* Exhibit "MM" (App. Part 5: APP1087-1108).

However, these issues were not raised by CLAP in its Arbitration Demand. *See* Exhibit "DD" (App. Part 4: APP0835-0840). Rather, CLAP simply sought assistance from the Arbitrator to interpret the OPAG consistent with CLAP's interpretation of it and force Bidsal to sell his membership interest in Green Valley to CLAP. Consequently, the parties never conducted discovery on those issues, prepared to present evidence at the Merits Hearing related to those issues, or formulated legal argument related to those issues in any briefs submitted to the Arbitrator.

Further, these provisions were not found anywhere in the Merits Order. *See* Exhibit "EE" (App. Part 4: APP0841-0856). In fact, they could not have been, because JAMS Rule 11(b) did not grant the Arbitrator authority to award anything outside of "disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought."

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See a true and correct copy of the JAMS rules, attached hereto as ***Exhibit "NN"*** an incorporated by this reference herein (App. Part 5: APP1109-1143).

Likewise, Section 14.1 of Article III of the OPAG only mandated arbitration "[i]n the event of any dispute or disagreement between the members *as to the interpretation of any provision of this Agreement* . . ." (emphasis added) *See* Exhibit "O" at Section 14.1 (App. Part 2: APP0419-0447 at 426-7). Thus, issues properly considered in the Arbitration Proceeding all dealt with the interpretation of the OPAG. Distributions to the members had nothing to do with the interpretation of the OPAG, and as such, were not properly part of the issues to be decided in the Arbitration Proceeding.

Moreover, the Final Award would not enforceable in and of itself. Rather, both JAMS Rule 24(J) and Article III Section 14.1 of the OPAG provided that the provisions of the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) govern the process in this case. *See* Exhibit "O" (App. Part 2: APP0419-0447 at 426-7). Under 9 U.S.C. § 9, CLAP must apply to a court of law to confirm any final arbitration award within one year, in order to enforce it. At the same time, under 9 U.S.C. § 12, Bidsal was entitled to file a motion to vacate, modify, or correct any final arbitration award within three (3) months after the award is filed or delivered. Consequently, a ten (10) day finalization date was premature and unwarranted under the law.

Bidsal brought these issues to the attention of the Arbitrator. *See* Exhibit "HH" (App. Part 4, APP0966-0979). Nonetheless, in blatant disregard of the law, the Arbitrator exceeded his authority by including in the Award these provisions of matters not properly before him. *See* Exhibit "JJ" and "LL" (App. Part 5: APP1031-1053)(App. Part 5: APP1084-1086). Consequently, the Award should, at least, be modified to remove these offending provisions.

E. THE ATTORNEYS' FEES AWARDED SHOULD BE VACATED AS WELL.

As with general arbitration awards, awards of attorneys' fees may be vacated based on a "manifest disregard of the law." *See* Arbitration Between Bosack v. Soward, 573 F.3d 891, 899 (9th Cir. 2009). Nevada law governs any award of attorney's fees. *See* Operating Agreement, Exhibit "O" (App. Part 2: APP0419-0447).

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In the State of Nevada, all applications for awards of attorneys' fees and costs are governed by Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969). The Nevada Supreme Court mandates that a Court analyze the following elements when considering an award of attorneys' fees:

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

85 Nev. at 349, 455 P.2d at 33 (*citing* 7 C.J.S. Attorney and Client § 191 a. (2), p. 1080 *et seq.*; 5 Am.Jur., Attorneys at Law, section 198, *Cf.* Ives v. Lessing, 19 Ariz. 208, 168 P. 506 (1917)). The Brunzell Court continued: "good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight." Id.

Further, in order to be recoverable, fees must relate to work that has "necessity and usefulness" in the case. Thayer v. Wells Fargo Bank, 112 Cal. Rptr. 2d 284 (Ct. App. 2001). Consequently, billing for duplicative or unnecessary work is not recoverable. *See* Serrano v. Unruh, 652 P.2d 985, fn. 21 (Cal. 1982). As an example of unnecessary work, the Court in Serrano stated that "**not allowable are hours on which plaintiff did not prevail** or hours that simply should not have been spent at all, such as where attorneys' efforts are unorganized or duplicative. This may occur . . . when young associates' labors are inadequately organized by supervising partners." Id. (*citing* Copeland v. Marshall, 641 F.2d 880 (D.C. Cir.), 902-903 (1980)) (emphasis added).

Similarly, "'padding' in the form of inefficient or duplicative efforts is not subject to compensation." *See* Ketchum v. Moses, 103 Cal. Rptr. 2d 377 (2001); *see also* Chavez v. Netflix, 75 Cal. Rptr. 3d 413 (Ct. App. 2008) (upholding trial court's decision to reduce hours included in fee award based on inefficient billing).

The Nevada Supreme Court has also recognized that a District Court may reduce requested attorneys' fees for overbilling. Woods v. Woods, Nev. Sup. Ct. No. 72665 (July 27,

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2018). In this case, CLAP was overbilled by its attorneys. The Nevada Supreme Court has further ruled that attorneys' fees should not be awarded for specific activities outside the matters on which the party prevailed. Barney v. Mt. Rose Heating & Air Conditioning, 192 P.3d 730, 736-37, 124 Nev. Adv. Op. No. 71 (Sept. 18, 2008).

Courts in the State of California have, similarly, emphasized that in determining whether the number of hours billed are reasonable, trial courts should consider whether the work billed for actually advanced the case. As one court put it, "the predicate of *any* attorney fee award, whether based on a percentage-of-the-benefit or a lodestar calculation, is the necessity and usefulness of the conduct for which compensation is sought." *See* Thayer v. Wells Fargo Bank, 112 Cal. Rptr. 2d 284 (Ct. App. 2001). Courts agree that the fees associated with failed motions are not recoverable. *See* Serrano, 652 P.2d 985 ("not allowable are hours on which plaintiff did not prevail"). Likewise, fees are not recoverable when they relate to unsuccessful causes of action or claims for relief. *See, e.g.*, Californians for Responsible Toxics Management v. Kizer, 259 Cal. Rptr. 599 (Ct. App. 1989) (holding that **a 35% reduction from a plaintiff's requested fee award was reasonable** in light of the fact that the plaintiff "did not succeed on any of its motions" and included both successful and unsuccessful claims). (emphasis added)

In this case, all of the foregoing legal principles were submitted to the Arbitrator in Bidsal's Attorneys' Fees Objection. *See* Exhibit "II" (App. Part 5, APP0980-1030). For the sake of brevity, those arguments are incorporated by reference as if more fully set forth herein. As a result, the Arbitrator should have reduced the attorneys' fees and costs sought by CLAP by the sum of $136,970.83. Id.

Nonetheless, the Arbitrator manifestly disregarded those legal principles presented to him in awarding to CLAP the sum of $249,078.75, which represented 95% of the fees initially sought by CLAP, then tacked on an additional amount pursuant to the Attorneys' Fees Supplement, while only slightly reducing the award because of CLAP's failure to prevail on the Rule 18 Motion and CLAP's wrongful attempt to recover the travel costs of CLAP's principal, for a total of $298,256.00. *See* Exhibits "GG" and "EE" (App. Part 4: APP871-965). The Award should be

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modified and corrected to reduce the award of attorneys' fees and costs to the sum of $136,970.83.

III.

CONCLUSION

A. THE ARBITRATOR'S FLAWED ASSUMPTIONS INVALIDATE HIS FINDINGS.

An arbitrator cannot supplant his own notions of justice and fact, when there is ample evidence to the contrary. In the present case, as shown above, the Arbitrator attributes a self-created concept of "rough justice" to Section 4.2 of the OPAG. In attributing this concept he unilaterally and unjustifiably decided that Section 4.2 of the OPAG was a "forced buy-sell agreement", when in reality, and by a plain reading of the document, indicates that the entire procedure listed in 4.2 must be followed prior to reaching the final paragraph of 4.2 that addresses when an offer to purchase can be turned into an obligation to sell by the offering member. Using the Arbitrator's fictional understanding of the OPAG, Section 4.2, any offer to purchase, made by any member could instantaneously be converted into a forcible sale. Begging the question, why would any member, not wishing to sell, **ever** make an offer to purchase. Furthermore, as addressed above, the Arbitrator, once again unilaterally and unjustifiably, determined that the provision in Section 4.2 of the OPAG was a "forced buy-sell agreement" because those types of provisions are "common among partners in business entities." *See* Exhibit EE" at 3-4 (App. Part 4: APP0844-0845). While such agreements may be common, it is abundantly clear that CLAP and Bidsal did not elect to have such an agreement and instead Golshani on behalf of CLAP drafted specific language that did not include a common "forced buy-sell agreement," as imagined by the Arbitrator.

B. THE ARBITRATOR ARBITRARILY ASSIGNED AUTHORSHIP OF THE OPAG.

Despite the abundance of evidence to the contrary the Arbitrator decided that Bidsal, not Golshani, drafted the provision in question, Section 4.2 of the OPAG. In addition to the abundance of evidence that Golshani was the drafter, there was a distinct lack of evidence that Bidsal was the drafter. Yet, the Arbitrator not only attributed the drafting to Bidsal, but in a plain

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act of prejudice used that flawed conclusion to interpret the provision in favor or CLAP and against Bidsal.

C. THE ARBITRATOR IGNORED THE PLAIN LANGUAGE OF THE OPAG.

The Arbitrator acknowledged and then disregarded the fact that the term "FMV" was defined in the OPAG. Apparently deciding that he knew best, the Arbitrator noted that the term "FMV" was defined in Section 4.2, but disregarded the plain language. The language used in the OPAG is not complex, "The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." This language becomes even clearer when read in context. In a plain language reading of the OPAG Section 4, it is apparent that the definitions come first, followed by use of the defined terms in the follow on subsections. The Arbitrator makes a very simple definition infinitely more confusing, devoting multiple paragraphs to deciding how he wanted to define the term, rather than using a simple and plain reading of the language the Parties had agreed upon.

For the aforementioned reasons above, Bidsal respectfully requests that this Court deny CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment in its entirety and Vacate the Arbitration Award.

Dated this 15th day of July, 2019

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 Respondent, Shawn Bidsal

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 15th day of June, 2019, I served a true and correct copy of the foregoing **RESPONDENT'S OPPOSITION TO CLA'S PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND COUNTERPETITION TO VACATE 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, pursuant to Administrative Order 14-2, entered on May 9, 2014.

/s/ Jill M. Berghammer
An employee of Smith & Shapiro, PLLC

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EXHIBIT 61

EXHIBIT 61

Demand for Arbitration Form

Instructions for Submittal of Arbitration to JAMS

INSTRUCTIONS

Please submit this form to your local JAMS Resolution Center. Once the below items are received, a JAMS professional will contact all parties to commence and coordinate the arbitration process, including the appointment of an arbitrator and scheduling a hearing date.

1-800-352-JAMS
www.jamsadr.com

If you wish to proceed with an arbitration by executing and serving a Demand for Arbitration on the appropriate party, please submit the following items to JAMS with the requested number of copies:

A. **Demand for Arbitration** *(2 copies)*

B. **Proof of service of the Demand on the appropriate party** *(2 copies)*

C. **Entire contract containing the arbitration clause** *(2 copies)*
- *To the extent there are any court orders or stipulations relevant to this arbitration demand, e.g. an order compelling arbitration, please also include two copies.*

D. **Administrative Fees**
- *For two-party matters, the Filing Fee is $1,750. For matters involving three or more parties, the filing fee is $3,000. The entire Filing Fee must be paid in full to expedite the commencement of the proceedings. Thereafter, a Case Management Fee of 12% will be assessed against all Professional Fees, including time spent for hearings, pre- and post-hearing reading and research and award preparation. JAMS also charges a $1,750 filing fee for counterclaims. For matters involving consumers, the consumer is only required to pay $250. See JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses. For matters based on a clause or agreement that is required as a condition of employment, the employee is only required to pay $400. See JAMS Policy on Employment Arbitrations, Minimum Standards of Fairness. JAMS may apply its Employment Minimum Standards where an individual claims to have been misclassified as an independent contractor or otherwise improperly placed into a category other than employee or applicant for employment.*

- *A refund of $875 will be issued if the matter is withdrawn within five days of filing. After five days, the filing fee is non-refundable.*

Once completed, please submit to your local JAMS Resolution Center.
Resolution Center locations can be found on the JAMS website at: http://www.jamsadr.com/locations/.

Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

TO RESPONDENT (PARTY ON WHOM DEMAND FOR ARBITRATION IS MADE)

Add more respondents on **page 6**.

RESPONDENT NAME	CLA Properties, LLC				
ADDRESS	2801 South Main Street				
CITY	Los Angeles	STATE	CA	ZIP	90007
PHONE	213-718-2416	FAX		EMAIL	bengo17@yahoo.com

RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY	Louis E. Garfinkel, Esq.				
FIRM/ COMPANY	Levine & Garinkel				
ADDRESS	1671 W. Horizon Rdge Pkwy., Suite 230				
CITY	Henderson	STATE	NV	ZIP	89012
PHONE	702-673-1612	FAX	702-735-2198	EMAIL	LGarfinkel@lgealaw.com

FROM CLAIMANT

Add more claimants on **page 7**.

CLAIMANT NAME	Shawn Bidsal				
ADDRESS	14309 Sherman Way Boulevard, Suite 201				
CITY	Van Nuys	STATE	CA	ZIP	91405
PHONE	818-901-8800	FAX		EMAIL	wcico@yahoo.com

CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY	James E. Shapiro, Esq.				
FIRM/ COMPANY	Smith & Shapiro, PLLC				
ADDRESS	3333 E. Serene Ave., Suite 130				
CITY	Henderson	STATE	NV	ZIP	89074
PHONE	702-318-50333	FAX	702-318-5034	EMAIL	jshapiro@smithshapiro.com

Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

MEDIATION IN ADVANCE OF THE ARBITRATION

☐ If mediation in advance of the arbitration is desired, please check here and a JAMS Case Manager will assist the parties in coordinating a mediation session.

NATURE OF DISPUTE / CLAIMS & RELIEF SOUGHT BY CLAIMANT

CLAIMANT HEREBY DEMANDS THAT YOU SUBMIT THE FOLLOWING DISPUTE TO FINAL AND BINDING ARBITRATION. A MORE DETAILED STATEMENT OF CLAIMS MAY BE ATTACHED IF NEEDED.

Claimant and Respondent are the sole members of Green Valley Commerce, LLC, a Nevada limited liability company, each with a 50% membership interest.

Arbitration is needed to resolve disagreements between the members relating to the proper accounting associated with the member's membership interest, including proper calculation of each member's capital accounts, proper calculation of the purchase price, and proper accounting of services each member provided to the company.

AMOUNT IN CONTROVERSY (US DOLLARS) This is the dispute

Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

ARBITRATION AGREEMENT

This demand is made pursuant to the arbitration agreement which the parties made as follows. ***Please cite location of arbitration provision and attach two copies of entire agreement.***

ARBITRATION PROVISION LOCATION

Article III, Section 14.1 of the Operating Agreement in part states:

"Dispute Resolution. ... [A]ny 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...."

RESPONSE

The respondent may file a response and counter-claim to the above-stated claim according to the applicable arbitration rules. ***Send the original response and counter-claim to the claimant at the address stated above with two copies to JAMS.***

REQUEST FOR HEARING

REQUESTED LOCATION Las Vegas, Nevada

ELECTION FOR EXPEDITED PROCEDURES (IF COMPREHENSIVE RULES APPLY)

*See: **Comprehensive Rule 16.1***

☑ By checking the box to the left, Claimant requests that the Expedited Procedures described in JAMS Comprehensive Rules 16.1 and 16.2 be applied in this matter. Respondent shall indicate not later than seven (7) days from the date this Demand is served whether it agrees to the Expedited Procedures.

SUBMISSION INFORMATION

SIGNATURE S Bidsal **DATE** 02/07/2020

NAME (PRINT/TYPED) Shawn Bidsal

Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

Completion of this section is required for all consumer or employment claims.

CONSUMER AND EMPLOYMENT ARBITRATION

Please indicate if this is a CONSUMER ARBITRATION. For purposes of this designation, and whether this case will be administered in California or elsewhere, JAMS is guided by *California Rules of Court Ethics Standards for Neutral Arbitrators, Standard 2(d) and (e)*, as defined below, and the JAMS Consumer and Employment Minimum Standards of Procedural Fairness:

☐ **YES**, this **is** a CONSUMER ARBITRATION.

☑ **NO**, this **is not** a CONSUMER ARBITRATION.

"Consumer arbitration" means an arbitration conducted under a pre-dispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

1. The contract is with a consumer party, as defined in these standards;
2. The contract was drafted by or on behalf of the non-consumer party; and
3. The consumer party was required to accept the arbitration provision in the contract.

"Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

1. An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;
2. An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;
3. An individual with a medical malpractice claim that is subject to the arbitration agreement; or
4. An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

NOTE: JAMS is guided by its Consumer Minimum Standards and Employment Minimum Standards when determining whether a matter is a consumer matter. In addition, JAMS may treat a matter as a consumer matter and apply the Employment Minimum Standards where an individual claims to have been misclassified as an independent contractor or otherwise improperly placed into a category other than employee or applicant for employment.

EMPLOYMENT MATTERS

If this is an EMPLOYMENT matter, Claimant must complete the following information:

Private arbitration companies are required to collect and publish certain information at least quarterly, and make it available to the public in a computer-searchable format. In employment cases, this includes the amount of the employee's annual wage. The employee's name will not appear in the database, but the employer's name will be published. Please check the applicable box below:

☐ **Less than $100,000** ☐ **$100,000 to $250,000** ☐ **More than $250,000** ☐ **Decline to State**

WAIVER OF ARBITRATION FEES

In certain states (e.g. California), the law provides that consumers (as defined above) with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of the arbitration fees. In those cases, the respondent must pay 100% of the fees. Consumers must submit a declaration under oath stating the consumer's monthly income and the number of persons living in his or her household. Please contact JAMS at 1-800-352-5267 for further information. Note: this requirement is not applicable in all states.

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Shawn Bidsal v. CLA Properties

I, Danielle Amerio, am not a party to the pending dispute, do hereby declare that on February 7, 2020, I served the Demand for Arbitration, along with a copy of all attachments thereto, by emailing a copy to the email addresses identified below and by depositing a true and correct copy thereof in a sealed envelope with postage fully prepaid, in the United States mail, in Henderson, Nevada, addressed as follows:

Rodney T. Lewin, Esq.
8665 Wilshire Blvd., Suite 210
Beverly Hills, CA 90211
rod@rtlewin.com

Louis E. Garfinkel, Esq.
Levine & Garinkel
1671 W. Horizon Rdge Pkwy., Suite 230
Henderson, NV 89012
lgarfinkel@lgealaw.com

I declare under penalty of perjury the forgoing to be true and correct. Executed in Henderson, Nevada, on February 7, 2020.

Danielle Amerio

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.

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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.

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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

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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,

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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

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(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

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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:

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(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.

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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

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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.

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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.

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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

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Section 01 Amendment of Articles of Organization.

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.

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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.

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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.

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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.

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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.

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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

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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.

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Member:

Shawn Bidsal, Member

CLA Properties, LLC

by _____

Benjamin Golshani, Manager

Manager/Management:

Shawn Bidsal, Manager

Benjamin Golshami, Manager

BG PB

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.

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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.

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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.

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EXHIBIT 62

EXHIBIT 62

Rodney T. Lewin, CAL.SBN. 71664
Law Offices of Rodney T. Lewin, APC
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Las Vegas, Nevada 89148
(702) 673-1612
Attorneys for Respondent

SHAWN BIDSAL, an individual,

Claimant,

v.

CLA PROPERTIES, LLC, a California limited liability company,

Respondent.

JAMS Ref. No. 1260005736

RESPONDENT'S ANSWER AND COUNTER-CLAIM

Respondent CLA Properties, LLC ("CLA") answers the Claim made by Claimant Shawn Bidsal ("Bidsal") and counter-claims as follows:

1. All of the matters raised in the Claim and in this Answer and Counterclaim arise out of, refer to, and are governed the Operating Agreement for Green Valley Commerce, LLC ("Green Valley ") and in particular by Section 4 of Article V ("Section 4") made an exhibit to the Claim dealing with one Member of Green Valley buying out the other (the parties here being the sole such members). It is in all respects a continuation of the claim in Arbitration No. 1260004569 which likewise was concerned solely with that same section regarding which the award was made on April 5, 2019 ("Award") by Arbitrator Stephen E. Haberfeld, a copy of which is affixed

hereto which has been confirmed as a judgment (the "Judgment"), which Mr. Bidsal has appealed. Having this matter heard by anyone other than Judge Haberfeld would be a waste of judicial resources because he alone of all possible arbitrators is thoroughly familiar with that section.

2. As stated starting on page 3 of the Award, "On July 7, 2017, Mr. Bidsal sent CLA a Section 4 written offer to buy CLA's 50% Green Valley membership interest, based on a 'best estimate' valuation of $5 million. On August 3, 2017 – via timely Section 4 Notice, in response to Mr. Bidsal's July 7 offer – CLA elected to buy rather than sell a 50% Green Valley membership interest – i.e., Mr. Bidsal's – based upon Mr. Bidsal's $5 million valuation, and thus without a requested appraisal. On August 7, 2017 – response to CLA's election -- Mr. Bidsal refused to sell his Green Valley membership interest to CLA based on his $5 million valuation. Mr. Bidsal contended that if CLA elected to buy his 50% Membership Interest rather than sell, Mr. Bidsal had the right to demand that the 'FMV' portion of Section 4 formula for determining price must be determined by an appraisal." The sale of Mr. Bidsal's interest should have closed within 30 days of CLA's election to buy and would have but for Mr. Bidsal's refusal to consummate the purchase in breach of the Operating Agreement.

3. As stated in paragraph C on page 11 of the Award, "There was no contractual residual protection available to Mr. Bidsal as to appraisal and/or price of his Membership Interest. 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." That parallels the comment in footnote 3 on page 4 of the Award that, "The formula in Section 4 for determining price is stated twice."

4. Therefore, CLA denies the assertion in the Claim here that there is any legitimate disagreement relating to the proper accounting to determine the price, before offsets, for the purchase of membership interest by one member from another because it is set forth in Section 4.

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As stated in footnote 3 on page 4 of the Award, the formula is "**(FMV - COP) x 0.5 + capital contribution of the [selling] Member at the time of purchasing the property minus prorated liabilities.**" Section 4 defines FMV as Fair Market Value and as above stated that was determined to be the amount set by Mr. Bidsal in his July 7, 2017 offer. "COP" is defined as "Cost of Purchase" as specified in the escrow closing statement. There could be no legitimate dispute that that amount is other than Four Million Forty Nine Thousand Two Hundred Ninety Dollars ($4,049,290.00). While the Claim asserts disagreement regarding the capital accounts, it is set forth right within the Operating Agreement affixed to the Claim and there can be no legitimate dispute that Mr. Bidsal's capital contribution, at the time of the purchase was $1,250,000.00. That leaves only the element of "prorated liabilities." The Claim includes no contention that any such liabilities exist and in this respect is correct.

5. Lastly, the Claim asserts disagreement regarding "proper accounting of services each member provided to the company" as though there was supposed to be compensation for services provided. The illegitimacy of this assertion that any such compensation should be provided is exemplified by the fact that this is the first time any such mention has been made in the entire nine year history of operations of Green Valley Commerce, LLC, and CLA denies that Mr. Bidsal is entitled to any compensation for services.

6. CLA is entitled to an accounting of, and payment of, the distributions taken by Mr. Bidsal after the date that the sale of Mr. Bidsal's interest in Green Valley to CLA should have occurred (sometimes called "delay damages") which Mr. Bidsal delayed in breach of the Operating Agreement. After CLA elected to purchase Mr. Bidsal's interest, Mr. Bidsal diluted the value of the membership interest to be purchase by CLA by distributing to himself $500,500.00, all since September 2, 2017. It is clear from Section 4 that the closing date was to be thirty days after the "Remaining Member," here CLA, chose whether to buy or sell. Had Mr. Bidsal honored his contractual obligations under the Operating Agreement he would have not been entitled to any

distributions after the closing and should not benefit by delaying the closing of the transaction. CLA has been damaged by the amount of such distributions, plus interest. CLA further claims that no further distributions should be made to Mr. Bidsal during the pendency of his appeal of the arbitration award. What the closing date should have been should be established, and any damages or additional sums due to CLA by reason of Mr. Bidsal's delaying the closing should be established and awarded to CLA.

7. Green Valley owns two commercial properties (the "Properties"). CLA claims that after CLA elected to buy Mr. Bidal's interest in Green Valley, Mr. Bidsal, who had been managing the Properties, in breach of his fiduciary duties, mismanaged the Properties, including not properly maintaining or repairing the Properties, resulting in loss of rents, waste, and loss of value of the assets. Even though the Arbitration Award compels Mr. Bidsal to sell his membership interest in Green Valley he has refused to turn over management of the Properties. Further, notwithstanding the fact that the Operating Agreement provides that the owner of CLA, Ben Golshani, is a manager of Green Valley, Mr. Bidsal has deprived him of full access of the books and records of Green Valley to which CLA would be entitled even were Ben Golshani not a manager, e.g. online access to Green Valley's bank accounts, keys to the Properties owned by Green Valley for inspection by CLA or Ben Golshani, list of vendors and their contact information, and to communications relating to the Properties, and the management thereof including the repair, maintenance and leasing thereof. As a result thereof, and particularly given the Award and Judgment, and CLA's and Mr. Bidsal's relative current and future interest in Green Valley, Mr. Bidsal should be removed as manager of Green Valley, or at least from managing the Properties, and Ben Golshani should be allowed to take over management of Green Valley and the Properties, or alternatively an independent third party management company selected by Ben Golshani should be hired to manage the Properties.

8. In addition, the Award includes an award of attorney fees and costs in the amount of

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$298,500.00. The rate of interest under Nevada law, NRS Section 99.040 is 7.5% per annum. The interest would run from April 5, 2019. If Mr. Bidsal's appeal of the Judgment is denied, CLA's should be allowed to offset for the purchase price for Mr. Bidsal's interest in Green Valley in the amount of its damages, including the delay damages, and the fee award, plus interest to whatever CLA owes for purchasing Mr. Bidsal's Green Valley membership.

9. Under the Operating Agreement and Nevada law CLA is entitled to recover its attorneys fees and costs in connection with and arising from this proceeding as determined by the Arbitrator, including the cost of this arbitration and any fees and costs incurred in connection with the entering of the award as a judgment, the enforcement thereof and any appeal, all as determined by any Court confirming the award, or entering the judgment.

WHEREFORE, Respondent prays that this matter be referred to Judge Haberfeld for determination, for an award (i) denying any payment for supposed services rendered to Green Valley by either manager or owner, (ii) for an accounting and damages to CLA in an amount as proven, (iii) for an order that no further distributions be made to Mr. Bidsal pending the resolution of his appeal, (iv) for the removal of Mr. Bidsal as a manager of Green Valley, or alternatively as the manager of the Properties, or that a third party management company be employed to managed the Properties on behalf of Green Valley; (v) that if Mr. Bidsal's appeal is denied, the determination of the price to be paid for Mr. Bidsal's interest in Green Valley and that CLA be allowed to offset its damages and fee awards in the payment thereof, (vi) for attorney fees and cost, (viii) that either the Arbitrator retain jurisdiction to award further attorney fees and costs incurred to confirm the award and obtain judgment, to register judgment, to enforce judgment and to defend against any appeal except as estimate thereof was previously included in

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initial award or to award such attorneys fees and costs in the amounts later determined by a court of competent jurisdiction, and (ix) and for such other and further relief as may be appropriate .

Dated: March 4, 2020.

LAW OFFICES OF RODNEY T. LEWIN,
A Professional Corporation

By _____
RODNEY T. LEWIN,
Attorneys for Respondent

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8665 Wilshire Boulevard, Suite 210, Beverly Hills California 90211-2931.

On March 4, 2020, I served the foregoing document described as **RESPONDENT'S ANSWER AND COUNTER-CLAIM** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

James E. Shapiro, Esq.
Smith & Shapiro, PLLC
3333 E. Serene Ave., Site 130
Henderson, NV 89704
jshapiro@smithshapiro.com
(Via email only)

___**BY MAIL:** I caused such envelope to be deposited in the mail at Beverly Hills, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after the date of deposit for mailing in affidavit.

___ **VIA OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier or driver authorized by overnight delivery to receive documents.

_X__ **VIA E-MAIL TO:** James E. Shapiro, Esq. (Jshapiro@smithshapiro.com)

___ **BY FACSIMILE.** Pursuant to Rule 2005. The fax number that I used is set forth above. The facsimile machine which was used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(I), the machine printed a transmission record of the transmission

BY PERSONAL SERVICE I personally delivered such envelope by hand to the addressee(s).

X STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 4, 2020 at Beverly Hills, California.

Barbara Silver

Barbara Silver

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JAMS ARBITRATION NO. 1260004569

CLA PROPERTIES, LLC,
Claimant and Counter-Respondent,

vs.

SHAWN BIDSAL,
Respondent and Counterclaimant.

FINAL AWARD

THE UNDERSIGNED ARBITRATOR, having been duly designated to be the Arbitrator in accordance with the arbitration provision of Article III, Section 14.1 of the Operating Agreement, dated June 15, 2011, of Green Valley Commerce, LLC, a Nevada LLC ("Green Valley"), based on careful consideration of the evidence adduced during and following the May 8-9, 2018 evidentiary sessions of the Merits Hearing of the Arbitration Hearing of this arbitration, applicable law, the written submissions of the parties, and good cause appearing, makes the following findings of fact, conclusions of law and determinations ("determinations") and this Final Award ("Award"), as follows.

DETERMINATIONS

1. The determinations in this Award are the determinations by the Arbitrator, which the Arbitrator has determined to be true, correct, necessary and/or appropriate for purposes of this Award. To the extent that the Arbitrator's determinations differ from any party's positions, that is the result of determinations as to relevance, burden of proof considerations, the weighing of the evidence, etc.

To the extent, if any, that any determinations set forth in this Award are inconsistent or otherwise at variance with any prior determination in the Interim Award, Merits Order No. 1 or any prior order or ruling of the Arbitrator, the determination(s) in this Award shall govern and prevail in each and every such instance.

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1
JURISDICTION, PARTIES, AND MERITS ORDER NO. 1

2. Pursuant to Rule 11(b) of the JAMS Comprehensive Arbitration Rules and Procedures — which govern this arbitration and which Rules the Arbitrator has the authority and discretion to exercise, as here[1] — the Arbitrator has the jurisdiction and has exercised his jurisdiction to determine his arbitral jurisdiction, which has been determined to be as follows:

The Arbitrator has and has had continuing jurisdiction over the subject matter and over the parties to the arbitration, who/which are Claimant and Counter- Respondent CLA Properties, LLC, a California limited liability company ("CLA") and Respondent and Counterclaimant Sharam Bidsal, also known as Shawn Bidsal, an individual. ("Mr. Bidsal").

CLA has been represented by the Law Offices of Rodney T. Lewin and Rodney T. Lewin, Esq. and Richard D. Agay, Esq. of that firm, whose address is 8665 Wilshire Blvd., Ste. 210, Beverly Hills, CA 90211-2931, and Levine, Garfinkel & Eckersely and Louis E. Garfinkel, Esq. of that firm, whose address is 1671 W. Horizon Ridge Pkwy, Ste. 220, Henderson, NV 89012.

Mr. Bidsal has been represented by Smith & Shapiro, PLLC and James E. Shapiro, Esq. of that firm, whose address is 2222 E. Seren Ave., Ste. 130, Henderson, NV 89074, and Goodkin & Lynch, LLP and Daniel L. Goodkin, Esq of that firm, whose address is 1800 Century Park East, 10th Fl., Los Angeles, CA 90067.

On October 10, 2018, the Arbitrator rendered and JAMS issued Merits Order No. 1, and on February 22, 2019, the Arbitrator rendered and JAMS issued the Interim Award in this arbitration. The Interim Award and Merits Order No. 1 contained the Arbitrator's determinations and written decision as to relief to be granted and denied, based on the evidence adduced evidentiary sessions of the Merits Hearing of the Arbitration Hearing held on May 8-9, 2018,[2]

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[1] JAMS Comprehensive Arbitration Rule 11(b) provides as follows:
"Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. Unless the relevant law requires otherwise, the Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter."

[2] The evidentiary sessions of the Merits Hearing were held in Las Vegas, Nevada, at the insistence of Mr. Bidsal, notwithstanding that the individual principals (including Mr. Bidsal), CLA's lead counsel and the Arbitrator are residents of Southern California.

applicable law, and extensive post-evidentiary submissions of the parties. One of the determinations was and remains that CLA is the prevailing party in this arbitration.

March 7, 2019 is hereby declared to be the date for last briefs in this arbitration and the date as of which the Arbitrator hereby declares the Arbitration Hearing (including the Merits Hearing thereof) closed. See JAMS Comprehensive Arbitration Rule 24(h).

The Arbitrator shall continue to maintain jurisdiction over the parties concerning the subject matter of this arbitration until the last day permitted by law and JAMS Comprehensive Arbitration Rules & Procedures.

II
FACTUAL CONTEXT

3. CLA and Mr. Bidsal are the sole members of Green Valley, LLC, a Nevada limited liability company ("Green Valley"), which owns and manages real property in Las Vegas, Nevada. At all relevant times, CLA and Mr. Bidsal have each owned a 50% Membership interest in Green Valley. CLA is wholly and solely owned by its principal, Benjamin Golshani ("Mr. Golshani").

4. Mr. Golshani on behalf of CLA and Mr. Bidsal executed an Operating Agreement for Green Valley, dated June 15, 2011. Exhibit 29. Section 4 of Article V of that Operating Agreement, captioned "Purchase or Sell Rights among Members" ("Section 4"), contains provisions permitting one member of Green Valley to initiate the purchase or sale of one member's interest by the other. Those Section 4 provisions were referred to by the parties and their joint attorney, David LeGrand, as "forced buy/sell" and "Dutch auction," whereby one of the members (designated as the "Offering Member") can offer to buy out the interest of the other based upon a valuation of the fair market value of the LLC set by the Offering Member in the offer. The other member (designated as the "Remaining Member") is then given the option to either buy or sell using the Offering Member's valuation, or the Remaining Member can demand an appraisal.

On July 7, 2017, Mr. Bidsal sent CLA a Section 4 written offer to buy CLA's 50% Green Valley membership interest, based on a "best estimate" valuation of $5 million. On August 3, 2017 — via timely Section 4 notice, in response to Mr. Bidsal's July 7 offer — CLA elected to buy rather than sell a 50% Green Valley membership interest — i.e., Mr. Bidsal's — based upon Mr. Bidsal's $5 million valuation, and thus without a requested appraisal. On August 7, 2017

— response to CLA's election — Mr. Bidsal refused to sell his Green Valley membership interest to CLA based on his $5 million valuation, and "invoke[d] his right to establish the FMV by appraisal,"[2] "in accordance with Article V, Section 4 of the Company's Operating Agreement."

III
"CORE" ARBITRATION ISSUE

5. While this arbitration — as briefed, tried, argued and resolved as a business/legal dispute thusly involving "pure" issues of contractual interpretation — is also, significantly, a contentious, intra-familial dispute. Messrs. Bidsal and Golshani are first cousins, as well as each effectively owning 50% Membership Interests in Green Valley.

6. Mr. Bidsal contended that if CLA elected to buy his 50% Membership Interest rather than sell, Mr. Bidsal had the right to demand that the "FMV" portion of the Section 4 formula for determining price must be determined by an appraisal. CLA contended upon its election to purchase rather than sell, it has the right to purchase Mr. Bidsal's fifty percent (50%) Membership based upon the valuation made by Mr. Bidsal, as the Offering Member, and that the FMV portion of the Section 4 formula to determine price must be the same amount as set forth in Mr. Bidsal's offer, i.e. $5 million, and that Mr. Bidsal should be ordered to transfer his Membership Interest based thereupon.

6. Thus, the "core" of the parties' dispute is whether or not Mr. Bidsal contractually agreed to sell, and can be legally compelled to sell, his 50% Membership Interest in Green Valley to CLA at a price computed via a contractual formula not in dispute, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 written offer to purchase CLA's 50% Membership Interest in Green Valley — without regard to a formal appraisal of Green Valley, which Mr. Bidsal has contended that the parties agreed that he had a contractual right to demand as a "counteroffered seller" under Section 4.2 of the Green Valley Operating Agreement.

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[2] The formula in Section 4 for determining price is stated twice, once if sale is by Remaining Member and once if sale is by Offering member. But whether the membership interest is sold by the Remaining Member or by the Offering Member, the formula for determining the price is the same, except that the identity of the selling Member, Remaining Member or Offering Member, is included: "(FMV - COI") x 0.5 plus capital contribution of the [selling] Member at the time of purchasing the property minus prorated liabilities."

7. Despite conflicting testimony and impeachment on cross-examination on both sides,[4] the evidence presented during the evidentiary sessions materially assisted the Arbitrator in reaching the interpretative determinations set forth in this Award concerning the pivotal "buy-sell" provisions set forth in Section 4.2 of the Green Valley Operating Agreement — which, as a result of collective drafting over a six-month period, was not a model of clarity, which precluded the granting of both sides' Rule 18 cross-motions, based on Section 4.2.

8. The "forced buy-sell" agreement, or so-called "Dutch auction," is common among partners in business entities like partnerships, joint ventures, LLC's, close corporations --- a primary purpose of which is to impose fairness and discipline among partners considering maneuvering, via pre-agreed procedures and consequences. If not careful and fair, the Dutch auction imposes a risk of one "overplaying one's hand" --- such that an intended buyer might end up becoming an unintended seller, at a price below, possibly well below, the price at which the partner was motivated to buy the same Membership Interest, under the "buy-sell" procedures which he/she/it initiated. If the provisions work, as intended, the result might not be expertly authoritative or precise, but nevertheless a form of cost-effective "rough justice," when one partner "pulls the trigger" on separation, by initiating Section 4.2 procedures.

9. As amplified below, the parties' dispute and this arbitration have been a result and expression of "seller's remorse" by Mr. Bidsal — after having initiated Section 4.2 procedures, of which he was the principal draftsman,[5] in the belief that, after the completion of those procedures, he would be the buyer of the other 50% Membership Interest in Green Valley, based on his "best estimate of the [then] current fair market value of the Company," for calculation of the buy-out price, using the formula set out in Section 4.2.

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[4] Neither of the parties' Rule 18 positions that Section 4.2 of the Green Valley Operating Agreement unambiguously supported the asserting side's position on contractual interpretation was sustained after briefing and argument during an in-person hearing on the parties' cross-motions. The Rule 18 denials and the inability of the parties to reach requisite stipulations, following the Rule 18 hearing, required the in-person evidentiary sessions of the Merits Hearing — which sessions were held on May 8-9, 2018 in Las Vegas, Nevada. The evidence adduced during those evidentiary sessions corroborated the Arbitrator's experience that trial of issues raised earlier in Rule 18 motions — including via cross-examination of witnesses, which the Arbitrator regards as an engine of truth — often results in the emergence of new and/or changed facts and circumstances which bear on resolution of what were Rule 18 issues.

[5] While not dispositive, per se, the Arbitrator has materially determined that Mr. Bidsal controlled the final drafting of the Green Valley Commerce, LLC Operating Agreement and thus should be deemed the principal drafter of Section 4.2 of that agreement.

10. As also amplified below, CLA Properties is the prevailing party on the merits of the parties' contentions in this Merits Hearing, based on the Arbitrator's principal contractual interpretation determinations that:

A. The clear, specific and express "specific intent" language of the last paragraph of Section 4.2 prevails over any earlier ambiguities about the contracting parties' Section 4.2 rights and obligations.

B. Mr. Bidsal's testimony, arguments and position in support of his having contractual appraisal rights appear to be "outcome determinative" in his favor. That is, they do not, as they apparently cannot, be logically applied in all instances contemplated by the Section 4.2 "buy-sell" provision, beyond the situation in which he was placed by Mr. Golshani's August 3, 2017 Section 4.2 response — specifically, for example, in instances in which CLA either would have (1) timely accepted Mr. Bidsal's July 7, 2017 Section 4.2 offer to buy CLA's 50% Membership Interest in Green Valley or (2) deliberately, inadvertently or otherwise failed to timely or otherwise properly respond to that offer within the 30-day time limit set under Section 4.2. CLA's testimony, arguments and position in support of its contractual interpretation of the operative provisions of Section 4.2 not only are based on and consistent with the Section 4.2's "specific intent" language, they can be logically applied in all instances contemplated by the Section 4.2 "buy-sell" provision — including beyond the situation created by the July 7/August 3 Section 4.2 written offer/response of the parties, which gave rise to the parties' dispute and this arbitration.

C. Mr. Bidsal contractually agreed to sell and can be legally compelled to sell and transfer his fifty percent (50%) Membership Interest in Green Valley to CLA at a price computed via the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, based on Mr. Bidsal's undisputed $5 million "best estimate" of Green Valley's fair market valuation, as stated in Mr. Bidsal's July 7, 2017 offer.

11. In a dispute between litigating partners or other parties, the testimony of third-party witnesses becomes important. That is especially so, when the third-party witness is unbiased and the drafting lawyer was jointly representing the contracting parties in connection with the preparation of the underlying contract in suit. David LeGrand was that lawyer, and the substance of his testimony is essentially the same as, and thus corroborates, CLA's contentions, supported by the testimony of CLA's principal, Mr. Golshani. Mr. LeGrand was not shown to be biased for or against either side in this matter. On cross-examination and on redirect, Mr. LeGrand testified that he had performed legal work for Mr. Golshani for a number of years, including during August 2017, but not recently, and that he had been asked to do legal work by

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Mr. Bidsal within about six months of his testimony, and shortly prior to his deposition in connection with this arbitration, but that Mr. LeGrand was too busy to take on Mr. Bidsal's legal work.

12. A portion of Mr. LeGrand's deposition testimony — which was read into the evidentiary session record, during Mr. LeGrand's hearing testimony on May 9, 2018 — was that, at Mr. Golshani's instance, Messrs. Bidsal and Golshani agreed to a "forced buy-sell" in lieu of a right of first refusal for inclusion in the Green Valley Operating Agreement. Although he attempted to take back or resist his prior use of the word "forced" at hearing, Mr. LeGrand understood "buy-sell" to mean that an offeree partner, presented with an offer under the "buy-sell" provision of the LLC Operating Agreement, has (A) the option to buy or sell at the price offered by the other/offeror member and (B) the contractual right to compel performance of that option, including at the price stated in offeror member's offer. That testimony is consistent with the "specific intent" language of Section 4.2 which Mr. LeGrand specially drafted, and which reads 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 Interest to the [R]emaining Member(s)."

13. That "specific intent" language is express, specific and could not be more clear as to these parties' objectively manifested "specific intent" to be so bound. Under governing Nevada law,[6] the purpose of contract interpretation "is to discern the intent of the contracting parties." American First Federal Credit Union v. Soro, 359 P.3d 105, 106 (Nev. 2015), quoting and citing Davis v. Beling, 279 P.3d 501, 515 (Nev. 2011). Because the evidence is that both Messrs. Bidsal and Golshani were each very interested in changing drafts over a six-month period of what became the Section 4.2 "buy-sell" provision, each of them must have closely read that section, including the "specific intent" last sentence of that section of the Green Valley Operating Agreement. Accordingly, any prior, contemporaneous or other ambiguity as to Remaining Member CLA's Section 4.2 "buy-sell" options and Offering Member Bidsal's obligation to sell his 50% Membership Interest to CLA "at the same offered price" as presented in his July 7, 2017 offer, as a result of CLA's August 3, 2017 response to Mr. Bidsal's

[6] Article X (d) of the Green Valley Operating Agreement provides that Nevada law shall apply to the interpretation and enforcement of the contract.

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July 7 offer, must give way to that objectively manifested specific intent of the parties.

14. When directed to that "specific intent" provision of Section 4.2, during hearing, Mr. LeGrand was asked and answered, as follows:

> "Q And does that – does that language reflect your – your then understanding of what the intent of this provision was?
> "A Yes.
> "Q And that was your understanding of what Mr. Golshani and Mr. Bidsal had wanted you to put in?
> "A Yes.
> "Q And it was your understanding that they had both — that was what they both had agreed to, right?
> "A Yes.
> *** ***
> "Q But the reason you put – the reason that you put down a – the reason you inserted the specific intent of the parties was to make sure there was no question about what the intent of the parties was, right?
> "A That was what I intend when I put language like 'specific intent,' yes."
>
> 5/9/2018 Hrg.Tr., at pp 295:19-296:5, 297:4-10.

15. It appears that in this case, Mr. Bidsal attempted to find a contractual "out" to regain lost leverage to either buy or sell a 50% membership interest in Green Valley at a price and/or on terms less favorable than he originally envisaged, when he made his July 7, 2017 offer, but more favorable than CLA's August 3, 2017 acceptance of Mr. Bidsal's company valuation price and CLA's "standing on the contract" to buy, rather than sell, based on Mr. Bidsal's market valuation figure — which interpretation and position the Arbitrator has determined have been proved correct by a preponderance of the evidence, after hearing, and according to law.

16. What Mr. Bidsal seems to have settled on for negotiation and arbitration was ignoring, disregarding and, it appeared at hearing, resisting strict application of the "specific intent" language quoted and discussed above. Under resumed cross-examination by CLA's counsel on May 9, 2018 — while acknowledging that CLA/Mr. Golshani was a Section 4.2 "Remaining Member" in respect to Mr. Bidsal's July 7, 2017 offer to buy CLA's 50% Membership Interest in Green Valley for $5 million, which truly represented Mr. Bidsal's best estimate of the value of the Company, when he made his offer, and as he so

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expressly stated in his offer — Mr. Bidsal (A) repeatedly refused to acknowledge that CLA had and duly exercised a Section 4.2 option, alternatively to either sell or buy a 50% Membership Interest in Green Valley based on Mr. Bidsal's offering $5 million as the value of the LLC, and (B) insisted, rather, that (1) CLA's August 3, 2017 response to Mr. Bidsal's July 7, 2017 offer constituted a "counteroffer," and that (2) as a contractual and apparently legal consequence of Mr. Bidsal having been made the recipient of a "counteroffer," he became entitled, as a seller, now, to Section 4.2 optional appraisal rights to determine Green Valley's fair market value or "FMV." Hrg. Tr. at pp. 339:14 -340:10.

17. What Mr. Bidsal apparently found and settled on was a drafting ambiguity in Section 4 of the Green Valley Operating Agreement — i.e., "FMV," which ambiguity the Arbitrator has determined somehow found its way into Section 4.2 late in the process — and using that ambiguity to argue that "FMV" could only mean third-party expert-appraised fair market value was required in the circumstances. Under Section 4.2 of the Green Valley Operating Agreement the "Remaining Member" (CLA) has the option to sell or buy "the [50%] Membership Interest" put in issue by the Offering Member, "based upon the same fair market value (FMV)" set forth in the Offering Member's Section 4.2-compliant offer — which valuation of the Company the Offering Member "thinks is the fair market value" of the Company. Mr. Bidsal used that ambiguity as his justification for refusing to perform as a compelled seller under the Section 4.2 "buy-sell," contending that Section 4 should be interpreted in his favor because Mr. Golshani was its draftsman. While Mr. Golshani had some role in what became Section 4, based on the evidence the Arbitrator finds that Mr. Bidsal controlled the final drafting of the Green Valley Commerce, LLC Operating Agreement, and had the last and final say on what the language was before signing the Operating Agreement, and is deemed to be the principal drafter of Section 4.2 of that agreement and therefore bears the burden of risk of ambiguity or inconsistency within the disputed provision. However, the determinations and award contained herein are based upon the testimony and exhibits introduced at the hearing in this matter, and the determination of draftsman is not dispositive. For the reasons set out herein the determinations and award would be made even if Mr. Bidsal's contention that Mr. Golshani was the draftsman of Section 4 were correct.

18. Beyond the parties' signed, closely read, express Section 4.2 specific intent, per se, there is an unanswered logical flaw in Bidsal's position — which the Arbitrator has determined to be "outcome determinative." That is, Mr. Bidsal's position might be plausible in the situation in which he has found himself on August 3 — after and in light of CLA's written response to his July 7 offer — but it does not and cannot work in all "buy-sell" contingencies contemplated by Section 4.2, given that section's formula, specific intent

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language and all other language in that section, without Mr. Bidsal sub silentio conceding the correctness of CLA's internally consistent position which "works in all contemplated Section 4.2 "buy-sell" contingencies.

A. Specifically, without that important concession, Mr. Bidsal would be unable to assign a "FMV" value to the Section 4.2 formula in contingencies in which CLA accepted or deliberately or inadvertently failed to respond to Mr. Bidsal's July 7 offer timely, properly or at all.

B. Under the parties' agreed formula for arriving at the "buyout" price, as set forth immediately above the "specific intent" provision of Section 4.2 -- regardless of who is the buyer — the buy-out price could not be computed, and Mr. Bidsal's contemplated transaction be completed or performed or enforced, without $5 million being "FMV" in the formula, if CLA, via Mr. Golshani, accepted or ignored the Offering Member's Section 4.2 offer.

19. If that is so, and the Arbitrator finds it is, then, logically as well as fairly under Section 4.2 — which is an agreed fairness provision of the parties — then $5 million is the "FMV" for the same buy-out formula, if CLA, as here, opted to buy rather than sell a 50% Membership Interest in Green Valley, LLC, without invoking its optional appraisal rights. Absent a demand by the Remaining Member, Section 4 of the Operating Agreement for Green Valley Commerce, LLC does not require an appraisal to determine the price to be paid by Remaining Member CLA for its purchase of Offering Member Bidsal's membership interest in Green Valley, and Mr. Bidsal had no right to demand an appraisal to determine the price to be paid by CLA for Mr. Bidsal's membership interest in Green Valley Commerce, LLC.

20. Significant among other factors adduced at hearing and in post-evidentiary sessions briefing, the Arbitrator further has determined that:

A. The "triggering" of the parties' Section 4.2 "buy-sell" provisions of the Green Valley Commerce, LLC ("Green Valley") Operating Agreement was under the control of Mr. Bidsal, as the Section 4.2 "Offering Party." What that means in this arbitration is that, among other things, Mr. Bidsal controlled whether and when he made his offer, and what the offering price would be, including whether or to what extent Mr. Bidsal engaged in due diligence to determine Green Valley's fair market valuation including via third-party professional appraisal, if he opted to obtain one preparatory to making his Section 4.2 offer.

B. Once Mr. Bidsal, as the contractually "Offering Party" conveyed his Section 4.2 offer — and pursuant to the parties' "specific intent" sol

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forth in that section and discussed elsewhere herein, and as a matter of fundamental, cost-effective fairness between essentially partners, regardless of labels — Mr. Bidsal contractually surrendered control of what next followed in the Section 4.2 "buy-sell" process to Mr. Golshani, on behalf of "Remaining Member" CLA.

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.

D. Under Section 4.2, CLA, as the Remaining Member, had 30 days from Mr. Bidsal's "triggering" of the "buy-sell" to make its election to buy or sell at the "same" price set forth in Mr. Bidsal's offer or to sell at a presumably higher appraised price — or as indicated above to deliberately or inadvertently allow the 30-day period to expire without timely, adequate or any written response.

E. There is no reference or indication in any earlier draft or other documentation generated prior to, or contemporaneous with, or following execution of the Green Valley Operating Agreement — pre-dispute — that an Offering Member retains a reserved right to unilaterally demand an appraisal, following, as here, the Remaining Member's unqualified, written acceptance of the Offering Member's Section 4.2-compliant written offer — the offer and acceptance both expressly stating, and thus bindingly agreeing, that $5 million is the agreed valuation of the Company for purposes of computing the purchase

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and sale price of "the Membership Interest" which was the subject of the parties' Section 4.2-compliant offer and acceptance.[7]

While an earlier version of what became Section 4.2 required that an offer be accompanied by an appraisal, the only reference to an appraisal or appraisal right in the final version of Section 4.2 is "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...." To repeat, appraisal rights are triggered only "[i]f the [Offering Member's] offered price is not acceptable to the Remaining Member" and, further, that the Remaining Member requests the "following procedure" of an appraisal "within 30 days of receiving the offer." That 30-day period is exactly the same time limitation on the Remaining Member by which to accept the Offering Member's offers or not. By implication, that logically would foreclose the possibility of Mr. Bidsal, as the Offering Member, having a contractual right to request an appraisal to determine "FMV" as a "second bite at the [Green Valley valuation] apple." Similarly, Section 4.2's use of the word "same" market value would exclude a third-party expert-appraised market valuation right in Mr. Bidsal — that is, without reading in a provision which just is not there expressly or by fair implication.

F. Mr. Bidsal's contractual interpretation position is irreconcilably inconsistent with the parties' specially included "specific intent" language added to the "buy-sell" provision mechanics.

G. Miscalculating the intentions, thinking and/or financial resources available to the other party in an arm's length transaction, such as a Section 4.2 "buy-sell," are not cognizable bases for re-writing or re-interpreting the parties' contractual procedures.

H. Mr. Bidsal's "best estimate of the current fair market value of the Company" at $5 million was authorized, prepared and conveyed on Mr. Bidsal's behalf by his lawyer on July 7, 2017. CLA accepted Mr. Bidsal's July 7 offer on August 3, 2017 — 27 days later. While Mr. Bidsal appears to have had a unilateral right to retract his offer, at any time prior to its acceptance during that 27-day period — including because of a realization that he had made a mistake in underestimating the then current fair market value of the Company

[7] Deleted from the execution copy of the Green Valley Operating Agreement, which was signed by the parties, was Mr. LeGrand's earlier language of Section 7 — which became Section 4 of the final — that an LLC member's offer under the "buy-sell" was to be accompanied by an appraiser's appraisal.[8] Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

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— the preponderance of the evidence is that Mr. Bidsal's $5 million conveyed "best estimate" of Green Valley's value in his Section 4.2-compliant offer was the product of careful analysis and forethought and not error -- that is until Mr. Bidsal was informed of CLA's acceptance of his offer and Section 4.2 election to buy, rather than sell, a 50% Membership Interest based on Mr. Bidsal's $5 million valuation of the Company. It was only on August 5, 2017, in express "response to your August 3, 2017 letter relating to the Membership Interest in Green Valley Commerce, LLC" — that Mr. Bidsal for the first time invoke[d] a purported right to establish the FMV by appraisal" "in accordance with Article V Section 4 of the Company's Operating Agreement."

21. Mr. Bidsal has not sustained his burden of proof under his counterclaim, and is not entitled to any relief thereunder.

22. CLA's motion for reconsideration of the Arbitrator's sustaining Mr. Bidsal's objections to the admission of Exhibit 39 has been denied. Exhibit 39 is not in evidence, and CLA's reference to that exhibit in briefing other than whether or not that exhibit should be in evidence has not been considered.

A. The apparent primary purpose of CLA's attempt to introduce Exhibit 39 into evidence was to establish so-called "pattern evidence" of the parties' intent to include a "forced buy-sell" in the contract over which the parties are in dispute in this arbitration.[8] CLA's stated or ostensible --- but, the Arbitrator believes, secondary — purpose in attempting to introduce Exhibit 39 is impeachment. Both efforts by CLA fail for the following reasons.

B. There is no contractual specification or limitation on the Arbitrator's broad authority and discretion conferred by operative JAMS Comprehensive Arbitration Rules, specifically Rule 22(d), to make evidentiary rulings and decisions --- including concerning the admission or exclusion of Exhibit 39.

C. Pattern evidence generally requires more than one instance of the alleged pattern — which in this case is limited to one instance, which is an operating agreement of an unrelated entity, to which Mr. Bidsal was not a party, concerning an unrelated property, and a dispute in another arbitration, details of which bearing on Exhibit 39 the Arbitrator sought to avoid getting into during hearing in this arbitration. Those factors sufficiently weakened CLA's argument that the proffered "pattern evidence" that Mr. Bidsal's prior inclusion of a "buy-sell" provision agreed to by him in the other operating agreement (Exhibit 39)

[8] Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

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raises an inference that he similarly agreed to a "forced" buy-sell in the Green Valley Operating Agreement.

D. Exhibit 39 was not produced by CLA to Mr. Bidsal, prior to its attempted introduction during the June 28, 2018 Merits Hearing evidentiary session. CLA's only justification for its non-production was that Exhibit 39, as documentation used for impeachment, only, need not be produced or identified, prior to attempted use for that limited purpose during hearing. With respect, the Arbitrator has not been persuaded that Exhibit 39 was withheld from production solely for impeachment at hearing.

24. Paragraph 1 of the relief granted to CLA in this Final Award contains the following language:

"Within ten (10) days of the issuance of the final award in this arbitration, 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 via 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 and deliver any and all documents necessary to effectuate such sale and transfer."

Mr. Bidsal's obligation to transfer his 50% interest to CLA pursuant to Section 4.1 of the Green Valley Operating Agreement's, as well as CLA's request for relief in its arbitration demand, necessarily imply and contemplate that the subject interest at the time of transfer must be "free and clear of all liens and encumbrances" — as the price for that interest under Section 4.1 is to be calculated on the same — plus via means and within a time after a final arbitration award is issued, by which Mr. Bidsal must effect and complete that transfer — here, within ten (10) days of the issuance of the final award, pursuant to the execution and delivery of all documents necessary to effectuate the sale and transfer of Mr. Bidsal's 50% interest in Green Valley, LLC.

IV
ATTORNEYS' FEES AND COSTS

25 Having been determined the prevailing party on the merits of the parties' contentions in this Merits Hearing, CLA is entitled to recover its attorneys' fees, costs and expenses as provided under Article III, Section 14.1 of the Green Valley Operating Agreement, which provides, in pertinent part that "at the conclusion of the arbitration, the arbitrator shall award the costs and

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expenses (including the cost of the arbitration previously advanced and the fees and expenses of attorneys, accountants, and other experts) to the prevailing party."

26. The Arbitrator has carefully considered and weighed the evidence and other written submissions of the parties in connection with CLA's Section 14.1 attorneys' fees and costs application — including weighing and consideration of the so-called Brunzell factors, under Nevada law[9] — and has determined that CLA should be awarded $298,256.900, as and for contractual prevailing party attorneys' fees and costs and expenses reasonably incurred in connection with this arbitration.

27. The $298,256.00 amount to be awarded to CLA against Mr. Bidsal, as and for contractual prevailing party attorneys' fees and costs, has been computed as follows.

A. The full amount of CLA's requested attorneys' fees and costs through September 5, 2018, which is the last date of billed services rendered and costs and expenses incurred, per CLA's October 30, 2018 application for attorneys' fees and costs is $266,239.82.[10]

B. The full amount of additional requested attorneys' fees and costs through February 28, 2019, per CLA's supplemental application for attorneys' fees and costs (denominated, "Additional Presentation") is $52,238.67.

C. CLA's share of Arbitrator's compensation and JAMS management fees and expenses since the last JAMS invoice of 12/19/2018 submitted by CLA's counsel in its Additional Presentation — including the Arbitrator's time since last JAMS billing to the date of the rendering of this Final Award — is $6,295.00.

D. The aggregate of the sum of those amounts — i.e., $324,773.49 — should and will be reduced by $26,517.26, computed as follows: (1) $13,158.63, representing CLA's attorneys' fees and costs billed in connection with CLA's unsuccessful Rule 18 cross-motion (but not CLA's successful defense of Mr. Bidsal's Rule 18 cross-motion, in the amount of $11,800.00), (2) $12,000.00, representing a discretionary downward adjustment of CLA's attorneys' fees reasonably incurred, primarily after September 5, 2018, based on the Arbitrator's

[9] Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969)("Brunzell").

[10] The full amount of CLA's requested attorneys' fees and costs through September 5, 2018 has been corrected to $266,239.92 from $249,078.75, the figure set forth in Paragraph 3 of Section V of the Interim Award.

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careful consideration of CLA's initial application and Additional Presentations and Mr. Bidsal's objections to CLA's requested attorneys' fees, exclusive of his Rule 18 objection (which is covered under item (A), above), and (3) $1,358.65, as and for Mr. Golshani's Las Vegas-related expenses in connection with this arbitration.

After weighing and considering all relevant considerations and in the exercise of the Arbitrator's discretion ---- the Arbitrator has determined that not all of that billed additional attorney and paralegal time can or should included in the Final Award and that the ultimate amount to be awarded in this Final Award is correct and appropriate in the circumstances.

The discretionary downward adjustment of $12,000.00 from CLA's approximately $41,000.00 additional attorneys' fees requested since issuance of the Interim Award should not be interpreted as any direct or indirect criticism of CLA's counsel's decision-making and tasking at any time during this arbitration — especially given that substantial attorney time appears to have been prompted by Mr. Bidsal's submissions, throughout this arbitration, as also determined below and elsewhere in this Final Award.

28. A principal determination in connection with CLA's application is that the main reason for the attorneys' fees and related costs being of the magnitude sought by CLA is that Mr. Bidsal, not CLA, was the principal cause and driver of those costs. Notwithstanding that Mr. Bidsal selected the attorney who drew the Operating Agreement (Mr. LeGrand), and that Mr. Bidsal had a key role in determining what became the "signed-off" Section 4 contractual provision which has been at the "core" of the parties' dispute, and notwithstanding the parties' specific contractual Section 4.2 "specific intent" and all the other reasons set out above (as in Par. 20(A) through (H), above), Mr. Bidsal's resistance to complying with his obligations included his conducting a "no holds barred" litigation over the "core" dispute over Section 4 contractual interpretation were the main drivers of the high costs of this litigation. "Parties who litigate with no hold barred in cases such as this, in which the prevailing party is entitled to a fee award, assume the risk they will have to reimburse the excessive expenses they force upon their adversaries."[1] — requiring an arbitration involving attorney-intensive discovery and review of earlier drafts of the Operating Agreement, deposition and hearing testimony of Mr. LeGrand, attorney time to oppose Mr. Bidsal's motion to stay the arbitration and then to develop and demonstrate to the Arbitrator by testimony (including cross-

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[1] Stokus v. Marsh, 295 Cal.App3d 647, 653-654 (1990). Mr. Bidsal earlier on conceded that "although Nevada law controls, Nevada courts do consider California cases if they assist with the interpretation." January 8, 2018 Bidsal Opening Brief, at p. 7. Mr. Bidsal's objections to attorneys' fees cite California, as well as Nevada cases.

examination) and extensive briefing why Mr. Bidsal's position, exhibits (e.g., Exhibit 351) and contentions concerning his claimed right of appraisal, in lieu of a $5 million "FMV", did not have merit — were the main drivers of the high costs of this litigation, also knowing of the Section 14.1 consequences, if and as he has lost his unavailing fight for an unavailable rights of appraisal. CLA was required to have two senior attorneys (i.e., Rodney Lewin, Esq. and Louis Garfinkel, Esq.) because — while Mr. Lewin, was CLA's lead counsel — he is not admitted in Nevada, whose law governed the "core" Section 4.2 provision, as well as the Section 14.1 "prevailing party" attorneys' fees and costs provision — and Mr. Garfinkel is admitted in Nevada and, further attended the deposition of Mr. LeGrand, which was taken in Nevada. It is also material that there was a symmetry in representation between the teams representing the parties. Mr. Bidsal was represented in this arbitration by three attorneys (Messrs. Shapiro and Herbert (NV) and Mr. Goodkin (CA), two of whom appeared for each deposition.

The applicability of Nevada substantive law and the provision for a Nevada venue for the Merits Hearing evidentiary sessions does not require or without more, persuade the Arbitrator that Las Vegas, Nevada rates should be a "cap" or "prevailing market" hourly rate for purposes of determining the reasonable attorney's fees of a Section 14.1 prevailing party in this arbitration. Mr. Bidsal has not cited any case so requiring or that Las Vegas is the sole relevant legal market, regardless, for determining reasonable hourly rates for legal services.[12] Both sides had Southern California counsel, as well as Nevada counsel, as part of their trial teams and Messrs. Bidsal and Golshani are residents of Southern California. While the Arbitration Demand stated that the arbitration should be held in Las Vegas, it was at Mr. Bidsal's behest, later, that the Merits Hearing evidentiary sessions were held in Las Vegas, rather than in Southern California.

In the circumstances of this hotly contested case, and with the Arbitrator being familiar with prevailing hourly rates for legal services in both Las Vegas and Southern California, the $475/hr, with 42 years experience, and $395/hr for 60 years experience for Messrs Lewis and Agay and Mr. Garfinkel's rate of $375/hr for 30 years experience, were reasonable,[13] as were their billed hours of service, in the circumstances.[14] That is so notwithstanding the

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[12] But see Reazin v. Blue Cross & Shield, 899 F.2d 951, 983 (10th Cir. 1990) (affirmance of district court award attorneys' fees award, including based on out-of-state (Jones Day) hourly rates which exceeded those of local (Wichita) attorneys).

[13] The hourly rates of Messrs. Lewin and Agay are below comparable Southern California prevailing hourly rates for comparable legal services and relevant experience.

[14] That is so, particularly after a pre-application downward adjustment of approximately $28,000 in the amount of CLA's billed attorneys' fees.

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considerable cross-traffic of briefing which, in the circumstances, appears to have been largely unavoidable, as well as, on balance, helpful to the Arbitrator, and thus, should not be the subject of penalty (including denial of prevailing party recovery).

However, under the authority of Nevada law — in contrast to California law and, generally, law elsewhere — CLA is not entitled to its attorneys' fees and costs incurred in connection with its Rule 18 cross-motion which — along with Mr. Bidsal's cross-motion — was denied. Barney v. Mt. Rose Heating & Air Conditioning, 192 P.2d 730, 726-737 (2008). As CLA's attorneys' fees in connection with the cross-motions in the amount of approximately $23,600 cannot meaningfully or cost-effectively be segregated by cross-motion, the Arbitrator has determined that one half of that amount — i.e., $11,800 — should not and will not include CLA's Rule 18 fees and costs incurred as part of CLA's awardable prevailing party fees and costs. In addition, Mr. Golshani's Las Vegas-related travel and accommodation expenses of $1,358.63 will also not be included as recoverable legal fees or costs.

Both sides have waived any objection which they had or may have had to a more detailed (e.g., factor-by-factor) and/or full-bodied analysis or discussion of the Brunzell factors in this Final Award or in the Interim Award. That is because neither side submitted any request for any such analysis or discussion, timely or at all, for inclusion of the same in this Final Award, after having been expressly afforded the opportunity to make such a request by February 28, 2019, 4:00 p.m. in the 7th subparagraph of Paragraph 23 of the Interim Award — expressly subject to waiver of objection under JAMS Comprehensive Arbitration Rule 27(b) (Waiver) for failure to timely make such a request.[15]

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In addition, the relative amounts of total hours billed among CLA's counsel and a paralegal appear for this engagement to be in balance.

[15] The 7th subparagraph of Paragraph 23 of the Interim Award, at p. 19 thereof, states as follows:

"Upon receipt of written request by either side, by February 28, 2019, 4:00 p.m. (PT), the Arbitrator will consider preparing and including in the final award a more detailed explanation, including via Brunzell factor-by-factor analysis. If neither side timely requests a more full-bodied analysis and/or discussion of the Brunzell factors than the salient factors and considerations hereinabove set forth, any subsequent objection based on Brunzell should and will be deemed waived. See JAMS Comprehensive Arbitration Rule 27(b) (Waiver)."

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V
RELIEF GRANTED AND DENIED

Based on careful consideration of the evidence adduced during and following the evidentiary hearings held to date, and the determinations hereinabove set forth, and applicable law, and good cause appearing, and subject to further modification as permitted by law and JAMS Comprehensive Arbitration Rules and Procedures, the Arbitrator hereby grants and denies relief in this Final Award, and it is adjudged and decreed, as follows:

1. 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.

2. Mr. Bidsal shall take nothing by his Counterclaim.

3. As the prevailing party on the merits, CLA shall recover from Mr. Bidsal the sum and amount of $298,256.00, as and for contractual attorneys' fees and costs reasonably incurred in connection with this arbitration.

4. Except as permitted under JAMS Comprehensive Arbitration Rule 24, neither side may file or serve any further written submissions, without the prior written permission of the Arbitrator. See JAMS Comprehensive Rule 29.

5. To the extent, if any, that there is any inconsistency and/or material variance between anything in this Final Award and the Interim Award, Merits Order No. 1 and/or any other prior order or ruling of the Arbitrator, this Final Award shall govern and prevail in each and every such instance.

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6. This Final Award resolves all claims, affirmative defenses, requests for relief (including requests for reconsideration) and all principal issues and contentions between the parties to this arbitration.

Except as expressly granted in this Final Award, all claims and requests for relief, as between the parties to this arbitration, are hereby denied.

Dated: April 5, 2019

STEPHEN E. HABERFELD
Arbitrator

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PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: CLA Properties, LLC vs. Bidsal, Shawn
Reference No. 1260004569

I, Anne Lieu, not a party to the within action, hereby declare that on April 05, 2019, I served the attached Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

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Shawn Bidsal

I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on April 05, 2019.

Anne Lieu
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EXHIBIT 203

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JAMS

SHAWN BIDSAL,

Claimant,

vs.

CLA PROPERTIES, LLC, a California limited liability company,

Respondent.

Reference #:1260005736

Arbitrator: Hon. David T. Wall (Ret.)

REQUEST FOR ORAL ARGUMENTS

RESPONDENT CLA PROPERTIES, LLC'S MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER

COMES NOW Claimant SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys of record, SMITH & SHAPIRO, PLLC and GERRARD COX LARSEN, and hereby files his request for oral arguments on Respondent CLA PROPERTIES, LLC's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager.

Dated this 17th day of June, 2020.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 17th day of June, 2020, I served a true and correct copy of the forgoing **REQUEST FOR ORAL ARGUMENTS – RESPONDENT CLA PROPERTIES, LLC'S MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER**, by emailing a copy of the same, with Exhibits (if any), to:

Individual:	Email address:	Role:
Louis Garfinkel, Esq.	LGarfinkel@lgealaw.com	Attorney for CLA
Rodney T Lewin, Esq.	rod@rtlewin.com	Attorney for CLA
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Michelle Samaniego	msamaniego@jamsadr.com	JAMS Case Coordinator
Hon. David T. Wall (Ret.)	dwall@jamsadr.com	Arbitrator

/s/ Jennifer A. Bidwell
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EXHIBIT 204

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Attorneys for Respondent and Counterclaimant

JAMS

SHAWN BIDSAL, an individual, Claimant, v. CLA PROPERTIES, LLC, a California limited liability company, Respondent.	**JAMS Ref. No. 1260005736** **RESPONDENT'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATIONS BENJAMIN GOLSHANI AND RODNEY T. LEWIN IN SUPPORT OF MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER**

Respondent CLA Properties, LLC ("CLA") replies to the Opposition ("Opp") by Claimant ("Bidsal") to CLA's motion to resolve member dispute regarding which manager should be day to day manager.

1. **INTRODUCTION**.

Bidsal acknowledges that both Ben Golshani and he are designated as managers of Green Valley Commerce, LLC ("Green Valley") and that the choice of which of them would actually do the day to day management was made by the consent of the two of them. (Opp 6:11.) Bidsal attempts to distract the Arbitrator by noting that the Operating Agreement requires joint consent to change a "Manager." (Opp 20:17.) But that is not

what this motion is about. Golshani is already designated as a Manager in the Operating Agreement. But who does the day to day management is not there designated, and as Bidsal acknowledges, that is done by their mutual consent. Bidsal does not contest that that mutual consent no longer exists, and therefore a dispute has arisen with regard thereto.

At Opp 23:10 Bidsal argues there is no authority to "remove" Bidsal. Wrong. This motion is to resolve a dispute over who should do the day to day management given there is no longer mutual consent to Bidsal being the day to day manager.

2. **THE ONE CRITICAL FACTOR FAVORING GOLSHANI BEING CHOSEN AS DAY TO DAY MANAGER UNREBUTTED BY BIDSAL**.

CLA readily concedes that if the benchmark for ruling on this motion is which party submits the most pages of irrelevant material in order to distract from the issue, then clearly Bidsal wins. On the merits, not so much. That is because the basic premise for CLA's contention that the Golshani should be chosen as the day to day manager is a simple one.

Bidsal's opposition argues as though the critical factor on which CLA's motion is made did not exist. That factor is that no matter the ruling on his appeal of the confirmation of the prior arbitration, CLA will continue to be an owner and manager of Green Valley and in every scenario set forth in the papers filed regarding this motion Bidsal will not. So all Bidsal's bragging about his credentials and "service" to Green Valley ignores the one critical fact, and argues as though he never initiated the "buy-sell" provisions of Green Valley's Operating Agreement, appearing in Section 4.2 of Article V thereof. What cannot be ignored is the fact that Bidsal started the buy-sell process in order to end his relationship with CLA's owner. (Opp 8:26.) That necessarily means either Bidsal or CLA no longer would be a member.

Section 4.2 of Article V of the Operating Agreement for Green Valley includes a buy-sell provision where a party, like Bidsal here, wanting a "divorce" ("Offering Member") simply starts a process with a letter offering to buy out the other member ("Remaining Member") setting out his claim of the fair market value of Green Valley's

property ("FMV"), virtually the only element of the formula to set a buy out amount not set by Green Valley's books. The Remaining Member then has three choices: sell using that FMV, buy using that FMV or ask for an appraisal. Thinking that he could steal Green Valley because of a mistaken belief that CLA did not have the funds to buy him out, Bidsal sent his offer with a lowball figure of $5,000,000. To his dismay, CLA did have the funds and responded that it would buy out Bidsal using the $5,000,000 as the FMV.

Hoisted from his own petard Bidsal then came up some cockamamie[1/] story that he, the Offering Member, was likewise entitled to insist upon an appraisal to determine the FMV. That is what the issue was in the first arbitration: CLA argued Bidsal had to sell using the offered amount, $5,000,000 to determine the FMV, and Bidsal argued that since CLA elected to buy instead of sell, the FMV for his sale to CLA had to be determined by an appraisal. CLA won and Bidsal appealed. That was the only relief he sought in the first arbitration. See Prayer No. 2 and Paragraphs 17-19 to which it refers in Bidsal's Response and Counterclaim, Exhibit 14.

In § II.M.3 starting at Opp 21:9, Bidsal attempts to confuse the issue by arguing that the Nevada Supreme Court has all sorts of options should it reverse the confirmation of the prior award, without any attempt to apply them to the facts here. What he omits is that even if he wins the appeal, the only remedy he could achieve would be an appraisal to determine the FMV. But he would still be the seller and CLA would still be the owner of Green Valley[2/].

At Opp 22:11 Bidsal argues that "it is distinctly possible that no forced sale would be required. See Exhibit '63.'"[3/] He never explains how that could be possible given what the

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[1/] "Mixed-up, muddled; ridiculous, implausible; not credible, foolishly complicated" (Oxford English Dict. (2d ed.1989) vol. III, p. 411.)

[2/] Bidsal never suggests a scenario where he gets to remain in Green Valley. But should he come up with one at oral argument, there is none he can pose in which CLA does not remain a member, unlike the truly only two alternatives where Bidsal does not.

[3/] Before that at Opp 21:23 Bidsal sets out grounds for modification or correction of an award at Opp 21:21 for the proposition that the Supreme Court could modify or correct the award if (a) there was mathematical error, (b) award covered claim not submitted or (c) award is imperfect in form, twice

claim and counterclaim in the arbitration stated, and there is no Exhibit 63 in the copy of the Opposition served upon us. And there is good reason to suspect there never was. Every reference in the Opposition to an exhibit other than to 63 is in bold italics; not so with regard to Exhibit 63.

So regardless of who wins the appeal, CLA will be an owner and manager of Green Valley. And unless Bidsal's "Hail Mary" appeal is successful, **CLA is the only one who is sure to be concerned** with the success of Green Valley. As such, CLA should determine who runs Green Valley's day to day operations. There simply is no basis for Bidsal's unexplained claim that maybe he won't have to sell, and for sure there is no suggestion that CLA will be selling its membership interest.

While this is what CLA contends is the critical factor, the motion added other facts that make choosing it the more logical choice.

3. **BIDSAL SEEKS TO HANG ON SOLELY TO ATTEMPT TO ENHANCE HIS "OUT OF THE BLUE" REQUEST FOR COMPENSATION**.

In the prior arbitration Bidsal testified that he started the buy-sell process because **"I didn't want to manage this property any longer."** (Motion, Exhibit 13) Given that fact, his refusal to turn over the operations to Golshani in response to Golshani's requests was a mystery until he started this arbitration. It finally became revealed when in his claim he **for the first time in nine years** makes a claim for compensation for his acting as day to day manager. He hangs on just to enhance his ill-founded claim and to attempt to leverage CLA.

4. **BIDSAL FALSELY CLAIMS THAT CLA NEVER TENDERED**

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citing NRS 38.247. CLA assumes he intended to cite NRS 38.242 . Actually what the applicable section states is that a "motion" for such relief can be "made within 90 days after the movant receives notice of the award," seemingly referring to grounds for a motion in the trial court. Bidsal goes on at Opp 22:7 to claim that a rehearing could be granted if the award is vacated on grounds set out in NRS 38.241(1) (a) or (b). What is set out there is totally dissimilar to the (a) (b) (c) items he just laid out.

PAYMENT OF THE PURCHASE PRICE.

Starting at Opp 9:22 Bidsal twice claims that the funds have never been tendered for CLA's purchase of his interest. But that is just plain false. On August 28, 2017 Bidsal's attorney was told, "My client has all of the funds required to close the escrow for the purchase of Mr. Bidsal's membership interest in Green Valley Commerce, LLC as shown by the attached statements. All that remains is that we agree upon escrow and your client performs as required under the Operating Agreement." (Exhibit 15).

5. **MANAGEMENT SKILLS**.

In § II.G, starting at Opp 10:1, Bidsal argues that not until November 2018 did Golshani ever complain about Bidsal's management.

The first indication that CLA would prevail came in an October 9, 2018 Merits Order (Exhibit 16). It was then that it became clear who would prevail. Until then Bidsal had every reason to have Green Valley be as profitable as possible . But once that order was issued, the risk of Bidsal's wanting retribution and the fact that he would not be an owner forever changed things.

Because Bidsal cannot address the crucial point on which the motion is based, he argues that he is better at the job. So in that regard in Section II.D (Opp 6:26) Bidsal claims the income of Green Valley was attributable to his management skills. First, CLA's motion is not based on who would be the better manager. It is based on who would more likely be concerned over the success of Green Valley when one of them is about to be divested of his interest. Had Bidsal honored his obligations under the Operating Agreement CLA would have been the sole owner in September 2017 and responsible for success or failure. Common sense dictates that CLA should not have its interest in Green Valley and substantial investment, which includes not only what it paid in the past ($ 2,834,250) but what it will pay in the future for Bidsal's interest (before offsets and other claims) estimated to be $1,690,000 controlled by the loser of the litigation.

Second, Golshani as the day to day manager proposes to hire an independent third

party commercial property manager. (Golshani Decl. ¶ 8.) So the issue of Golshani's management skills is really a ***red herring***.

Third, if success is to be attributed totally to Bidsal's management, then the drop in income of more than fifty percent after it became clear that Bidsal would no longer be a member must likewise be attributable to Bidsal's management.

Because his argument is so weak, Bidsal devotes an entire section (II.J. Opp 12:26) to rebut the supposed assertion by CLA that it was "Bidsal's intent to 'rape' GVC" citing motion at 6:25. But that is almost the exact opposite of what is stated at motion. After laying out why, given that CLA was the only one of the two who necessarily would still be a member after Bidsal's appeal, we were noting that Bidsal need not fear that CLA would rape Green Valley. Put in context the complete thought was, "Nor can the ability to rape Green Valley during the pendency of this arbitration be considered a reason for Bidsal to be concerned over Green Valley's well being." Hardly would we have meant that Bidsal did not need to be concerned over his own raping Green Valley.

To top it off at Opp 12:13 Bidsal in effect concedes that expenses have recently unduly risen when he states, "Golshani, of course, fails to advise the Arbitrator of his role in these increased expenses, which is explained and demonstrated by Golshani emails." "Of course," Bidsal does not identify even one thing that Golshani did that caused an increase in expenses because there is no such "role" that Golshani played in causing the increase in expenses.

Finally, Bidsal is in no position to claim that in fact he has been a good caretaker for Green Valley. In December of 2018 Golshani visited the Arizona property called Greenway owned by Green Valley and saw that the premises were in total disrepair and informed Bidsal of that. (Golshani ¶ 7.) Later on February 23, 2019 Golshani again visited Greenway and saw that there had been no correction, and that the premises were in the same horrible condition. (Id.) He then took pictures of the premises showing the condition from December to then and e-mailed the pictures to Bidsal complaining of the terrible condition of the premises (Exhibit 23). Finally, Golshani went to Greenway again in October and

December of 2019 and Bidsal had done nothing to repair the condition of the premises and they remained as they had been since at least as far back as a year earlier. Since, unless Bidsals appeal is granted, CLA has the right to all net income generated by Green Valley after exercising its option to buy, it cannot be denied that Bidsals motivation to maintain and lease Green Valley's properties is less than CLA's.

In Section II.E. (Opp 7:1) Bidsal continues by asserting that Golshani has been a poor manager of Mission Square. Once again, if Golshani believed that he would end up poorer by putting himself in charge of Green Valley, he would not be making this motion.

Moreover, Bidsal's claim is more than specious, it is deceiving. He argues that in 2017 he became dissatisfied with participation with Golshani, (Opp 7:12.) claiming poor management skills by Golshani evidenced by the tax returns Golshani had filed which he only then discovered. (Even his claim of dissatisfaction with being in business with Golshani is suspect given that he has made no similar offer to buy out CLA's interest in the third jointly owned LLC, Country Club) What he conceals is that this claim was not made until after he had sent the same kind of offer to buy out Golshani from Mission Square as he had for Green Valley and had received the same election from CLA to buy him out. (See election to buy Bidsal's interest in Mission Square, Exhibit 17). To avoid that sale Bidsal contended that only Golshani, not CLA, was the member, and therefore the election was not valid. That is now the subject of litigation in Nevada (Exhibit 18, also Bidsal Exhibit 18), there being no arbitration provision in Mission Square operating agreement

Hardly should the Mission Square action be tried in this arbitration, but CLA does point out that the claim there is frivolous. Of course it truly does not matter to Bidsal who buys his membership interest. But more than that Bidsal at all times realized that the Operating Agreement did not identify the correct party as the member. He acknowledged that CLA was the true member repeatedly, one example of which is the Arizona Joint Tax Application that **Bidsal signed and filed** stating that CLA was the Member. (Exhibit 19). All the tax returns prepared by CLA's accountants and filed by Mission Square, which were reviewed by Bidsal or his "management team", also reflected that CLA was the Member.

(Golshani Decl ¶ 4.)

Bidsal continues his claim of poor management by Golshani by complaining that there were cash calls and high vacancies. But as shown by the schedule on Opp page 8 the Mission Square cash call was back in 2014 and 2017 and had the greatest distribution, the year of Bidsal's supposed dissatisfaction.

Moreover, there are explanations for the distinctions between Green Valley and Mission Square regarding distributions. At that time it was vacant and was purchased for the value of the land alone. (Golshani Decl. ¶ 3.)) The property when acquired was such that it was known that it would be a "fixer-upper" requiring more capital than just that needed for the purchase. *(Id.*) And as to the large vacancy factor, Bidsal conceals that in the summer of 2019 a pipe which was 6' below the surface busted and flooded the whole building. It caused substantial damage that is still being mitigated. (*Id.*)

At Opp 10:22 Bidsal supports his claim that Golshani would not be a good manager with,

> Apparently from 2011 to 2018, a period of ***seven*** years, Golshani was so disinterested in the management of GVC that he never asked for access to GVC's banking records. (Emphasis in original)

So the very same access which at Opp 19:15 Bidsal acknowledges he refused to provide Golshani after numerous requests, and never even giving his excuse until now, he complains that Golshani had not asked for that before! And even the claim is false. CLA had requested the online access to bank accounts at least as early as May 15, 2018, so there goes the seven years. (Exhibit 20) BIDSAL IS SIMPLY NOT CREDIBLE, a finding also made by Judge Haberfeld and confirmed by Judge Kishner!

So enamored with the specious claims regarding Golshani's management that he repeats them two pages later in Section H. They do not become better by repeating them.

But the basic factor remains: the motion never contended that the decision should rest on who has the more talent to manage. It was based who most likely would be concerned with the success of Green Valley, and that cannot be anyone but CLA.

After complaining that Golshani is not a good manager, Bidsal goes on to complain

about Golshani's intent to hire a third party commercial property manager; something that he admits that he has done in the past, because of the cost. Bidsal fails to point out that he is seeking compensation for his own work; so just how would he be harmed by the hiring a third party to do the work? As he testified the reason he initiated the buy-sell process (before he understood the significance) was that he **"...didn't want to manage this property any longer**". So he does not want to manage the property; he just wants to disenfranchise CLA and Golshani.

6. **DEPRIVATION OF RECORDS AND INFORMATION**.

A separate reason for this motion is Bidsal's delaying or withholding records and information which he was required to do both by law and the Operating Agreement. Starting on page 14 of the Opp, Bidsal begins by reciting what he did years ago which was not the period of time raised by the motion, and could not be less relevant.

Even what he says conceals the true facts. An examination of what he claims shows that he has cherry picked the isolated materials he has on occasions supplied in the past.

Finally, on Opp page 16 he addresses 2020. Bidsal repeatedly states that the fault for CLA's not receiving what it had requested was its failure to accept his March 4th offer to allow inspection on March 17th or 18th. But what he never mentions is that in his March 4th e-mail he wrote, "Alternatively if you like, I can mail you the documents." (Bidsal Exhibit 47) And as Bidsal at Opp 18:26 acknowledges, on March 6th "Golshani then stated that Bidsal should email him the books and records that he had requested to inspect." (Bidsal Exhibit 48) So Bidsal's repeated excuse for failing to provide records being CLA's not inspecting on March 17th or 18th, is a red herring. (Eg. Opp 18:13, 19:1, and 19:3.)

Starting at Opp 18:25 Bidsal acknowledges that he has not provided CLA with all that it had requested. He excuses this failure on the grounds that starting on March 19th his office had been closed pursuant to "stay-at-home-order." So Bidsal's reliance on the March 19th ordered closure is meritless. He had thirteen (13) days to email what CLA had requested, and he failed to do so. As a result CLA has never received an up to date rent

roll, the passcodes for the bank account, contracts with vendors, listing agreements including the listing agreement with West Coast Investment, the general ledger detail report showing every transaction, deposits and checks, listing of the repairs, their itemized costs, the name of the contractors and a copy of the contracts or estimates or proposals for repairs or maintenance from any other vendor including the landscaper during 2018 and 2019 or the records of tours given to prospective tenants, each of which was stated in CLA's March 6th e-mail.(Golshani Decl. ¶ 2.)

Bidsal's contention at Opp 25:26 that he has satisfied all the requests for information and records is simply false. More than that, and what is perhaps even more telling, at no place in the 500 or so pages of the Opposition is there one assertion either (1) that he has never been to the office since March 19th or (2) notwithstanding his bragging about his property management experience and organization, any explanation why he is unable to send any of the foregoing information electronically. Are we to believe that the general ledger of Green Valley is maintained by hand, perhaps using a quill, or that not one of the items in addition to the bank passcode is available to him outside of the office either on line or hard copy kept elsewhere. That omission speaks volumes.

Bidsal does not even pretend that he could not provide the bank passcode without access to his office. (Opp 19:26.) Rather he claims that he has refused to provide it because the codes include accounts other than Green Valley.

First, that is an **excuse he has never before given**, notwithstanding repeated requests by CLA. (Exhibit G and Bidsal Exhibits 42, 43, 48 and 51. and Golshani Decl. ¶ 3.) To the contrary he purposefully obfuscated. When in response to item 6 of CLA's February 24, 2020 e-mail (Bidsal Exhibit 43) listing the bank code Bidsal responded on February 27th (Bidsal Exhibit 47) "you have copies of most of the financial statements. If you are missing anything, let me know and I will get them over to you." Of course, that does not address the bank passcode at all.

Beyond all that, the mere fact that the code to Green Valley's bank accounts is the same code for other accounts is no excuse at all. He could have easily remedied the problem by setting up a separate code for Green Valley. Bidsal offers no evidence that he has tried to do that and no reason why that has to been accomplished.

7. THERE IS NO UNMET CONDITION TO THIS ARBITRATION OR THIS MOTION.

In § III.B starting at Opp 23:13 Bidsal reveals his desperation by claiming that CLA cannot make this motion because it has not satisfied the condition precedent of having representatives meet to attempt to resolve the dispute. First, on February 24, 2020 CLA again demanded that management be turned over to it and on February 27, 2020 Bidsal said "that is not going to happen." (Exhibit 10) The parties have effectively met and conferred and there is no reason to delay.

But even more telling is that Bidsal is the one who started this arbitration. So he is in no position to make any claim that some pre-condition has not been satisfied.

8. THERE IS NO PROHIBITION TO HIRING A THIRD PARTY PROPERTY MANAGER

In Section II. I (Opp 11:3) Bidsal argues at length regarding the hiring of a property manager, all based on his contention at Opp 12:7 that "there is no provision in the GVC OPAG to appoint a third-party manager." WRONG! Article IV, Section 02 in part states:

> 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.

The Manager's authority could hardly be stated any more broadly than that. There is nothing within the Operating Agreement that would prohibit engaging a property manager.

While Bidsal admits that "With so many commercial properties to manage, Bidsal has, on occasion, had to hire third-party property management companies to alleviate some

of his personal workload" what he ***failed to disclose*** is very telling. That is, that as the day to day manager, **Bidsal had previously hired commercial property managers to manage Green Valley's properties**. (See Golshani Decl ¶ 6 and Exhibit 21-Green Valley trial balances). When it suits him hiring an outside property manager is fine; only when CLA proposes to do so is the cost factor significant.

One would think that given that Bidsal has so many properties to manage having CLA alleviate some of his workload by taking over the day to day management of Green Valley would be welcomed.

Further, we still do not know what amount Bidsal is claiming for managing, but we can predict that the cost of hiring a third-party manager will be lower than what Bidsal will claim. While Bidsal complains about the cost of hiring a third-party commercial property manager **he completely omits what he claims he should be paid for doing it!**

And he continues to hide the ball!! CLA attempted to find out what Bidsal's compensation claim is. CLA's Interrogatory # 7 served May 11 (6 weeks ago) asked:

INTERROGATORY NO. 7:

"If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC set forth in detail YOUR calculation of the amount that YOU contend YOU should be paid for YOUR services to Green Valley Commerce, LLC."

Bidsal's response? Nothing but meritless objections and diversions:

"Bidsal objects to this Interrogatory as calling for speculation. Without waiving said objection, Bidsal contends that the calculation and accounting of services rendered is currently a subject of the present arbitration which was brought to ascertain said accounting, thus any such speculation, prior to a decision by the arbitrator would be premature and conjectural. Further, the total compensation will depend on the effective date of the transfer, which has not yet been established. Finally, due to the COVID-19 restrictions currently in place, Bidsal access to the documents and information which would be responsive to this interrogatory has been severely limited and/or temporarily terminated. Without waiving said objection, once the COVID-19 restrictions are lifted, Bidsal will provide a responsive to this interrogatory".

(See Bidsal Responses to CLA First Set of Interrogatories attached as Exhibit 26.)

Bidsal cannot have it both ways; he cannot complain about the cost of hiring a property manager but refuse to state what his charges would be. This is just more game playing.

Hiring an independent third party commercial property manager makes sense. We know what they will be paid. The risk is very limited; commercial property management companies have liability insurance and, importantly, Green Valley will not need to indemnify a third party manager.[4/] They will market the properties for lease, and stay on top of repairs, and produce reports for the managers and members at least on a monthly or quarterly basis as is customary without the members having to beg for information

And since Bidsal is complaining that he has not been compensated for his day to day management, the answer is, let Golshani do it.

9. **RESPONSE TO IRRELEVANCIES**.

To avoid seeming to be cavalier, CLA responds to what surely is irrelevant, at least to the extent of showing it is or showing why it is either wrong or overstated.

Starting in Section II.A. (Opp 2:20) Bidsal all but breaks his arm patting himself on the back. Bidsal's efforts in getting Green Valley started could not be less relevant to this dispute. Therefore, CLA does not bother to address how Bidsal and Golshani came together, or to CLA's providing the credit for the auction but for which there never would have been a purchase of a defaulted note.

While the three sales are interesting (starting at Opp 4:26) they have as much to do with the price of cheese in China as with who should maintain the books and records of Green Valley and conduct its day to day activities now.

Starting at Opp 8:21 Bidsal attempts to relitigate the first arbitration, attaching as an Exhibit to his Opposition his counter petition to vacate the arbitrator's award made in the District Court case, in an attempt to buttress the possibility of his succeeding on appeal. That counter petition, filled with misstatements of fact and law (as was pointed out in CLA's

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[4/]Bidsal claims that under the Operating Agreement he is entitled to be "indemnified" for his actions as property manager of Green Valley. See Bidsal's attorney's letter marked Exhibit 22.

opposition thereto, see Exhibit 24[5/]), was denied by Judge Kishner. Of course the appeal is solely an issue for the Nevada Supreme Court on his appeal from the confirmation of the award, and not here. CLA's contention is simply that the odds of Bidsal overturning Judge Haberfeld's reasoned arbitration award, confirmed by Judge Kishner in her Judgment, are overwhelmingly in favor of CLA, and that should be taken into consideration in deciding who should be the day to day manager.

At Opp 9:26 Bidsal argues CLA had received "free milk" from Green Valley. That's a strange characterization for a return on an investment of $2,834,250.

At Opp 16:12, Bidsal accuses CLA of making contradictory complaints that there should have been more capital improvements and that the capital improvements were too costly. False. What CLA has complained of is that while there was "deferred maintenance" claimed by Bidsal, after CLA exercised its option to buy Bidsal's interest he made distributions instead of fixing the property.

In Section II.L starting at Opp 19:20 Bidsal addresses some phantom. This motion does not seek any relief with regard to future distributions. Thus, we have not made the arguments he claims are "competing" at Opp 20:5. The only thing we have said regarding distributions is that instead of taking care of the very deferred maintenance he himself had claimed, he distributed the money leaving the repairs for later, and that the effect of that is to devalue the asset that CLA was buying.

At Opp 24:1 Bidsal argues that the motion is premature and should await discovery. There is nothing that can be discovered regarding the likelihood of who will remain an owner of Green Valley after the appeal is decided. For sure, no matter what the Nevada Supreme Court decides it will be CLA. The only thing that decision will address is whether or not Bidsal gets to have an appraisal to set the fair market value.

Bidsal there emphasizes that there is a dispute regarding whether Bidsal has properly managed. Agreed. But the only things in that regard which the Motion points out are the

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[5/]The opposition to the counter petition had voluminous exhibits which we do not include; if requested we will provide.

huge drop in income since the arbitration award was made and Bidsal's making distributions instead of taking care of deferred maintenance that he himself had claimed.

Those items are without dispute. This Motion does not seek any award for Bidsal's mismanagement, and would be made on the principal ground even if Bidsal had been the best manager ever. So the claim of being premature is silly.

Thus, Bidsal's argument starting at Opp 24:26 that he has been a good steward in the past totally misses the mark. In the past he had an ownership interest and would continue to have it and that his and CLA's interest in the future of Green Valley were the same . That simply no longer is true.

Bidsal then says he would not be fighting so hard if he were not concerned about Green Valley. Wrong again. He is appealing for one reason and one reason alone: to get more money for sale of his membership interest. He knows he low-balled in his offer and that if there were an appraisal, he'd get a higher price. That is the reason he is going "to such lengths." (Opp 24:22.)

10. **CONCLUSION**.

Had Bidsal honored his contractual obligations, ownership (and management) of Green Valley should have been turned over to CLA in September of 2017. At least the day to day operations of Green Valley management should have been turned over to CLA on April 5, 2019 when the award was issued. CLA understands that the Arbitrator cannot rule on Bidsal's appeal. But the Arbitrator can recognize that given the claim and counterclaim in the prior arbitration, CLA is the only one who can for sure say it will be an owner and a manager even after the appeal is decided. Given that fact, even without regard to Bidsal's depriving CLA of books and record, CLA should be given the right to conduct the day to day affairs of Green Valley.

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Dated: June 24, 2020.

LAW OFFICES OF RODNEY T. LEWIN,
A Professional Corporation,
Attorneys for Respondent

By: /s/ Rodney T. Lewin

RODNEY T. LEWIN

DECLARATION OF BENJAMIN GOLSHANI

I, Benjamin Golshani, declare under penalty of perjury under the laws of the state of Nevada in accordance with N.R.S. 53.045. as follows:

1. I requested the following in both my February 24, 2020 e-mail and my March 6, 2020 e-mail, but never received any of them: up to date rent roll, the passcodes for bank, contracts with vendors, listing agreements including the listing agreement with West Coast Investment, the general ledger detail report showing every transactions, deposits and checks, listing of the repairs, their itemized costs, the name of the contractors and a copy of the contracts or estimates or proposals for repairs or maintenance from any other vendor including landscaper during 2018 and 2019 or the records of tours given to prospective tenants, each of which was stated in CLA's March 6th e-mail (Bidsal Exhibit 48).

2. With reference to my repeated requests for the bank passcode, starting no later than May 15, 2018, Mr. Bidsal never told me that he used the same code for Green Valley and others.

3. Regarding the Mission Square property, it was purchased for the value of the land alone. property when acquired was such that it was known that it would be a "fixer-upper" requiring more capital than just that needed for the purchase. And as to the large vacancy factor, in the summer of 2019 a pipe which was 6' bellow the surface busted and flooded the whole building. It caused a significant amount damage that is still being mitigated.

4. All of tax returns Mission Square's accountant prepared showed CLA Properties, LLC as a member, and not me personally, albeit I own CLA Properties, LLC. Each of those returns were sent to Bidsal or his designee, and never until the dispute arose regarding CLA's purchase of his membership interests in Green Valley and Mission Square did he ever object that the tax returns showed the wrong one as a member. Exhibit 19 is a true copy of a tax document signed by Bidsal and filed in the state of Arizona which I received from him. This tax filing, confirms that CLA always was believed

by all (including Bidsal) and considered to be a member of Mission Square.

5. I have had difficulty in getting financial reports and tax information from Bidsal in the past; for example CLA did not receive the 2017 tax returns and it's K1 for Green Valley until September 2018. Cla has had to ask repeatedly for financial reports. I was willing to overlook this in the past because I felt that Mr. Bidsal's and mine coincided. However, given Mr. Bidsals repudiation and failure to cooperate in connection with CLA's purchase of his interest, even after the October 2018 Merits Order, or the Arbitration Award and even after the Judgement, I no longer trust him to look our for CLA's interests and do not want my multi-million dollar investment controlled by Mr. Bidsal.

6. Green Valley has used and paid for an outside property managers in the past. Attached as Exhibit 21 are copies of trial balances prepared by Bidsal for Green Valley, both of which show payments for "Property Management Fees" which Bidsal told me were for outside property management companies.

7. In December of 2018 I visited the Arizona property called Greenway owned by Green Valley and saw that the premises were in total disrepair. On January 1st 2019 I informed Mr. Bidsal of the condition of the premises. Later on February 23, 2019 I again visited Greenway and saw that there had been no correction, and that the premises were in the same horrible condition. I then took pictures of the premises showing the condition and e-mailed the pictures to Bidsal along with my complaints regarding of the terrible condition of the premises. True copies of these pictures and the accompanying text of an email I sent to Mr. Bidsal complaining of the lack of attention are attached as Exhibit 23. Finally, I went to Greenway again in October and December of 2019 and Bidsal had done nothing to repair the condition of the premises, and they remained as they had been since at least as far back as a year earlier.

8. I have experience in managing my own commercial properties and using outside property managers. I have been interviewing third party property managers and it is my intent to hire an outside property manager to manage Green Valley's properties subject to my oversite as the day to day manager of Green Valley.

9. I looked on LoopNet to see if all of Green Valley's properties were being marketed as Mr. Bidsal claimed in his Opp at 17:12. Attached as Exhibit 25 is a true copy of a page that I downloaded and printed from LoopNet showing that Green Valley's property at 3 Sunset Way, Henderson, Nevada is not being advertised on LoopNet as of today.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed June 24, 2020 at Los Angeles, California.

_____

BENJAMIN GOLSHANI

DECLARATION OF RODNEY T. LEWIN

I, Rodney T. Lewin, declare under penalty of perjury under the laws of the state of Nevada in accordance with N.R.S. 53.045. as follows:

1. Exhibit 15 is a true copy of an email and attachments that I sent to Mr. . Bidsal's attorney, James Shapiro, on August 28, 2017 confirming that CLA was ready and able to close the purchase of Mr. . Bidsal's membership interest in Green Valley.

2. Exhibit 22 is a true copy of a letter I received from Mr. Shapiro.

3. Exhibit 26 is a true copy of Mr. Bidsal Responses to CLA First Set of Interrogatories.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed June 24, 2020 at Los Angeles, California.

/s/ Rodney T. Lewin
Rodney T. Lewin

EXHIBIT 205

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Attorneys for Claimant

JAMS

SHAWN BIDSAL, Claimant, vs. CLA PROPERTIES, LLC, a California limited liability company, Respondent.	**Reference #:1260005736** Arbitrator: Hon. David T. Wall (Ret.)

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CLAIMANT SHAWN BIDSAL'S SUPPLEMENT TO OPPOSITION TO RESPONDENT CLA PROPERTIES, LLC'S MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER

COMES NOW Claimant SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys of record, SMITH & SHAPIRO, PLLC and GERRARD COX LARSEN, and hereby files his Supplement to Claimant's Opposition (the "***Opposition***") to Respondent CLA PROPERTIES, LLC's ("***CLA***") Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager and Memorandum of Points and Authorities and Declarations of Benjamin Golshani and Rodney T. Lewin in Support Thereof (the "***Supplement to Opposition***").

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14A.App.3181

This Supplement to Opposition is made and based upon the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, the attached declarations and exhibits, and any oral argument your Honor may wish to entertain in the premises.

Dated this 7th day of July, 2020.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
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Aimee M. Cannon, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PREFATORY STATEMENT

By its original Motion, CLA sought an arbitration order requiring Bidsal to cease acting as the day-to-day manager of Green Valley Commerce, LLC ("***GVC***"). At the hearing the Arbitrator requested supplemental information regarding CLA's alleged tender to Bidsal. As is apparent, CLA failed to effectuate a valid tender with respect to the purchase of Bidsal's interest in GVC.

II.

STATEMENT OF FACTS

CLA falsely asserts that it is the "inchoate sole owner of Green Valley, and as such is entitled to control Green Valley's activities." *See* Motion at 5:7-8. This statement is patently false. In order to be the sole owner of GVC, CLA would have had to purchase Bidsal's share from him. Yet, CLA has NEVER tendered payment for Bidsal's membership interests. *See* Exhibit "1" to the Opposition.

In CLA's Reply to the Opposition, it disputes that it failed to tender payment for Bidsal's share in GVC. *See* Reply at 5:1-8. In supporting its assertion that CLA tendered payment, CLA cites a single piece of correspondence dated August 28, 2017 (the "***August 28th Letter***"). *Id.*, at Exhibit "15". In the August 28th letter CLA's attorney stated to Bidsal's attorney, "…my client has all the funds required to close the escrow for the purchase of Mr. Bidsal's membership interest in Green Valley commerce, LLC as shown by the attached statements. All that remains is that we agree upon escrow…" *See* Exhibit "15" to CLA's Reply. As part of this correspondence, CLA attached a letter from Wells Fargo Bank, dated August 23, 2017 (the "***Wells Fargo Letter***") that stated, "Dear To whom it may concern: This letter is verification that the Customer named above has the following deposit accounts with Wells Fargo. Account Number 0846, Date Opened 12/09/2015, Current Balance* 2,010,051.54." *Id.* The asterisk after the term "Current Balance," was then clarified in the Wells Fargo Letter. The Wells Fargo Letter stated, "[t]he Balance is the opening available balance as of the date of this letter but such balance does not include any uncollected items and/or amounts that have not yet been posted to such account as the date hereof. **The foregoing is not, and should not at any time or in any way be construed as a guaranty of future account balances**." *Id.* (emphasis added.). Exhibit "15" to CLA's Reply is the ***ONLY*** evidence produced by CLA to support its assertion that it made proper tender to Bidsal to purchase Bidsal' s interest in GVC. CLA did not open an escrow account to deposit the funds referenced in the Wells Fargo Letter[1], nor did CLA provide a check to Bidsal for the alleged purchase price. In fact, no purchase price was even identified in the August 28th Letter. *Id.*

On August 31, 2017, Bidsal's counsel responded to the August 28th letter (the "***August 31st Response***"). A true and correct copy of the August 31st Response is attached hereto as ***Exhibit "63"*** and is incorporated herein by this reference. The August 31st Response stated, "I am in receipt of your August 28, 2017 letter regarding Green Valley Commerce, LLC (the "***Company***"), wherein you incorrectly state that "[a]ll that remains is that we agree upon escrow and your client performs as required under the Operating Agreement." *Id.* The August 31st response indicates that a purchase

[1] At least CLA never notified Bidsal that it had opened an escrow and Bidsal was never aware that any escrow had been opened.

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price had not yet been established when it stated, "[a]s set forth in my August 5, 2017 letter to Benjamin Golshani, Shawn Bidsal has exercised his right under Article V, Section 4 of the Company's Operating Agreement, to establish the FMV by appraisal." *Id.*

III.

STATEMENT OF AUTHORITIES

A. LEGAL TENDER.

1. Legal Standard.

In 2014, the Nevada Supreme Court issued its blockbuster decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 334 P.3d 408 (2014), holding that NRS 116.3116(2) provides a homeowner association with a superpriority lien that extinguishes a first deed of trust when properly foreclosed upon. This decision created significant waves in the real estate industry in southern Nevada and spawned numerous lawsuits. Four years later, the Nevada Supreme Court dialed back the scope of its original *SFR Investments Pool 1* decision, ruling that a deed of trust beneficiary can preserve its deed of trust by tendering the superpriority portion of the HOA's lien before the foreclosure sale is held. *See Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev ___, 427 P.3d 113 (2018). In *Bank of America* the Nevada Supreme Court made it clear that "[v]alid tender ***requires payment in full***" and further stated that "[i]n addition to ***payment in full***, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist." 427 P.3d at 117 and 118 (emphasis added). Obviously, these holdings make it clear that the first and most important rule of tender is that it must include "**payment in full**", which has obviously never occurred in this case. Not surprising, the Nevada Supreme Court's 2018 decision created a hyper-focus on what constitutes valid tender in Nevada, with Lenders claiming to have tendered payment merely by sending a letter promising to pay the superpriority lien amount of the HOA, whatever that amount was determined to be. This is precisely what CLA is arguing here, that its letter offering to pay whatever the purchase price was ultimately determined to be, but with no payment attached, constitutes a valid tender.

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In 2020, the Nevada Supreme Court issued its decision in *7510 Perla Del Mar Ave Trust v. Bank of America, N.A.*, 136 Nev. Adv. Rep. 6, 458 P.3d 348 (2020), in which it expressly rejected the idea that a letter offering payment of an undetermined amount, with no payment attached, could constitute a valid tender. In *Perla Del Mar* the Supreme Court specifically held:

> [I]t is the generally accepted rule that a promise to make a payment at a later date or once a certain condition has been satisfied cannot constitute a valid tender. *See Southfork Invs. Grp., Inc. v. Williams*, 706 So. 2d 75, 79 (Fla. Dist. Ct. App. 1998) ("To make an effective tender, the debtor must actually attempt to pay the sums due; mere offers to pay, or declarations that the debtor is willing to pay, are not enough."); *Cochran v. Griffith Energy Serra., Inc*., 191 Md. App. 625, 993 A.2d 153, 166 (Md. Ct. Spec. App. 2010) ("A tender is an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." (emphasis added) (internal quotation marks omitted)); *Graff v. Burnett*, 226 Neb. 710, 414 N.W.2d 271, 276 (Neb. 1987) ("To determine whether a proper tender of payment has been made, we have stated that a tender is more than a mere offer to pay. A tender of payment is an offer to perform, coupled with the present ability of immediate performance, which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made." (emphasis added)); *McDowell Welding & Pipefitting, Inc. v. U.S. Gypsum Co.*, 260 Ore. App. 589, 320 P.3d 579, 585 (Or. Ct. App. 2014) ("In order to serve the same function as the production of money[,] . . . a written offer of payment must communicate a present offer of timely payment. The prospect . . . that payment might occur at some point in the future is not sufficient for a court to conclude that there has been a tender . . . ." (citation and internal quotation marks omitted)); cf. 74 Am. Jur. 2d Tender § 1 (2012) (recognizing the general rule that an offer to pay without actual payment is not a valid tender); 86 C.J.S. Tender § 24 (2017) (same). Accordingly, we conclude that the district court erred in determining that Miles Bauer's offer to pay the yet-to-be-determined superpriority constituted a valid tender.

7510 Perla Del Mar Ave Trust, 458 P.3d, at 350-351. From the *Perla Del Mar* decision we learn several important legal concepts which control in this case.

First, a promise to make a payment at a later date or once a certain condition has been satisfied cannot constitute a valid tender.

Second, for CLA to have made an effective tender, CLA must actually have attempted to pay the sums due because mere offers to pay, or declarations that the debtor is willing to pay, are not enough.

Third, a tender is an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied.

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Fourth, the prospect that payment might occur at some point in the future is not sufficient for a court to conclude that there has been a tender.

Fifth, and most important, the general rule is that an offer to pay without actual payment is not a valid tender. *See also*, 74 Am. Jur. 2d Tender § 1 (2012) and 86 C.J.S. Tender § 24 (2017).

2. The Undisputed Facts Demonstrate that No Tender Was Ever Made.

In this case, CLA is now attempting to claim that its August 28, 2017 letter, constituted a valid tender of the purchase price. However, applying the forgoing principles to CLA's August 28, 2017 letter clearly demonstrates otherwise.

The entire material portion of CLA's August 28, 2017 letter states, in its entirety:

> Dear Mr. Shapiro,
>
> As you know, we represent CLA Properties, LLC. Please be advised that my client has all of the funds required to close the escrow for the purchase of Mr. Bidsal's membership interest in Green Valley commerce, LLC as shown by the attached statements. **All that remains is that we agree upon escrow and your client performs as required under the Operating Agreement**. **We reiterate our demand that Mr. Bidsal do so without delay**.
>
> Please advise if you have any questions regarding the foregoing.

See Exhibit "24" (emphasis added).

There are 5 important points to be made regarding CLA's August 28, 2017 letter.

(1) CLA did not identify the amount of the alleged tender.

(2) CLA did not tender actual payment in any form. Rather, CLA simply referenced that it had "all of the funds required to close the escrow for the purchase of Mr. Bidsal's membership interest…"

(3) CLA did not identify a specific date on which the alleged tender would take place.

(4) To the contrary, CLA identified two conditions that had to be met before the purchase price would be paid. *First*, CLA stated that the parties had to agree upon an escrow. *Second*, CLA stated that Bidsal had to perform "as required under the Operating Agreement." In fact, CLA concluded: "We reiterate our demand that Mr. Bidsal do so without delay," clearly demonstrating that CLA had no intention of tendering the purchase price until its two conditions had been met.

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(5) It is important to note that there is no mention of the use of an escrow, let alone any requirement that escrow be used, anywhere in the Operating Agreement. As such, CLA self-created requirement that the parties agree upon an escrow was just that, CLA's own requirement that it required to be met before it would tender the purchase price. Because this is not a condition that CLA had the right to insist upon, imposing this condition vitiated any argument that this was a valid tender. 427 P.3d at 118.

The Nevada Supreme Court has made it abundantly clear that "a promise to make a payment at a later date or *once a certain condition has been satisfied* cannot constitute a valid tender." *Id.* Because CLA's August 28, 2017 letter: (1) did not identify the amount being tendered, (2) did not include actual payment (cash, business check, cashier's check, money order, etc…), and (3) contained two conditions that CLA stated must be met before the purchase price would be paid, under the legal principles outlined above, CLA's August 28, 2017 letter cannot constitute a legal tender of the purchase price. *Id*.

B. CLA'S TENDER WAS NOT EXCUSED.

CLA has alleged that if its August 28, 2017 letter does not constitute a legal tender, that it is excused from tendering payment because in Bidsal's August 31, 2017 response, Bidsal notified CLA that it would not accept the purchase price even if it were tendered. There are multiple problems with this argument.

1. Legal Standard.

In *Perla Del Mar*, the Nevada Supreme Court made it clear that before tender is excused, a statement must be made that clearly states that any tender would be rejected. 458 P.3d at 351 ("*See Schmitt v. Sapp*, 71 Ariz. 48, 223 P.2d 403, 406-07 (Ariz. 1950) ("An actual tender is unnecessary where it is apparent the other party will not accept it. The law does not require one to do a vain and futile thing." (*citation omitted*)); *Mark Turner Props., Inc. v. Evans*, 274 Ga. 547, 554 S.E.2d 492, 495 (Ga. 2001) ("Tender of an amount due is waived when the party entitled to payment, by declaration or by conduct, proclaims that, if tender of the amount due is made, an acceptance of it will be refused." (*alteration and internal quotation marks omitted*)); *Chiles, Heider & Co. v. Pawnee Meadows, Inc.*, 217 Neb. 315, 350 N.W.2d 1, 5 (Neb. 1984) ("A formal tender is not

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necessary where a party has shown by act or word that it would not be accepted if made." (internal quotation marks omitted)); *Alfrey v. Richardson*, 1951 OK 133, 204 Okla. 473, 231 P.2d 363, 368 (Okla. 1951) (stating that tender was waived where it was clear that "if a strict legal tender had been made, defendant would not have accepted the money").

Further, a party is only excused from tendering "when a party, ***able and willing to do so***, offers to pay another a sum of money and is told that it will not be accepted, the offer is a tender without the money being produced." *Bank of America, N.A. v. Thomas Jessup, LLC*, 435 P.3d 1217, 1220 (2019) *overruled on other grounds*, *citing to Guthrie v. Curnutt*, 417 F.2d 764, 765-66 (10th Cir., 1969) (emphasis added). In fact, the burden is on the tendering party to prove that its "performance has in effect ***been prevented by the other party*** to the contract." *Id*., *quoting Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (emphasis added).

As the forgoing makes clear, there are two elements that must be present before a party's obligation to tender payment will be excused. *First*, the party must be "able and willing" to tender payment without any conditions imposed by the tendering party. *Second*, the receiving party must prevent the tender from occurring or must tell the tendering party that it will not accept any payment. *Id*., at 1220.

As is shown next, CLA cannot meet either of these two elements.

2. Bidsal's August 31, 2017 Letter Does Not State that Bidsal Would Not Accept Tender of the Purchase Price.

Before a party is excused from tendering payment, the receiving party must prevent the tender from occurring or must tell the tendering party that it will not accept any payment. *See Bank of America, N.A. v. Thomas Jessup, LLC*, 435 P.3d 1217, 1220 (2019). However, that never occurred in this case.

Remember, CLA's August 28, 2017 letter imposed two conditions that CLA required be met before CLA would tender the purchase price. CLA's first condition was that the parties agree on an escrow.[2] *See* Exhibit "24". CLA's second condition was that Bidsal "performs as required

[2] This requirement is not contained anywhere in the Operating Agreement (*see* Exhibit "9"), but was a unilateral requirement imposed by CLA. *See* Exhibit "24".

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under the Operating Agreement." *Id*. Of course, CLA did not identify what Bidsal was required to do to satisfy the second condition, which made it virtually impossible for Bidsal to comply with the second requirement. *Id*.

In his August 31, 2017 response, Bidsal outlined what he believed the obligations of the parties were under the terms of the Operating Agreement. *See* Exhibit "63". Further, because CLA's August 28, 2017 letter had imposed two requirements that must be met before CLA would tender payment of the purchase price, Bidsal had no reason to even discuss any potential tender of the purchase price, because it was clear from CLA's August 28, 2017 letter (which was not accompanied by any payment) that CLA was *not* tendering the purchase price, and that CLA would not be tendering the purchase price until its two conditions had been met. *See* Exhibit "24".

Not only is there no language in Bidsal's August 31, 2017 letter which can be construed as a statement that Bidsal would refuse any tender by CLA of the purchase price, but it was self-evident from CLA's August 28, 2017 letter that CLA was not tendering payment of the purchase price and would not tender payment until its two conditions had been met. Bidsal could not and did not refuse a tender which was never made. *See* Exhibit "63".

Based upon the forgoing, it is clear that Bidsal's August 31, 2017 letter does not notify CLA that Bidsal will not accept any tender of the purchase price (after all, in light of CLA's August 28, 2017 letter, Bidsal had no reason to even address that issue) and therefore CLA cannot now claim it was excused from tendering the purchase price.

3. CLA Was Not Willing To Tender The Purchase Price Until Its Unilaterally Set Conditions Were Met.

The second element that must be met before a party can be excused from tendering payment is the party "able and willing to" to tender the payment, but "performance has in effect been prevented by the other party to the contract." *Bank of America, N.A.*, 435 P.3d, at 1220, *citing to Guthrie*, 417 F.2d, at 765-66 and *Cladianos*, 69 Nev., at 45.

The only evidence CLA has provided to supports its alleged willingness to tender the purchase price is its August 28, 2017 letter. *See* Exhibit "24". However, CLA's August 28, 2017 letter demonstrates that CLA was not ready, willing and able to tender the purchase price. *Id*. To

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the contrary, CLA's August 28, 2017 letter makes it abundantly clear that it would only tender the purchase price at some future date and only after: (1) the parties agreed to use an escrow, and (2) Bidsal complied with an unknown amount of, and unspecified, requirements of the Operating Agreement. *Id*.

By failing to actually tender any payment and by imposing conditions on any future payment, CLA demonstrated that it was ***not*** ready, willing and able to tender the purchase price. *See* Exhibit "24". CLA's performance ***was not*** "prevented by the other party to the contract," but rather ***was*** prevented by CLA failure to tender the purchase price until Bidsal had satisfied CLA's two conditions.

Thus, even if Bidsal had stated in his August 31, 2017 response that he would not accept any tender of the purchase price (which never happened), because CLA was not ready, willing and able to tender payment of the purchase price until Bidsal had satisfied CLA's two conditions, CLA was not excused from tendering payment of the purchase price.

4. CLA Was Not Excused from Tendering the Purchase Price.

As outlined above, there are two elements that must be present before a party's obligation to tender payment will be excused. *First*, the party must be "able and willing" to tender payment. *Bank of America, N.A.*, 435 P.3d, at 1220, *citing to Guthrie*, 417 F.2d, at 765-66 and *Cladianos*, 69 Nev., at 45. *Second*, the receiving party must prevent the tender from occurring or must tell the tendering party that it will not accept any payment. *Id*.

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Because CLA cannot met either of the two elements, CLA was not excused from tendering the purchase price.

IV.

CONCLUSION

For the reasons set forth above, CLA failed to effectuate a valid tender to Bidsal and as such cannot be deemed the owner of GVC. Claimant respectfully requests that CLA's Motion be denied in its entirety.

Dated this 7th day of July, 2020.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Aimee M. Cannon, Esq.
3333 E. Serene Ave., Suite 130
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Attorneys for Petitioner, Shawn Bidsal

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 7th day of July, 2020, I served a true and correct copy of the forgoing **CLAIMANT SHAWN BIDSAL'S SUPPLEMENT TO OPPOSITION TO RESPONDENT CLA PROPERTIES, LLC'S MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER**, by emailing a copy of the same, with Exhibits (if any), to:

Individual:	Email address:	Role:
Louis Garfinkel, Esq.	LGarfinkel@lgealaw.com	Attorney for CLA
Rodney T Lewin, Esq.	rod@rtlewin.com	Attorney for CLA
Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com	Attorney for Bidsal
Michelle Samaniego	msamaniego@jamsadr.com	JAMS Case Coordinator
Hon. David T. Wall (Ret.)	dwall@jamsadr.com	Arbitrator

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

Exhibit “63”

Exhibit “63”

SMITH & SHAPIRO
ATTORNEYS AT LAW

James E. Shapiro, Esq.
jshapiro@smithshapiro.com

August 31, 2017

VIA FIRST CLASS MAIL & EMAIL TO:

Rodney T. Lewin
8665 Wilshire Boulevard, Suite 210
Beverly Hills, CA 90211-2391
rod@rtlewin.com

RE: Green Valley Commerce, LLC, a Nevada limited liability company

Dear Mr. Golshani,

I am in receipt of your August 28, 2017 letter regarding Green Valley Commerce, LLC (the "***Company***"), wherein you incorrectly state that "[a]ll that remains is that we agree upon escrow and your client performs as required under the Operating Agreement."

As set forth in my August 5, 2017 letter to Benjamin Golshani, Shawn Bidsal has exercised his right under Article V, Section 4 of the Company's Operating Agreement, to establish the FMV by appraisal. Further, Mr. Bidsal identified the following MIA Appraisers:

For the Nevada properties:

(1) Lubawy & Associate, 3034 South Durango, Suite 100, Las Vegas NV 89117, 702-242-9369.

(2) Valuation Consultant, Keith Harper, 4200 Cannoli Circle, Las Vegas NV 89103, 702-222-0018.

For the Arizona properties:

(3) Commercial Appraisals, 2415 E Camelback Rd, Ste 700, Phoenix AZ 85016, 602-254-3318.

(4) US Property Valuations, 3219 E Camelback Rd, Phoenix AZ 85018, 602-315-4560.

Under the terms of the Operating Agreement, the ball is in Mr. Golshani's court as he must now identify which of the forgoing MIA Appraisers he desires to use, as well as identify two more MIA appraisers for the properties whom Mr. Golshani desires to use. Once Mr. Golshani provides this information, we will be able to move forward.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

SMITH & SHAPIRO, PLLC

James E. Shapiro, Esq.

cc: Shawn Bidsal

EXHIBIT 206

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Attorneys for Respondent and Counterclaimant

SHAWN BIDSAL, an individual, Claimant, v. CLA PROPERTIES, LLC, a California limited liability company, Respondent.	**JAMS Ref. No. 1260005736** **CLA'S S SUPPLEMENT TO BRIEF RE MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER –TENDER ISSUE AND DECLARATION OF BENJAMIN GOLSHANI IN SUPPORT OF MOTION**

TO THE HONORABLE DAVID WALL:

Respondent ("CLA") responds to the Supplemental Brief ("Supp.") regarding tender submitted by Claimant Bidsal.

1. **INTRODUCTION.** Lest it be lost in the shuffle, we remind Your Honor that what is before you is the resolution of the conflict between the two members of Green Valley Commerce, LLC ("Green Valley") as to who should conduct the day to day operations of Green Valley and possess and maintain its books and records. In that regard

one, repeat, just one, of the bases which Respondent ("CLA") has urged to choose it rather than Claimant Bidsal is that under every scenario that has been set out in the papers (or for that matter oral argument) CLA is going to end up as the sole owner and Bidsal will end up without any membership interest. Even if under some as yet undescribed outcome Bidsal remained a member, the probabilities of that are dramatically less than fifty percent combined with the fact that even then CLA would be a member. Remember, what Bidsal has pursued is to have fair market value determined by appraisal. CLA would still be the buyer.

We pause to note that Exhibit 63, mentioned but not affixed to Bidsal's Opposition, supposedly was going to set out a different scenario. Now an exhibit bearing that number has been provided in Bidsal's Supplemental Brief. An examination of it shows that it was simply a demand for an appraisal which the prior arbitration deemed Bidsal had no right to make. In no way does it suggest a scenario where Bidsal would remain a member.[1/]

However, that basis is only one of those on which CLA has relied. It has now seemingly been proved that Bidsal has deprived CLA of information and records to which it was entitled. And while admittedly not conclusive in addition there is strong evidence that since the prior arbitration award Bidsal has mismanaged Green Valley. Were there any doubt about who was likely going to be the sole owner of Green Valley, these other two bases at least cumulatively should tip the scales in favor of CLA.

2. **TENDER NOT AN ISSUE**. That said, we turn our attention to Bidsal's contention that our claim that CLA will end up as the owner of Green Valley is defeated by CLA's failure to tender the buyout amount to Bidsal. A few things bear noting before addressing the authorities:

- First, in the first arbitration CLA successfully sought to force Bidsal to sell using

---

[1/] At the hearing Your Honor speculated that the prior reference to Exhibit 63 was intended to be Exhibit 60, Bidsal's opposition to confirmation of arbitration award and counter petition to vacate and nothing in the forty pages thereof suggests a scenario where CLA does not end up as the sole owner. Bidsal did not then correct Your Honor. So Exhibit 63 is new evidence.

the $5,000,000 his offer had stated as the fair market value in the formula to determine buyout amount. **If Bidsal had a defense on the basis of CLA's failure to tender that amount, then he had to raise it in that arbitration**. But even though there were more than six different briefs filed by Bidsal in the arbitration and three more in the federal court and state court regarding vacating or confirming the award, never once did Bidsal raise a contention that there had not been a tender. As such, even were he correct, he has lost that claim by failing to assert it.[2/]

● Second, CLA's Exhibit 27 attached hereto[3/] shows that on August 15, 2017 CLA's owner, Ben Golshani, wrote, **"I am planning on closing escrow to purchase your membership interest in both entities pursuant to my elections to buy at the price you offered. Since we are both located in Los Angeles, I suggest we use a local escrow company**." The next day Bidsal responded, **"We cannot open any escrow since we we [sic] do not agree on this matter**." Even if there had not then been a tender, Bidsal's refusal to proceed period and timely close excused any need for tender. Noteworthy is that Bidsal never contended that there had been a failure of proper tender!

● Third, disregarding Bidsal's current Claim of a bogus "disagreement," (wholly apart from his appraisal claim covered by prior arbitration), CLA's Exhibit 15 showed that whatever amount was needed was on hand and Bidsal was told, "Please be advised that my client has all of the funds required to close the escrow for purchase of Mr. Bidsal's membership interest in Green Valley commerce [sic], LLC as shown by the attached statements. All that remains is that we agree upon escrow and your client performs as required under the Operating Agreement".

But Bidsal never so agreed or performed. **Indeed, this new Bidsal Exhibit 63 confirms Bidsal's refusal to proceed without an appraisal, a demand that he had no**

[2/] See *Bank of America v. SFR Investments Pool* 1, 427 P.3d 113,119 (Nev. 2018) at 119 "[A] de novo standard of review does not trump the general rule that '(a) point not urged in the trial court, unless it goes to the jurisdiction of that court is deemed to have been waived and will not be considered on appeal.'"

right to make. For that reason also any requirement for tender was excused. There is no requirement to make tender when the other side states it will not proceed. Moreover, in Bidsal Exhibit 63 his attorney responded to the demand to close the sale and yet HE MADE NO CONTENTION THAT THE EVIDENCE OF THE AVAILABLE FUNDS WAS NOT AN ADEQUATE TENDER OR THAT THE AMOUNT WAS NOT SUFFICIENT!

● Finally, and this seemingly should be point, game, set and match, item 1 of the Relief Granted by Judge Haberfeld's Award, appearing on page 19 thereof (Exhibit 2 to our Motion) in critical part 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 at a price computed in accordance with the contractual formula . . .

In ordering the transfer any issue of tender (which Bidsal never raised in the arbitration, in federal court or in the trial court) no longer could exist. That issue has been subsumed in the Judgement. Stated differently, the "tender" issue is behind us, and is not available now to defeat CLA's becoming the sole owner of Green Valley.

We nonetheless address Bidsal's authorities.

3. **ERRONEOUS ARGUMENTS**. Starting on page 2 of Bidsal's Supplement, he acknowledges receipt of CLA Exhibit 15 (also Bidsal Exhibit 24). Seemingly what he is hanging his hat on (given that it is in bold and underscored) is that when one of the two banks which acknowledged holding adequate funds, it said that that was not "a guaranty of future account balances." Of course not. Had Bidsal performed under the Operating Agreement much of the funds would have been used to pay him.

Bidsal does not explain what more could or should have been done by CLA in face of his refusal to proceed without an appraisal. To the contrary at p. 3, line 11 of Bidsal's Supp. he argues that so far as he was concerned, "a purchase price had not yet been established." Nonsense. All that means is that he was refusing to sell using his $5,000,000 as the fair market value (the FMV") in the formula to determine the purchase price (buyout

amount). As we have before explained, each element of the formula was fixed and only the FMV was left open for determination either by the amount offered, or if demanded by the "Remaining Member," here CLA, not Bidsal (the Offering Party), by appraisal.

4.. **STATUTORY LIEN CASES INAPPLICABLE**. Starting at Supp. P. 4,line 6 Bidsal relies on cases dealing with the interpretation of statutes governing the results of foreclosures of homeowner association liens which are governed under particular statutes, i.e. the Uniform Common Interest Ownership Act of 1982 ("UCIOA"). "HOA liens created under NRS Chapter 16 are statutory liens and thus enforcement of the lien is governed by statute" *Bank of America v. SFR Investments Pool* 1, 427 P.3d 113, 120 (Nev. 2018) Our case is not an HOA case; nevertheless the cases relied upon by Bidsal are of no help to him.

In *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75 (2014) the Nevada Supreme Court affirmed that foreclosure of an HOA lien wiped out the previously recorded deed of trust and the buyer at the foreclosure sale took free of the deed of trust. It suggested that to avoid losing its priority the beneficiary of the deed of trust could pay the HOA the amount owed for the priority period, which in Nevada is nine months (six months under UCIOA). If done, then the buyer at any foreclosure sale of the HOA lien would take subject to that deed of trust.

The issue raised in the case on which Bidsal primarily relies, *Bank of America v. SFR Investments Pool* 1, 427 P.3d 113 (Nev. 2018), was what is the result if the first holder offers to pay, and the HOA refuses it. The answer came down that the deed of trust is not wiped out by foreclosure on the HOA lien, but rather the buyer at such sale would take subject to the deed of trust.

Perhaps one could imagine a factual setting more dissimilar to what is involved in the pending motion, but it would not be easy. Suffice it to say that everything involved in these HOA lien cases was governed by an elaborate statutory scheme ending up with "the first in time" not being "the first in right" but only to a limited extent (in Nevada nine

months worth).

And there is significance in the dissimilarity. Absent a contract provision to the contrary, the exchange of money for transfer of an interest, by deed, assignment or other takes place simultaneously. Indeed, along with the satisfaction of other conditions (e.g. checking title) that is the very reason that virtually every real estate transaction is consummated with a stakeholder (escrow holder). Absent an agreement to the contrary the time for performance by both buyer and seller is simultaneous each party's performance is conditioned on the other party's performance. It's not enough for the buyer to merely tender, he must actually pay the price.

That is the reason that both individually and through its counsel CLA wrote to Bidsal attempting to get the escrow opened. At most if it is treated as tender, CLA's deposit of funds in escrow could not and did not arise until the escrow was opened–the escrow which Bidsal refused to open. Any CLA obligation of payment or tender was excused unless and until Bidsal proceeded with opening an escrow.

Contrasting the meaning of "tender" in cases where there is a debt the court in *Cladianos v. Friedhoff*, 69 Nev. 41, 45 (1952) stated that tender in the instance where there is performance due from both parties (with emphasis added),

> means only a readiness and willingness accompanied with an ability on the part of one of the parties to do the acts which the agreement requires him to perform provided the other will concurrently do the things which he is required by it to do the things he is required to do, and a notice by the former to the latter of such readiness. Such readiness, ability, and notice are sufficient evidence of, and indeed imply, an offer or tender in the sense <u>in which those terms are used in reference to mutual and concurrent agreements</u>. It is not an absolute, unconditional offer to do or transfer anything at all events, but it is, in its nature, conditional only, and dependent on, and to be performed only in the case of, the readiness of the other party to perform his part of the agreement."

That is what is applicable in this purchase and sale agreement. CLA had no obligation to do any more than it did absent performance by Bidsal. Their obligations were mutual and concurrent conditions.

But to cover all bases, were the statutory HOA lien cases argued by Bidsal relevant

to the purchase and sale of a membership interest in an LLC, what Bidsal argues from them is wrong.

5. **WHAT THE CASES REALLY SAY**. Once again, assuming the relevance of these lien priority cases, what Bidsal attempts to get from them fails.

At Supp. p. 4, line 17 Bidsal quotes from *Bank of America*, *supra*, that to be valid the tender must be payment in full. What Bidsal does not reveal is that statement is made in connection with statutory liens. To put it in context what the court said is, beginning with a quote from a Wisconsin case:

> "Common-law and statutory liens continue in existence until they are satisfied or terminated by some manner recognized by law. A lien may be lost by ... payment or tender of the proper amount of the debt secured by the lien." Valid tender requires payment in full." (Citation omitted.) 427 P.3d at 117

Even assuming that the same principle applied here, Bidsal has presented absolutely nothing to show that the amount that he was given evidence was on hand for the purchase was not more than enough for what he would be owed for the purchase of his membership interest, and for sure never complained that it was insufficient.

Bidsal then quotes the portion of the *Bank of America* case that "valid tender must be unconditional, or with conditions on which the tendering party has a right to insist." The condition that the Bank was deemed entitled to insist was an acknowledgment that the payment satisfied the priority portion of the HOA lien, and it was held to be a proper condition. The condition that implicitly was contained here, both in the e-mail from Ben Golshani and the letter by his attorney, was that in exchange Bidsal transfer his membership interest for which the funds in the bank were going to be used. **CLA had every right to insist on receiving transfer of Bidsal's membership interest and making it a condition to payment.** But Bidsal refused to enter an escrow to accomplish same, and to the contrary said he would not proceed without an appraisal.

There can be no doubt that in virtually any purchase the buyer is entitled to simultaneous transfer, and in demanding the opening of escrow, that is all that CLA asked.

And once again, Bidsal never complained about going into an escrow to complete the transfer. **All he and his attorney argued was that the $5 million dollar price that he set as the FMV was no good, there had to be an appraisal, the argument he lost in the prior arbitration.**

At Supp. p. 4, line 21, Bidsal refers to Bank's contentions regarding its tender, and says, "That is precisely what CLA is arguing here." Fine. What he fails to mention is that the Bank's tender was found to be sufficient. By Euclidian logic if CLA's tender "was precisely" like the Bank's tender, since the Bank's tender was good, then so too must CLA's tender be deemed good.

Bidsal proceeds at Supp. page 5 with a lengthy quotation from *7510 Perla Del Mar Ave Trust v. Bank of America*, 458 P.3d 348 (Nev. 2020). The most critical portion is:

> A tender of payment is an offer to perform, coupled with the present ability of immediate performance, which, were it not for the refusal of cooperation by the party to whom tender is made, would immediately satisfy the condition or obligation for which the tender is made.

That describes this case. CLA offered to pay by going into escrow to consummate the sale and provided evidence of its "present ability of immediate performance." And "were it not for the refusal of cooperation by [Bidsal]" CLA's offer "would immediately satisfy" its obligation to make payment.

More than that, here is what the court also said in upholding the Bank's mere offer with condition as sufficient for tender:

> An actual tender is unnecessary where it is apparent the other party will not accept it. **The law does not require one to do a vain and futile thing. Tender of an amount due is waived when the party entitled to payment, by declaration *or by conduct,* proclaims that, if tender of the amount due is made, an acceptance of it will be refused**. A formal tender is not necessary where a party has shown by act or word that it would not be accepted if made. . .[T]ender was waived where it was clear that if a strict legal tender had been made, defendant would not have accepted the money. If a demand for a larger sum is so made that it amounts to announcement that it is useless to tender a smaller sum, it dispenses with the tender requirement."458 P.3d at 351(Emphasis added; quotation marks and citations omitted).

That covers exactly what happened here. Both by himself and by his attorney, Bidsal made clear that he was not going to accept an amount based on his $5,000,000 fair market valuation, and rather than proceed to sell his membership interest in the 30 days as as set forth in the Buy-Sell agreement, demanded an appraisal. Assuming anything more than the e-mail from Ben Golshani and the letter from CLA's attorney were needed for tender, "an actual tender [was] unnecessary [since] it is apparent [Bidsal] will not accept it." There is no other way to read his response or that of his attorney in Bidsal Exhibit 63.

Just as in *Perla Del Mar* anything more than what was done for tender was waived by the Bidsal responses to e-mail and letter seeking to enter escrow to consummate purchase. By his "conduct" Bidsal made clear he was not going to accept payment based on his $5,000,000 fair market valuation and close in the required 30 days. As such tender, to extent required and not made, was waived.

Bidsal follows with five conclusions (in italics) misstating them by omission. We cure that by setting them forth adding in bold what Bidsal omits.

> *First, a promise to make a payment at a later date or once a certain condition has been satisfied cannot constitute a valid tender* **unless it is "coupled with the present ability of immediate performance**." 458 P.3d at 350.
>
> *Second, for CLA to have made an effective tender, CLA must actually have attempted to pay the sums due because offers to pay, or declarations that the debtor is willing to pay, are not enough* **unless "it is apparent the other party will not accept it."** 458 P.3d 351.
>
> Third, [CLA agrees with this statement.]
>
> *Fourth, the prospect that payment might occur at some point in the future is not sufficient for a court to conclude there has been a tender* **except "when the party entitled to payment, by declaration *or by conduct,* proclaims that, if tender of the amount due is made, an acceptance of it will be refused**." *Id.*
>
> *Fifth, and most important, the general rule is that an offer to pay without actual payment is not a valid tender* unless either it is "**coupled with the present ability of immediate performance**," **"it is apparent the other party will not accept it"** or **"when the party entitled to payment, by declaration *or by conduct,* proclaims that, if tender of the amount due is made, an acceptance of it will be refused**," in which even tender "is waived." 458 P,3d at 450-452.

It was no more CLA's burden to state the purchase price than it was Bidsal's. The problem was that Bidsal tried to lowball the purchase price and when CLA unexpectedly elected to buy instead of sell, Bidsal was determined not to sell for that price. He demanded an appraisal to try and get a higher price and repudiated his obligation to perform as required, thus excusing any further tender or any tender at all, assuming, arguendo that any tender was ever required.

6. **BIDSAL'S 5 IMPORTANT POINTS ARE NOT VALID**. Starting at/// At Bidsal's Supp. p. 6, line 11, he raises "5 important points."

(1) *CLA did not identify the amount of the alleged tender*. First, Bidsal started the process with an offer in which he established the fair market value ("FMV") at $5,000,000 to be filled into the formula to determine the buyout amount (or purchase price). Bidsal has never gone so far as to claim that had his offer been accepted the price would not have been determinable once the FMV was fixed the remaining elements of the formula were not disputable. **To follow Bidsal's contention one would have to believe that Bidsal made his offer not knowing what he would have to pay were it accepted.**

As noted the formula is fixed: **"(FMV - COP) x 0.5 + capital contribution of the [selling] Member at the time of purchasing the property minus prorated liabilities."** All components were established when Mr. Bidsal made his offer. FMV was the amount set by Mr. Bidsal in his July 7, 2017 offer, i.e. $5,000,000.00. "COP" is defined as "Cost of Purchase" as specified in the escrow closing statement; that was Four Million Forty Eight Thousand Two Hundred Ninety Dollars ($4,048,959.00). Bidsal's capital contribution at the time Green Valley purchased the property was $1,215,000. Bidsal as the manager knew what the prorated liabilities were (if any). So when CLA wanted to open an escrow and close it was very clear to all CLA was offering to perform and pay the purchase price as determined by the formula: [$5,000,000 - $4,048,959 x .5 = 475,520 + $1,215,000=

$1,690,525.5 - prorated liabilities, if any][4/].

Bidsal's next point, is *(2) CLA did not tender actual payment in any form.* An examination of the authorities upon which Bidsal bases this complaint reveals, as one might expect, that none imposes a requirement for same. Additionally, where a tender is required and the funds in dollars are identified (as here), nothing more is required. More than that, in a purchase and sale transaction through an escrow, the form of the payment would be some kind of instrument issued by the escrow holder–CLA's funds would be deposited by the escrow holder.

Continuing, Bidsal's next contention *(3) CLA did not identify a specific date on which the alleged tender would take place.* Again, there is no requirement in the law that one making a tender do so. But in fact Bidsal's Exhibit 24 shows the funds were already on hand and include a demand for Bidsal to perform by getting the escrow opened "without delay." The time to close was set forth in the agreement; i.e. within 30 days. That surely is specific enough.

Now Bidsal's next "point"(4) part of which item (5) duplicates is spectacular. In item (4) (Bidsal Supp. p. 6, line 22) he complains there were two conditions NOT TO THE TENDER BUT TO THE PAYMENT TO BIDSAL! That ought to be enough to show they are not grounds to avoid the appointment of CLA as the day to day manager. But there is more, the two conditions themselves. The first that is that Bidsal agree upon an escrow. A Never, in around twelve briefs Bidsal has filed in the two arbitrations and two courts (with more to come in the pending appeals) has Bidsal ever objected to consummating his sale through an escrow, or suggested how it would be consummated without an escrow, which under section 4.2, was required.

More than that, the sale could not be consummated without an escrow UNLESS BIDSAL EXECUTED THE ASSIGNMENT BEFORE THERE WAS ANY "TENDER"

[4/] Any pro rata liability would be determinable from Green Valley's books. Bidsal as the day to day manager would have (should have) known what they were, if any. Because of Bidsal's steadfast refusal to open up Green Valley's books CLA does not know what they are. But to have the hasty close it was willing to use zero so Bidsal can have no complaint.

OR PAYMENT SO THAT THEN CLA COULD VERIFY THAT THE ASSIGNMENT TRULY WAS "FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES" AS PROVIDED IN THE AWARD. Since we may assume that Bidsal had no intention of doing that, we find another reason why an escrow was needed: to verify that there were no liens or encumbrances. While he complains that the purchase and sale provisions of the Operating Agreement do not specify how the sale is to be consummated **(UNTRUE**; see section 4.2 @ page 10 which is titled *"**Purchase or Sell Procedure***") and which sets forth the requirement for both an escrow and a 30 day close.

And in neither Bidsal's e-mail or his attorney's letter (CLA Ex. 27 and Bidsal Ex. 24) or in any of the dozen or so briefs Bidsal has filed in the three years since Bidsal's offer did Bidsal ever mention that he contested the use of an escrow. Only now in response to a motion to break the deadlock over who should run the day to day operations of Green Valley does he pretend that he objects.

The second condition to which Bidsal complains is that "Bidsal performs as required under the Operating Agreement," taking those words out of context. An examination of CLA's attorney's letter (Bidsal Ex. 24) reveals that that statement is totally unrelated to either payment or tender. It was made in the context of Bidsal's attorney's earlier letter (Bidsal Ex. 23) and Bidsal's own statement (CLA Ex. 27) that Bidsal was not going to go forward with the sale absent appraisal. The full sentence in which those words appear is "All that remains is that we agree upon escrow and your client performs as required under the Operating Agreement." What that means is Bidsal had to go forward to consummate the sale using the $5,000,000 as the FMV. Bidsal's pretense at Supp. p. 9, line 1 that he did not know what that meant coming some three years later without ever before asking is simply not believable.

What Bidsal is arguing in this item (4) is that CLA should have paid Bidsal or tendered payment without regard to Bidsal's selling for the buyout amount in which the FMV was Bidsal's offered $5,000,000. That is just the kind of "stuff" CLA has faced ever since Bidsal refused to sell without an appraisal.

None of these supposed "important points" in any way suggest a result where Bidsal does not sell his membership interest either as stated in the prior arbitration award or if his appeal is successful, after the property is appraised.

7. **BIDSAL'S RESPONSES WAIVED ANY FURTHER TENDER**. At At Bidsal Supp. p. 7, line 20, Bidsal simply and unequivocally misstates what his cases provide. He says that *Perla Del Mar, supra*, established that "tender is" not "excused' unless the other party "clearly states that any tender would be rejected." But the opinion says not once but twice the exact opposite and once with emphasis by italics. The waiver ("excuse") can arise from statements "or by conduct" that makes clear any tender would be rejected. 459 P.3d at 351. In fact at his threshold of abandoning Nevada authority Bidsal next quotes from *Schmitt v. Sapp*, 71 Ariz. 48 (1950) which stated that the anticipated rejection need be only "apparently." When Bidsal personally (CLA Ex. 27) and through his counsel (Bidsal Ex. 24) said they were not going to open any escrow or proceed with a sale until there was an appraisal, there was nothing further CLA could do other than to initiate arbitration. NOTE: THERE IS NEITHER ARGUMENT OR EVIDENCE THAT THERE WAS SOMETHING BIDSAL WOULD HAVE ACCEPTED HAD IT BEEN OFFERED, OTHER THAN CLA'S CAVING IN TO BIDSAL'S OUTRAGEOUS DEMAND FOR APPRAISAL.

And Bidsal's quotations from Georgia, Nebraska and Oklahoma are no better

Bidsal brings us back to Nevada at Supp. p. 8, line 7 citing *Bank of America N. A. v. Thomas Jessup LLC,* 435 P.3d 1217. In that case, the Bank's attorney wrote to the agent for the HOA with what was deemed not sufficient tender. In response, the agent responded with a fax stating:

> "[I]t is our view that without the action of foreclosure [by the Bank] a 9 month Statement of Account is not valid. At this time, I respectfully request that you submit the Trustees Deed Upon Sale showing your client's possession of the property." 436 P.3d at 1218.

Based on that fax, the Nevada Supreme Court reversed the judgment for Jessup

(who had purchased the property from the buyer at foreclosure sale of the HOA lien) on the basis that

> Although [the] fax did not explicitly state that it would reject a superpriority tender, we believe this is the only reasonable construction of the fax, which stated that "a 9 month Statement of Account is not valid."435 P. 3d at 1220.

The statements made by Bidsal and his attorney are even clearer and "the only reasonable construction" of them is that Bidsal simply was not going to go forward with the sale absent an appraisal.

8. **BIDSAL'S REPUDIATION EXCUSED ANYTHING MORE FROM CLA FOR TENDER.** Along with all the other reasons why Bidsal's three year late contention is without merit, the prior arbitration award establishes that his insistence on appraisal and refusal to proceed with sale otherwise constituted a repudiation. Tender is excused where the seller has repudiated the contract. Anticipatory repudiation can be implied from conduct that prevents the other party from performing, including "acts, conduct, or declaration of the party, evincing a clear intention to repudiate the contract." *Cladianos v. Friedhoff*, 69 Nev. 41, 46 (1952). Bidsal could not have been clearer that he was not going to honor the Operating Agreement by selling his interest based on the "offered" amount being used for the FMV.

Once Bidsal announced he would not proceed with the sale absent an appraisal, he committed a breach (as has already been so found), "It is elementary contract law that a material breach by one part to the contract may excuse further performance by another party." *Crockett & Myers v. Napier, Fitzgerald & Kirby*, 440 F.Supp.2d 1184, 1193 (D.Nev. 2006).

. 9. **CONCLUSION**. With apologies to Andrew Lloyd Webber, "so we return to the beginning." In determining who should guide Green Valley moving forward the scales tip decidedly in CLA's favor because under no possible outcome of this arbitration or the appeal of the confirmation of the prior arbitration will it not remain a

member, and under every scenario that Bidsal has presented, ultimately he will not. But even if there were some as yet undescribed result of in which Bidsal remained a member, the probabilities of the opposite are so much greater that the weight on the scales would be in CLA's favor. And therefore, CLA should be entitled to choose who does the day to day management and handles the books and records of Green Valley.

Respectfully submitted:

Dated: July 13, 2020.

LAW OFFICES OF RODNEY T. LEWIN,
A Professional Corporation,
Attorneys for Respondent/Counterclaimant

By: */s/ Rodney T. Lewin*
RODNEY T. LEWIN

I, Benjamin Golshani, state the following:

1. I am the sole member of CLA Properties, LLC ("CLA") which is one of the two members of Green Valley Commerce, LLC ("Green Valley"), and I am one of the two managers of Green Valley. The other member and manager is Sharam ("Shawn") Bidsal ("Bidsal").

2. Exhibit 27 attached to these motion papers is a true and correct copy of an email exchange between Mr. Bidsal and myself. Specifically, on August 15, 2017 I sent Mr. Bidsal an email stating , **"I am planning on closing escrow to purchase your membership interest in both entities pursuant to my elections to buy at the price you offered. Since we are both located in Los Angeles, I suggest we use a local escrow company**." The next day I received an email response from Mr Bidsal stating, **"We cannot open any escrow since we [sic] do not agree on this matter**."

3. Although I did meet with Mr. Bidsal he refused to proceed without an appraisal and on August 16, 2017 James Shapiro sent an email to my lawyer which was forwared to me stating that Mr. Bidsal "is ready to proceed forward with arbitration in accordance with the terms of the Operating Agreement." And Arbitration #1 before Judge Haberfeld was thus commenced.

I declare under penalty of perjury under the laws of the State of Nevada that the forgoing is true and correct. Executed on July 13, 2020 at Los Angeles, California.

BENJAMIN GOLSHANI

EXHIBIT 27

APPENDIX (PX)002981

From: shawn bidsal
Sent: 8/16/2017 8:26:21 AM
To: ben@claproperties.com
Subject: Re: Escrow company

ben

we can not open any escrow since we we do not agree on this matter, i am open to meet you and further discuss a resolution,

Shawn Bidsal
West Coast Investments Inc
14039 Sherman Way, Suite 201
Van Nuys CA 91405
818-901-8800 p
818-901-8877 f

On Tuesday, August 15, 2017 5:35 PM, "ben@claproperties.com" <ben@claproperties.com> wrote:

Shawn,

it was good speaking with you on Sunday. Although we considered to talk about an alternative resolution to our disputes, I am waiting for a concrete proposal from you. Right now, I am planning on closing escrow to purchase your membership interest in both entities pursuant to my elections to buy at the price you offered. Since we are both located in Los Angeles, I suggest we use a local escrow company.

Ben

CERTIFICATE OF SERVICE

I hereby certify that I am the principal of LAW OFFICES OF RODNEY T. LEWIN, A.P.C., and that on the 13th day of July, 2020, I served a true and correct copy of the foregoing **CCLA's SUPPLEMENT TO BRIEF RE MOTION TO RESOLVE MEMBER DISPUTE RE WHICH MANAGER SHOULD BE DAY TO DAY MANAGER – TENDER ISSUE AND DECLARATION OF BENJAMIN GOLSHANI IN SUPPORT OF MOTION**, by emailing a copy of the same, with Exhibits (if any), to:

Individual	Email address:	Role
Louis Garfinkel, Esq.	LGarfinkel@lgealaw.com	Attorney for CLA
James E. Shapiro, Esq.	JShapiro@smithshapiro.com	Attorney for Shawn Bidsal
Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com	Attorney for Shawn Bidsal
Michelle Samaniego	msamaniego@jamsadr.com	JAMS Case Coordinator
Hon. David T. Wall (Ret.)	dwall@jamsadr.com	Arbitrator

/s/*RODNEY T. LEWIN*

Rodney T. Lewin

EXHIBIT 207

HON. DAVID T. WALL (Ret.)
JAMS
3800 Howard Hughes Pkwy., 11th Floor
Las Vegas, NV 89169
Phone: (702) 457-5267
Fax: (702) 437-5267
Arbitrator

JAMS

BIDSAL, SHAWN, Claimant, v. CLA PROPERTIES, LLC, Respondents.	Ref. No. 1260005736 **ORDER ON PENDING MOTIONS**

During the Pre-Arbitration Conference conducted telephonically in two sessions on April 16, 2020 and April 30, 2020, the parties agreed to include in the Scheduling Order a briefing schedule for a motion to be filed by Respondent CLA to remove Claimant as the day to day property manager. On May 20, 2020, Respondent timely filed a Motion to Resolve Member Dispute Re: Which Manager Should be Day to Day Manager. Claimant filed a timely Opposition on June 10, 2020, and Respondent filed a timely Reply brief on June 24, 2020. On June 25, 2020, Claimant filed an Emergency Motion to Quash Subpoenas and for Protective Order. Respondent filed an Opposition on June 30, 2020, and Claimant filed a Reply brief later on the same day. Both Motions were addressed during a hearing by videoconference on July 1, 2020. Participating were Arbitrator David T. Wall; James E. Shapiro Esq., and Douglas D. Gerrard, Esq., appearing with Claimant Shawn Bidsal; and Rodney T. Lewin, Esq. and Ben Golshani appearing for Respondent. During the hearing, the undersigned Arbitrator requested supplemental briefing on this issue of

whether Respondent had made a valid tender under Nevada law. Claimant filed a timely Supplemental Brief on July 7, 2020, and Respondent filed a timely Supplemental Brief on July 13, 2020.

A. Respondent's Motion to Resolve Member Dispute re: Which Manager Should be Day to Day Manager

By this Motion, Respondent seeks to remove Claimant as day to day manager of Green Valley Commerce, LLC ("GV"), an entity in which Claimant and Respondent each hold a 50% interest. Both parties are managers of GV, but by prior consent only Claimant acts as day to day manager of the entity.

A full recitation of the long procedural history of this matter is not necessary here, but certain historical facts are of import. In July of 2017, Claimant offered to buy Respondent's interest in GV at a particular price pursuant to a "buy-sell" provision in the Operating Agreement. Respondent instead chose to buy Claimant's interest at that price, pursuant to the terms of the buy-sell language. Claimant sought to avoid having to sell his interest at that price, and litigation between the parties ensued. In April of 2019, Respondent prevailed at an arbitration hearing, which determination was upheld and reduced to judgment in December of 2019. An appeal has been filed by Claimant challenging those determinations.

Respondent notes that under virtually any reasonable outcome in the appellate court, Bidsal will be required to sell his interest in GV to Respondent (whether at Bidsal's originally proffered purchase price or based on an alternative calculation of fair market value). As such, Respondent contends that as the "inchoate owner," Respondent should be handling day to day management of GV.

Claimant contends that the appellate court may vacate the prior Arbitration Award and order rehearing of the matter, and that Respondent is not assured of becoming the sole owner/member of GV. Claimant also contends that Respondent is not the inchoate owner of GV since he never actually tendered payment. Both parties also point to the adverse party's deficiencies as a day to day manager, although Respondent has stated an intent to hire a third-party manager upon Claimant's removal as day to day manager.

The instant Arbitration proceeding has been brought to determine a proper accounting of each member's interest for purposes of establishing a purchase price. Respondent filed a Counterclaim which includes a request for removal of Claimant as the day to day manager of GV.

It is the determination of the undersigned Arbitrator, based upon all of the evidence and argument offered by counsel, as well as the applicable legal authority, that Respondent's Motion to Resolve Member Dispute Re: Which Manager Should be Day to Day Manager is hereby DENIED WITHOUT PREJUDICE, based upon the following considerations:

- Although it appears more likely than not that the outcome of the pending appeal will result in a transfer of Claimant's interest in GV to Respondent, such a result is not guaranteed;
- Respondent's request to remove Claimant as day to day manager is one of Respondent's causes of action in the Counterclaim on file herein, and as such is subject to a determination at the Arbitration Hearing scheduled for December of 2020. In the instant Motion, Respondent has outlined deficiencies in Bidsal's performance of his managerial duties which has negatively impacted the entity's financial status. Claimant has denied those allegations, and has proffered information and argument supporting his assertion that remaining as day to day manager is in the best interest of the entity. These are fact-based issues not appropriate for summary adjudication, which the instant Motion essentially

requests. The parties are entitled to conduct discovery and present evidence and argument at the Arbitration Hearing on these issues. Today's denial of this Motion is Without Prejudice, reserving to Respondent the right to present evidence supporting the allegations within the Counterclaim at the Arbitration Hearing to obtain the remedy requested;

- Respondent has not shown, at this procedural juncture, sufficient prejudice to GV to warrant removal of Claimant as day to day manager as an interim or injunctive remedy prior to the Arbitration Hearing on this matter.[1]

B. Respondent's Motion to Quash Subpoenas and for Protective Order

On June 11, 2020, Respondent submitted subpoenas for documents from three different representatives of the accounting firm Clifton Larson Allen ("firm") and a deposition subpoena for Claimant. The subpoenas were then issued by the undersigned Arbitrator.

Claimant has challenged the legality of these subpoenas and also claims they are overbroad in scope and therefore seeks to quash.

The Operating Agreement for GV, in Article III, Section 14.1, states that this Arbitration shall be governed by the United States Arbitration Act, 9 USC §1, *et seq*. Section 7 of the Federal Arbitration Act allows the arbitrator to compel the attendance of witnesses (and to bring requested documents) at the Arbitration Hearing but not for pre-hearing depositions. See, CVS Health Corp. v. VIVIDUS, LLC, 878 F.3d 703 (9th Cir 2017). Even though the Operating Agreement also provides that the Arbitration shall be "administered by JAMS in accordance with its then prevailing expedited rules," (which allow for the Arbitrator to compel attendance of witnesses and

[1] Claimant's contention at the motion hearing and in supplemental briefing that Claimant cannot be removed as day to day manager in part because Respondent failed to tender payment for Claimant's interest is without merit, if for no other reason than as a result of the determination by Judge Haberfeld in the prior arbitration that Claimant shall transfer his interest in GV to Respondent.

documents during pre-hearing discovery), federal law in this jurisdiction does not vest the Arbitrator with the authority to enforce such subpoenas in this matter.

It is the determination of the Arbitrator to DEFER this portion of the Motion to Quash for further proceedings should any witness refuse to comply with a subpoena issued by the Arbitrator. As of the date of this hearing, according to counsel, no witness has yet refused to comply with a pre-hearing subpoena. Should that occur, counsel and the Arbitrator will discuss additional remedial measures, such as scheduling a bifurcated Arbitration Hearing with such witness(es) in advance of the currently scheduled Arbitration Hearing. These matters will be addressed on an *ad hoc* basis going forward, with the party seeking enforcement of the subpoena bearing the responsibility to apprise the Arbitrator of any witness refusing to comply with a subpoena for deposition or for the production of documents.

Claimant also avers that some of the subpoenas are overbroad by requesting all documents regarding "the arbitrations between Shawn Bidsal and CLA, including this current arbitration." To the extent the subpoena can be interpreted to require the production of documents not relevant to the current Arbitration proceedings, the Motion to Quash is hereby GRANTED and such production shall be limited to documents relevant to the current Arbitration proceedings.

Claimant argues that some of the subpoenas are overbroad in asking for documents from January 1, 2011, to present, when GV wasn't even formed until May of 2011. On this issue, the Motion to Quash is DENIED, and relevant documents dating back to January 1, 2011, shall be produced.

The parties are also dispute the dates and locations for the depositions of Bidsal and Golshani. On June 11, 2020, Respondent noticed the deposition of Bidsal for July 13, 2020. On June 19, 2020, Claimant noticed the deposition of Golshani for July 7, 2020. Neither witness is

available to be deposed on those dates, and counsel have agreed to set new dates but have not agreed on the order of the depositions. It is the determination of the Arbitrator that Bidsal's deposition, which was first in time to be noticed, shall occur before Golshani's deposition. Additionally, it is the determination of the Arbitrator that both of these depositions shall be conducted in California, although the parties may agree on the use of videoconference technology to take the depositions.

Dated: July 20, 2020

Hon. David T. Wall (Ret.)
Arbitrator

PROOF OF SERVICE BY E-Mail

Re: Bidsal, Shawn vs. CLA Properties, LLC
Reference No. 1260005736

I, Michelle Samaniego, not a party to the within action, hereby declare that on July 20, 2020, I served the attached ORDER ON PENDING MOTIONS on the parties in the within action by electronic mail at Las Vegas, NEVADA, addressed as follows:

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Parties Represented:
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Parties Represented:
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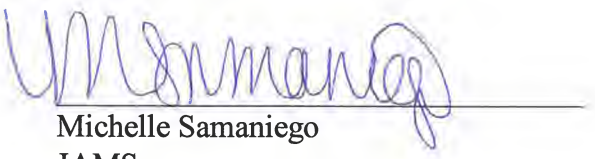
Parties Represented:
Shawn Bidsal

I declare under penalty of perjury the foregoing to be true and correct. Executed at Las Vegas, NEVADA on July 20, 2020.



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Steven D. Grierson
CLERK OF THE COURT

APEN
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Attorneys for Movant CLA Properties, LLC

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. A-22-854413-J Dept. No. 23 **APPENDIX TO MOVANT CLA PROPERTIES, LLC'S MOTION TO VACATE ARBITRATION AWARD (NRS 38.241) AND FOR ENTRY OF JUDGMENT (VOLUME 13 OF 18)**

Movant CLA Properties, LLC ("CLA"), hereby submits its Appendix in Support of its Motion to Vacate Arbitration Award pursuant to NRS 38.241 and for Entry of Judgment.

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Case Number: A-22-854413-J

NOTE REGARDING INCORRECT INDEX

Appellant CLA's motion to vacate the arbitration award (1A.App. 1), was accompanied by an 18-volume appendix. Each volume contained an index. Unfortunately, the index to the motion appendix contained errors regarding some volume and page numbers.

Under NRAP 30(g)(1), an appeal appendix for the Nevada appellate court must contain correct copies of papers in the district court file. CLA is complying with that rule, providing this court with exact duplicate copies of all 18 appendix volumes that were filed in the district court with the motion to vacate the arbitration award. These district court volumes all contained the incorrect index that was filed with each volume of the motion appendix.

To assist this court on appeal, CLA has now prepared a corrected index showing correct volume and page numbers for the appendix that was filed in the district court with the motion to vacate. The corrected index is attached as an addendum to CLA's opening brief. And the present note is being placed in the appeal appendix immediately before the incorrect index that was contained in each volume of the motion appendix filed in the district court.

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OPERATIVE PLEADINGS

App.	PART	EX. No.	DATE	DESCRIPTION
000013	1	101	02/07/20	JAMS Arbitration Demand Form
000048	1	102	03/02/20	Commencement of Arbitration
000064	1	103	03/04/20	Respondent's Answer and Counter-Claim
000093	1	104	04/30/20	Scheduling Order
000099	1	105	05/19/20	Bidsal's Answer to Counter-Claim
000105	1	106	08/03/20	Notice of Hearing for Feb. 17 thru 19, 2021
000110	1	107	10/20/20	Notice of Hearing for Feb. 17 thru 19, 2021
000114	1	108	11/02/20	Bidsal's 1st Amended Demand for Arbitration
000118	1	109	01/19/21	Respondent's 4th Amended Answer and Counter-Claim to Bidsal's 1st Amended Demand
000129	1	110	03/05/21	Bidsal's Answer to 4th Amended Counter-Claim
000135	1	111	04/29/21	Notice of Hearing for June 25, 2021
000141	1	112	08/09/21	Notice of Hearing for Sept. 29 thru 30, 2021

FINAL AWARD
Jams Arbitration No.: 1260044569

App.	PART	EX. No.	DATE	DESCRIPTION
000147	2	113	04/05/19	Final Award - Stephen E. Haberfeld, Arbitrator

ORDERS
District Court Clark County, Nevada
Case No.: A-19-795188-P

App.	PART	EX. No.	DATE	DESCRIPTION
000169	2	114	12/05/19	Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counter-petition to Vacate the Arbitrator's Award - Joanna S. Kishner, Nevada District Court Judge
000180	2	115	12/16/19	Notice of Entry of Order Granting Petition for Confirmation of Arbitration Award

FINAL AWARD
JAMS Arbitration No.: 1260005736

App.	PART	EX. No.	DATE	DESCRIPTION
000195	2	116	10/20/21	Interim Award – Hon. David T. Wall (Ret.), Arbitrator
000223	2	117	03/12/22	Final Award – Hon. David T. Wall (Ret.), Arbitrator

EXHIBITS

App.	PART	EX. No.	DATE	DESCRIPTION *[Parenthetical number* **(_)** *is exhibit identification at arbitration hearing]*	DATE ADMIT'D	OFF'D/ NOT ADMIT'D
000255	3	118	05/19/11	Agreement for Sale and Purchase of Loan [BIDSAL004004-4070] **(1)**	03/17/21	
000323	3	119	05/31/11	Assignment and Assumption of Agreements [BIDSAL003993-3995] **(2)**	03/17/21	
000327	3	120	06/03/11	Final Settlement Statement – Note Purchase [CLAARB2 000013] **(3)**	03/17/21	
000329	3	121	05/26/11	GVC Articles of Organization [DL00 361] **(4)**	03/17/21	
000331	3	122	12/2011	GVC Operating Agreement [BIDSAL000001-28] **(5)**	03/17/21	
000360	3	123	11/29/11 - 12/12/11	Emails Regarding Execution of GVC OPAG [DL00 323, 351, 353, and CLAARB2 000044] **(6)**	03/17/21	
000365	3	124	03/16/11	Declaration of CC&Rs for GVC [BIDSAL001349-1428] **(7)**	03/17/21	
000446	3	125	09/22/11	Deed in Lieu Agreement [BIDSAL001429-1446] **(8)**	03/17/21	
000465	3	126	09/22/11	Estimated Settlement Statement – Deed in Lieu Agreement [BIDSAL001451] **(9)**	03/17/21	
000467	3	127	09/22/11	Grant, Bargain, Sale Deed [BIDSAL001447-1450] **(10)**	03/17/21	
000472	3	128	12/31/11	2011 Federal Tax Return [CLA Bidsal 0002333-2349] **(12)**	03/17/21	
000490	3	129	09/10/12	Escrow Closing Statement on Sale of Building C [CLA Bidsal 0003169-3170] **(13)**	03/17/21	
000493	3	130	04/22/13	Distribution Breakdown from Sale of Building C [BIDSAL001452-1454] **(14)**	03/17/21	

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000497	3	131	09/10/13	2012 Federal Tax Return [CLA Bidsal 0002542-2557] **(15)**	03/17/21	
000514	3	132	08/08/13	Letter to CLA Properties with 2012 K-1 [CLA Bidsal 002558-2564] **(16)**	03/17/21	
000522	3	133	03/08/13	Escrow Settlement Statement for Purchase of Greenway Property [CLA Bidsal 0003168, BIDSAL001463] **(17)**	03/17/21	
000525	3	134	03/15/13	Cost Segregation Study [CLA Bidsal 0002414-2541] **(18)**	03/17/21	
000654	3	135	09/09/14	2013 Federal Tax Return [CLA Bidsal 0001637-1657] **(19)**	03/17/21	
000676	3	136	09/08/14	Tax Asset Detail 2013 [CLA Bidsal 0001656-1657] (20)	03/17/21	
000679	3	137	09/09/14	Letter to CLA Properties with 2014 K-1 [CLAARB2 001654-1659] **(21)**	03/17/21	
000686	3	138	11/13/14	Escrow Closing Statement on Sale of Building E [BIDSAL001475] **(22)**	03/17/21	
000688	3	139	11/13/14	Distribution Breakdown from Sale of Building E [BIDSAL001464-1466] **(23)**	03/17/21	
000692	3	140	02/27/15	2014 Federal Tax Return [CLA Bidsal 0001812-1830] **(24)**	03/17/21	
000712	3	141	08/25/15	Escrow Closing Statement on Sale of Building B [BIDSAL001485] **(25)**	03/17/21	
000714	3	142	08/25/15	Distribution Breakdown from Sale of Building B [BIDSAL001476 and CLA Bidsal 0002082-2085] **(26)**	03/17/21	
000720	3	143	04/06/16	2015 Federal Tax Return [CLA Bidsal 0002305-2325] **(27)**	03/17/21	
000742	3	144	03/14/17	2016 Federal Tax Return [CLA Bidsal 0001544-1564] **(28)**	03/17/21	
000764	3	145	03/14/17	Letter to CLA Properties with 2016 K-1 [CLA Bidsal0000217-227] **(29)**	03/17/21	
000776	3	146	04/15/17	2017 Federal Tax Return [CLA Bidsal 0000500-538] **(30)**	03/17/21	
000816	3	147	04/15/17	Letter to CLA Properties with 2017 K-1 [CLAARB2 001797-1801] **(31)**	03/17/21	
000822	3	148	08/02/19	2018 Federal Tax Return [BIDSAL001500-1518] **(32)**	03/17/21	
000842	3	149	04/10/18	Letter to CLA Properties with 2018 K-1 [BIDSAL001519-1528] **(33)**	03/17/21	
000853	3	150	03/20/20	2019 Federal Tax Return (Draft) CLA Bidsal 0000852-887] **(34)**	03/17/21	
000890	3	151	03/20/20	Letter to CLA Properties with 2019 K-1 [CLA Bidsal 0000888-896] **(35)**	03/17/21	

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000900	3	152	01/26/16 – 04/22/16	Emails regarding CLA's Challenges to Distributions [CLAARB2 001277-1280, 001310-1313, 001329-1334, 001552-1555] **(36)**	03/17/21	
000919	3	153	07/07/17	Buy-Out Correspondence – Bidsal Offer [BIDSAL000029] **(37)**	03/17/21	
000921	3	154	08/03/17	Buy-Out Correspondence – CLA Counter [BIDSAL000030] **(38)**	03/17/21	
000923	3	155	08/05/17	Buy-Out Correspondence – Bidsal Invocation [BIDSAL000031] **(39)**	04/26/21	
000925	3	156	08/28/17	Buy-Out Correspondence – CLA Escrow [BIDSAL000032] **(40)**	04/26/21	
000930	3	157	06/22/20	CLA Responses to Interrogatories **(43)**	03/17/21	
000939	3	158	04/25/18	GVC Lease and Sales Advertising [BIDSAL620-633, 1292-1348] **(50)**	03/19/21	
001011	3	159	08/10/20	Property Information [CLAARB2 1479, 1477] **(52)**	03/19/21	
001014	3	160	03/20/18	Deposition Transcript of David LeGrand [DL 616-1288] **(56)**	03/19/21	
001688	3	161	09/10/12	Deed – Building C [BIDSAL 1455-1460] **(57)**	03/19/21	
001695	3	162	11/13/14	Deed Building E [BIDSAL 1464-1475] **(58)**	03/19/21	
001704	3	163	09/22/11	Email from Golshani to Bidsal dated Sep 22, 2011 **(67)**	04/26/21	
001708	3	164	07/17/07	Deed of Trust Notice [Bidsal 001476 – 001485] (annotated) **(84)**	03/19/21	
001719	3	165	07/17/07	Assignment of Leases and Rents [Bidsal 004461 – 004481 & 4548-4556] **(85)**	03/19/21	
001750	3	166	05/29/11	CLA Payment of $404,250.00 [CLAARB2 000820] **(87)**	03/19/21	
001752	3	167	06/15/11	Operating Agreement for County Club, LLC [CLAARRB2 000352 – 000379] **(88)**		03/17/21
001781	3	168	09/16/11	Email from LeGrand to Bidsal and Golshani [CLAARB2 001054 – 001083] **(91)**	03/17/21	
001812	3	169	12/31/11	GVC General Ledger 2011 [CLA Bidsal 003641 – 003642] **(95)**	03/19/21	
001815	3	170	06/07/12	Green Valley Trial Balance Worksheet, Transaction Listing [CLA Bidsal 002372 - 002376] **(97)**	04/26/21	
001820	3	171	01/21/16	Correspondence from Lita to Angelo re Country Blub 2012 accounting [CLAARB2 001554]		
001823	3	172	01/25/16	Email from Bidsal re Letter to WCICO dated 1/21/16		

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				[CLAARB2 002086]		
001828	3	173	06/30/17	GVC Equity Balances Computation [CLAARB2 001543] **(111)**	03/19/21	
001830	3	174	07/21/17	Email from Golshani to Main [CLAARB2 002017] **(112)**	04/26/21	
001832	3	175	07/25/17	Email Comm. Between Golshani and Main [BIDSAL 002033 – 002035] **(114)**	04/26/21	
001836	3	176	08/16/17	Email Comm. From Shapiro [CLAARB2 001221 – 001225] **(117)**	04/26/21	
001842	3	177	08/16/17	Email Comm. Between Golshani and Bidsal [CLAARB2 001244 – 001245] **(118)**	03/19/21	
001844	3	178	11/14/17	Email Comm. Between RTL and Shapiro [CLAARB2 001249] **(123)**	04/26/21	
001846	3	179	12/26/17	Letter from Golshani to Bidsal [CLAARB2 000112] **(125)**	04/26/21	
001848	3	180	12/28/17	Letter from Bidsal to Golshani [CLAARB2 002028] **(126)**		
001850	3	181	04/05/19	Arbitration Award [CLAARB2 002041 - 002061] **(136)**	03/19/21	
001872	3	182	06/30/19	Email from Golshani to Bidsal [CLAARB2 000247] **(137)**	03/19/21	
001874	3	183	08/20/19	Email from Golshani to Bidsal [CLAARB2 000249] **(139)**	03/19/21	
001876	3	184	06/14/20	Email Communication between CLA and [CLAARB2 001426] **(153)**	03/19/21	
001878	3	185	10/02/20	Claimant's First Supplemental Responses to Respondent's First Set of Interrogatories to Shawn Bidsal [N/A] **(164)**	03/19/21	
001887	3	186	02/19/21	Claimant's Responses to Respondent's Fifth Set of RFPD's Upon Shawn Bidsal [N/A] **(165)**	03/19/21	
001892	3	187	02/22/21	Claimant's Responses to Respondent's Sixth Set of RFPD's Upon Shawn Bidsal [N/A] **(166)**	03/19/21	
001895	3	188	07/11/05	2019 Notes re Distributable Cash Building C [CLAARB2 002109] **(180)**	04/26/21	
001897	3	189	12/06/19	Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award [N/A] **(184)**	03/19/21	
001908	3	190	04/09/19	Plaintiff Shawn Bidsal's Motion to Vacate Arbitration Award [N/A] **(188)**	03/19/21	
001950	3	191	01/09/20	Notice of Appeal [N/A] **(189)**	03/19/21	
001953	3	192	01/09/20	Case Appeal Statement [N/A] **(190)**	03/19/21	
001958	3	193	01/17/20	Respondent's Motion for Stay Pending Appeal [N/A] **(191)**	03/19/21	

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002123	3	194	03/10/20	Notice of Entry of Order Granting Respondent's Motion for Stay Pending Appeal [N/A] **(192)**	03/19/21	
002129	3	195	03/20/20	Notice of Posting Cash In Lieu of Bond [N/A] **(193)**	03/19/21	
002134	3	196	Undated	(LIMITED) Arbitration #1 Exhibits 23 – 42 [DL 322, 323 – 350, 352 – 353] (Portions of 198 admitted: Exs. 26 and 40 within 198) **(198)**	44/26/21	
002197	3	197	07/11/05	Rebuttal Report Exhibit 1 Annotated (Gerety Schedule) **(200)**	03/19/21	
002201	3	198	08/13/20	Chris Wilcox Schedules **(201)**	03/18/21	
002214	3	199	12/31/17	Rebuttal Report Exhibit 3 (Gerety Formula) **(202)**	03/19/21	
002216	3	200	11/13/14 & 08/28/15	Distribution Breakdown **(206)**	04/27/21	

Motion to Replace Bidsal as Manager

App.	PART	EX. No.	DATE	DESCRIPTION
002219	4	201	05/20/20	Respondent's Motion to Resolve Member Dispute (Replace Manager)
002332	4	202	06/10/20	Claimant's Opposition Respondent's Motion to Resolve Member Dispute
002927	4	203	06/17/20	Claimant's Request For Oral Arguments re. Respondent's Motion to Resolve Member Dispute
002930	4	204	06/24/20	Respondent's Reply MPA's ISO Motion to Resolve Member Dispute
002951	4	205	07/07/20	Claimant's Supplement to Opposition to Respondent's Motion to Resolve Member Dispute
002965	4	206	07/13/20	Respondent's Supplement to Motion to Resolve Member Dispute
002985	4	207	07/20/20	Order On MTC and Amended Scheduling Order

"First Motion to Compel"

App.	PART	EX. No.	DATE	DESCRIPTION
002993	5	208	07/16/20	Respondent's Motion To Compel Answers to First set of ROGS
003051	5	209	07/16/20	Exhibits to Respondent's Motion to Compel Answers to First set of ROGS

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003091	5	210	07/24/20	Claimant's Opp. to MTC ANS to 1st Set of ROGS and Countermotion to Stay Proceedings
003215	5	211	07/27/20	Respondent's Reply Re MTC
003223	5	212	07/28/20	Respondent's Reply ISO MTC and Opp. to Countermotion to Stay Proceedings
003248	5	213	08/03/20	Order on Respondents Motion To Compel and Amended Scheduling Order

Motion No. 3

App.	PART	EX. No.	DATE	DESCRIPTION
003253	5	214	06/25/20	Claimant's Emergency Motion To Quash Subpoenas and for Protective Order
003283	5	215	06/29/20	Respondent's Opposition to Emergency Motion to Quash Subpoenas and for Protective Order
003295	5	216	06/30/20	Claimant's Reply to Respondent's Opposition to Emergency Motion to Quash Subpoenas and for Protective Order
003298	5	217	07/20/20	Order on Pending Motions

"Second Motion to Compel"

App.	PART	EX. No.	DATE	DESCRIPTION
003306	6	218	10/07/20	Respondent's MTC Further Responses to First Set of ROGS to Claimant and for POD
003362	6	219	10/19/20	Lewin-Shapiro Email Chain
003365	6	220	10/19/20	Claimant's Opposition to Respondent's MTC Further Responses to First Set of ROGS to Claimant and for POD
003375	6	221	10/22/20	Respondent's Reply to Opposition to MTC Further Responses to First Set of ROGS to Claimant and for POD
003396	6	222	11/09/20	Order on Respondent's MTC Further Responses To First Set of ROGS to Claimant and for POD

"Motion to Continue"

App.	PART	EX. No.	DATE	DESCRIPTION

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

003403	7	223	11/05/20	Respondent's MTC Proceedings
003409	7	224	11/17/20	Order on Respondent's Motion to Continue Proceedings and 2nd Amended SO

"Motion for Leave to Amend"

App.	PART	EX. No.	DATE	DESCRIPTION
003415	8	225	01/19/21	Letter to Wall requesting Leave to Amend
003422	8	226	01/19/21	Respondent's Motion for Leave to File Fourth Amended Answer and Counterclaim
003433	8	227	01/29/21	Claimant's Opposition to Respondent's Motion for Leave to file Fourth Amended Answer and Counterclaim
003478	8	228	02/02/21	Respondent's Reply ISO Motion for Leave to File Fourth Amended Answer and Counterclaim
003482	8	229	02/04/21	Order on Respondent's Pending Motions

"Main Motion to Compel"

App.	PART	EX. No.	DATE	DESCRIPTION
003489	9	230	01/26/21	Respondent's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA
003539	9	231	01/29/21	Claimant's Opposition to Main deposition
003775	9	232	02/01/21	Jim Main's Opposition and Joinder to Claimant's Opposition to Respondent/Counterclaimant's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA
003778	9	233	02/03/21	Respondent's Reply In Support of Emergency Motion For Order Compelling The Completion of The Deposition of Jim Main, CPA
003784	9	234	02/04/21	Order on Respondent's Pending Motions

"Motion for Orders"

App.	PART	EX. No.	DATE	DESCRIPTION
003791	10	235	02/05/21	CLA Motion For Orders Regarding Bank Accounts, Keys And Distribution
003834	10	236	02/19/21	Claimant's Opposition To Respondent/Counterclaimant's Motion For Orders (1)

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				Compelling Claimant to Restore/Add CLA to All Green Valley Bank Accounts; (2) Provide CLA With Keys to All of Green Valley Properties; And (3) Prohibiting Distributions to The Members Until The Sale of The Membership Interest In Issue In This Arbitration is Consummated and the Membership Interest is Conveyed
003941	10	237	02/22/21	Ruling

"Motion in Limine - Taxes"

App.	PART	EX. No.	DATE	DESCRIPTION
003948	11	238	03/05/21	CLA MIL re. Taxes
003955	11	239	03/11/21	Claimant's Opposition to CLA's MIL Regarding Bidsal's Evidence Re Taxes
003962	11	240	03/17/21	Ruling – Arbitration Day 1 03/17/2021, p. 11

"Motion in Limine - Tender"

App.	PART	EX. No.	DATE	DESCRIPTION
003964	12	241	03/05/21	CLA's Motion in Limine Re Failure to Tender
004062	12	242	03/11/21	Claimant's Opposition to MIL and Failure to Tender
004087	12	243	03/12/21	CLA's Reply to Opposition to MIL Re Failure to Tender
004163	12	244	03/17/21	Ruling – Arbitration Day 1 - 03/17/2021, pp. 15 - 17

"Motion to Withdraw Exhibit"

App.	PART	EX. No.	DATE	DESCRIPTION
004167	13	245	03/26/21	Motion to Withdrawal Exhibit 188
004170	13	246	03/31/21	Claimant's Opposition to CLA's Motion To Withdraw Exhibit 188
004172	13	247	03/31/21	CLA's Reply Re Motion To Withdraw Exhibit 188
004175	13	248	04/05/21	Order on CLA's Motion To Withdraw Exhibit 188

"LeGrand Motion"

App.	PART	EX. No.	DATE	DESCRIPTION

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004178	14	249	05/21/21	Respondent's Brief Re: (1) Waiver of The Attorney-Client Privilege; and (2) Compelling The Testimony of David LeGrand, Esq.
004194	14	250	06/11/21	Claimant Shawn Bidsal's Brief Regarding the Testimony of David LeGrand
004289	14	251	07/09/21	CLA's Properties, LLC Supplemental Brief Re. (1) Waiver of The Attorney-Client Privilege; and (2) Compelling The Testimony of David LeGrand, Esq.
004297	14	252	07/23/21	Claimant Shawn Bidsal's Supplemental Brief Regarding the Testimony of David LeGrand
004315	14	253	09/10/21	Order Regarding Testimony of David LeGrand

Motion re. Attorney's Fees

App.	PART	EX. No.	DATE	DESCRIPTION
004324	15	254	11/12/21	Claimant's Application for Award of Attorney's Fees and Costs
004407	15	255	12/03/21	Respondent's Opposition to Claimant's Application for Attorney's Fees and Costs
004477	15	256	12/17/21	Claimant's Reply in Support of Application for Attorney's Fees and Costs
004526	15	257	12/23/21	Respondent's Supplemental Opposition to Claimant's Application for Attorney's Fees and Costs
004558	15	258	12/29/21	Claimant's Reply to Respondent's Supplemental Opposition to Application for Attorney's Fees and Costs
004566	15	259	01/12/22	Claimant's Supplemental Application for Attorney's Fees and Costs
004684	15	260	01/26/22	Respondent's Second Supplemental Opposition to Claimant's Application for Attorney's Fees and Costs
004718	15	261	02/15/22	Claimant's Second Supplemental Reply In Support of Claimant's Application For Award of Attorney Fees And Costs

TRANSCRIPTS

App.	PART	EX. No.	DATE	DESCRIPTION
004772	16	262	05/08/18	Transcript of Proceedings - Honorable Stephen E. Haberfeld Volume I Las Vegas, Nevada May 8, 2018
004994	16	263	05/09/18	Transcript of Proceedings - Honorable Stephen E.

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				Haberfeld Volume II Las Vegas, Nevada May 9, 2018
005256	16	264	03/17/21	Arbitration Hearing Transcript
005660	16	265	03/18/21	Arbitration Hearing Transcript
006048	16	266	03/19/21	Arbitration Hearing Transcript
006505	16	267	04/26/21	Arbitration Hearing Transcript
006824	16	268	04/27/21	Arbitration Hearing Transcript
007052	16	269	06/25/21	Arbitration Hearing Transcript
007104	16	270	08/05/21	Arbitration Hearing Transcript
007225	16	271	09/29/21	Arbitration Hearing Transcript
007477	16	272	01/05/22	Arbitration Hearing Transcript
007508	16	273	02/28/22	Arbitration Hearing Transcript

OTHER

App.	PART	EX. No.	DATE	DESCRIPTION
007553	17	274	07/15/19	Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgement and Counterpetition to Vacate Arbitration Award – *(Case No. A-19-795188-P, District Court, Clark County, NV)*
007628	17	275	11/24/20	Appellant Shawn Bidsal's Opening Brief *(Supreme Court of Nevada, Appeal from Case No. A-19-795188-P, District Court, Clark County, NV)*
007669	17	276	03/17/22	IN RE: PETITION OF CLA PROPS. LLC C/W 80831 Nos. 80427; 80831, March 17, 2022, *Order of Affirmance*, unpublished disposition
007675	17	277	2011 - 2019	2011 – 2019 Green Valley Commerce Distribution CLAARB2 002127 - 002128

DATED this 22nd day of June, 2022.

REISMAN SOROKAC

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EXHIBIT 208

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July 16, 2020

VIA E-MAIL dwall@jamsadr.com
Honorable David Wall, Arbitrator
JAMS
3800 Howard Hughes Pkwy, 11th Floor
Las Vegas, NV 89169

Re: Bidsal v. CLA Properties, LLC
JAMS Reference No: 1260005736

CLA PROPERTIES, LLC'S MOTION TO COMPEL ANSWERS TO FIRST SET OF INTERROGATORIES TO SHAWN BIDSAL

Dear Judge Wall:

CLA Properties, LLC ("CLA") hereby requests that you enter an order compelling Shawn Bidsal ("Bidsal") to immediately provide full, complete answers to the interrogatories served by CLA on Bidsal on May 12, 2020.

A. STATEMENT OF FACTS

On or about February 7, 2020, Bidsal filed his Demand for Arbitration (the "Demand") with JAMS. The Demand states in pertinent part "Arbitration is needed to resolve disagreements between the members relating to the proper accounting associated with the member's membership interest, including proper calculation of each member's capital accounts, proper calculation of the purchase price, and proper accounting of services each member provided to the company."

On May 12, 2020, CLA served its First Set of Interrogatories to Shawn Bidsal ("Interrogatories"). A copy of the Interrogatories is attached as Exhibit "A".

On June 22, 2020, Bidsal served Claimant Shawn Bidsal's Responses To Respondent CLA Properties, LLC's First Set of Interrogatories to Shawn Bidsal (the "Responses" or "responses"). A copy of the Responses is attached as Exhibit "B".

On July 2, 2020, CLA's counsel sent a letter to Bidsal's counsel advising that the Responses were deficient. The letter served as CLA's good faith attempt to meet and confer. A copy of the letter is attached as Exhibit "C".

On July 10, 2020, Bidsal's counsel responded to CLA's counsel letter dated July 2, 2020. A copy of the response is attached as Exhibit "D". Bidsal's counsel admitted that the Responses were deficient, indicated that they would be supplemented, but only "when we are able to do so."

Pursuant to the May 4, 2020 Scheduling Order, initial expert disclosures are due by August 20, 2020. In addition to other reasons for requiring answers to the interrogatories the information sought by the Interrogatories is necessary so CLA can comply with the initial expert disclosure deadline.

For the reasons set forth below, CLA respectfully requests that the Arbitrator enter an order immediately requiring Bidsal to supplement the deficient Responses to answer each interrogatory fully and completely without objection.

B. ARGUMENT

1. THE ARBITRATOR SHOULD ENTER AN ORDER COMPELLING BIDSAL TO IMMEDIATELY SUPPLEMENT THE RESPONSES.

(a) INTERROGATORIES NO. 1, NO. 2, AND NO. 3

Interrogatories No. 1, No. 2, and No. 3 state as follows:

> **INTERROGATORY NO. 1:**
> If the judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is not reversed on appeal, state the amount of money (excluding any offsets) that YOU contend would be the PURCHASE PRICE.
>
> **INTERROGATORY NO. 2:**
> If the judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is not reversed on appeal, set forth in detail YOUR calculation of the PURCHASE PRICE.
>
> **INTERROGATORY NO. 3:**
> DESCRIBE each DOCUMENT that YOU contend supports YOUR calculation of the PURCHASE PRICE as set forth in YOUR response to Interrogatory Nos. 1 and 2. [1]

Interrogatories No. 1, No. 2, and No. 3 focus on the "purchase price" that Bidsal contends CLA must pay Bidsal for his membership interest in Green Valley. Specifically, the Interrogatories seek the amount of the purchase price, the calculation of the purchase price, and documents that support the calculation of the purchase price. See Exhibit "A", p. 3.

Bidsal's responses fail to provide any information whatsoever. Instead, Bidsal objected to the Interrogatories on the following grounds: (1) the Interrogatories call for speculation; (2) the calculation of the purchase price is currently the subject of the present arbitration and thus speculative prior to a decision by the Arbitrator and would be premature and conjectural; (3) Bidsal is unable to calculate the purchase

[1] Terms that are defined in the Interrogatories are located on pages 1 and 2 of Exhibit A.

price due to a lack of information as a result of restrictions imposed by COVID-19; and (4) the proper calculation of the purchase price can only be determined once the effective date of transfer is identified and because the effective date of transfer has not been identified, it is impossible to calculate the purchase price. See Exhibit "B", pp. 1-3.

Bidsal's objections are frivolous and demonstrate bad faith.

First, CLA is entitled to Bidsal's contentions.

Second, as the Arbitrator is aware, on July 7, 2017, Bidsal sent CLA an offer to buy CLA's 50% interest in Green Valley based on a valuation of $5,000,000.00. If CLA accepted Bidsal's offer or 30 days passed without a response by CLA, then Bidsal would have had to then pay CLA pursuant to the formula contained in Section 4 of the Green Valley Operating Agreement. Bidsal's offer was made (3) years ago and it strains credulity that Bidsal did not know the purchase price when the offer was made. Bidsal made an offer to purchase CLA's membership interest based on evaluation of $5,000,000.00 and it is inconceivable that he had not calculated the purchase price beforehand. Bidsal had to have had an expectation of what he would pay.

Third, based on Bidsal's objection, CLA would not find out what Bidsal contends what the purchase price is **until after the arbitration**, which obviously is a ridiculous position. Bidsal brought this arbitration claiming that there are certain elements of the formula that need clarification and he cannot hide behind some

ridiculous theory that he has to wait until the arbitration is completed to be able to provide discovery, which should be done before the arbitration.

Fourth, assuming arguendo that some portion of the answer has to be predicated on certain assumptions, then Bidsal should provide his answer based on each of the various assumptions he claims would impact his answer.

Fifth, the Operating Agreement sets forth the time for the transfer—30 days. Section 4.2 (page 10) sets forth the terms of the sale: "The terms to be all cash and close escrow within 30 days of the acceptance". And that is not even necessary to compute the purchase price.

Last, or perhaps this should be first, Bidsal's Claim asserts a disagreement regarding these issues. **If such a disagreement existed, then by definition Bidsal must have some position.**

Bidsal is obligated to provide answers in good faith and he needs to set forth his contentions. CLA is entitled to full and complete answers to Interrogatory Nos. 1, 2, and 3.

(b) INTERROGATORIES NOS. 4 THROUGH 7

Interrogatories No. 4, No. 5, No. 6, and No.7 state as follows:

> **INTERROGATORY NO. 4:**
> If YOU contend that YOU are entitled to compensation for SERVICES state each and every fact that supports YOUR contention.
>
> **INTERROGATORY NO. 5:**
> If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC IDENTIFY all persons with knowledge of any facts relating to YOUR contention.

INTERROGATORY NO. 6:
If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC DESCRIBE each DOCUMENT and COMMUNICATION supporting YOUR contention.

INTERROGATORY NO. 7:
If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC set forth in detail YOUR calculation of the amount that YOU contend YOU should be paid for YOUR services to Green Valley Commerce, LLC.

Interrogatories Nos 4 through 7 focus on the "services" that Bidsal claims he is entitled to compensation for. The Interrogatories focus on the facts supporting compensation, the identity of individuals with knowledge or facts pertaining to the claim for compensation, the identity of documents supporting the claim for compensation, and the amount Bidsal should be paid for the services rendered to Green Valley. See Exhibit "A", pp. 3-4.

Interrogatory No. 5 requests that Bidsal identify all persons with knowledge of the facts supporting his entitlement to compensation for services rendered to Green Valley. In response, Bidsal has objected to the Interrogatory No. 5 on the grounds that it seeks irrelevant information, is not reasonably calculated to lead to the discovery of admissible evidence, is overbroad, and unduly burdensome. See Exhibit "B", pp.3-4. This objection is without merit. The information sought by this Interrogatory is clearly relevant and Bidsal is obligated to provide a full and complete answer.

Interrogatory No. 6 requests that Bidsal identify documents that support his claim that he is entitled to compensation for services rendered to Green Valley. In response, Bidsal objected to this Interrogatory on the grounds that it seeks irrelevant information, is not reasonably calculated to lead to the discovery of admissible evidence, is overbroad, and unduly burdensome. Moreover, Bidsal claims that due to COVID-19 restrictions, his access to documentation has been limited or temporarily terminated. See Exhibit "B", p.6. Bidsal's objections to this Interrogatory are without merit. The information sought by this Interrogatory is clearly relevant and CLA is entitled to a complete answer.

Interrogatory No. 7 requests Bidsal to set forth his calculation of the amount that he believes he is owed for services rendered to Green Valley. Bidsal has objected to Interrogatory No. 7 on the following grounds: (1) the Interrogatory calls for speculation; (2) the calculation and accounting of services rendered is currently the subject of the present arbitration and thus any accounting would be speculative prior to a decision by the Arbitrator and would be premature and conjectural; (3) the total compensation will depend on the effective date of the transfer, which has not been established; and (4) due to COVID-19 restrictions currently in place, Bidsal's access to documents and information has been severely limited and/or temporarily terminated. See Exhibit "B", p.7.

Again, these objections are without merit. As discussed above, CLA is entitled to know Bidsal's contentions now, not during or after the arbitration. Based on Bidsal's objection, CLA would not find out what Bidsal claims he is entitled to by

way of compensation until after the arbitration, which is ridiculous. Bidsal's responses are simply in bad faith. CLA is entitled to know the compensation Bidsal is entitled to now.

(c) INTERROGATORY NO. 8

Interrogatory No. 8 states:

> **INTERROGATORY NO. 8:**
> If YOUR response to each request for admission served with these interrogatories is not an unqualified admission for each such request for admissionwhich is not is not an unqualified admission:
> (a) state all facts and reasons upon which YOU base YOUR response, including all facts and reasons either (i) upon which YOU base YOUR response and/or (ii) which support YOUR not responding with an unqualified admission;
> (b) IDENTIFY all DOCUMENTS and other tangible things that support YOUR response.

Interrogatory No. 8 seeks information regarding Bidsal's Responses to CLA's First Set of Requests for Admissions to Shawn Bidsal which consisted of just ONE request. See Exhibit "E" attached hereto. CLA's Request for Admission asked Bidsal to admit the following:

"Unless the judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is reversed on appeal, CLA Properties, LLC ("CLA") shall be entitled to purchase Shawn Bidsal's membership interest in Green Valley Commerce, LLC for a gross price (before offsets, if any) based on the following formula: "(FMV-COP) x 0.5 = capital contributions of the Offering Member(s) at the time of purchasing the property minus prorated liabilities" and with (a) FMV being $5,000,000.00, (b) COP being $4,049,290, (c) capital contributions of the Offering Member(s) at the time of purchasing the property being $1,250,000, and (d) prorated liabilities being Zero".

Bidsal objected to Interrogatory No. 8 on several grounds. See Exhibit "B", pp.5-6. These objections are without merit.

In responding to No. 8(a), Bidsal attempts to re-litigate the first arbitration and judgment. See Exhibit "B", p. 5. The FMV has been established by the arbitration and judgment as $5,000,000.00. Bidsal has an obligation to not unreasonably construe the request for admission.

In response to Interrogatory No. 8(b), Bidsal again attempts to re-litigate the first arbitration and judgment in his response. See Exhibit "B", pp. 5-6. Bidsal has admitted that COP is defined in the Operating Agreement Section 4.1:

> "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.

In his response to Interrogatory No.8(b), Bidsal is simply making up a new definition of COP. The Green Valley property was purchased and later subdivided and Bidsal has the closing statements. Bidsal acknowledges that the closing statements contain the cost of purchase but Bidsal fails to provide such information. The Arbitrator should compel Bidsal to provide full and complete answers.

In response to Interrogatory No. 8(c), Bidsal states "Due to COVID-19 restrictions, Bidsal is unable to verify the capital account balances, which must take into account events which occurred after the properties were originally purchased." See Exhibit "B", p. 6. This objection is also without merit. Bidsal contends that COVID-19 restrictions are still in effect in California, but they had been lifted at some time. Furthermore, this is information that Bidsal had (3) years ago when he

made his offer to purchase CLA's Green Valley's membership interest with a valuation of $5,000,000.00. CLA is entitled to a full, complete answer, to this Interrogatory.

Beyond all that, Bidsal does not provide any information as to how he would determine the answer and why he is precluded from doing so by reason of COVID-19 restrictions. CLA suspects that to the extent he needs information from Green Valley's books and records, the same is available on line; let Bidsal identify the exact record he needs to provide the answer, exactly what it would contain that is not otherwise available to him **and swear under oath that that record is located in a place that no one has entered since the Interrogatories were served or that the information is not available elsewhere**, such as on line or in his production of documents (either this one or in Arbitration #1).

(d) INTERROGATORY NO. 10

Interrogatory No. 10 states:

> **INTERROGATORY NO. 10**
> Set forth in detail what you contend were the capital accounts of each the members of Green Valley Commerce, LLC on September 6, 2017.

CLA's Interrogatory No. 10 requests that Bidsal set forth in detail information concerning the capital accounts of each member of Green Valley. See Exhibit "A", p. 4. In response, Bidsal objected to this Interrogatory on the grounds that it is vague, Green Valley's business records speak for themselves and should be relied on in determining the value of the capital accounts on September 6, 2017, and due to

COVID-19 restrictions, Bidal's access to documents responsive is limited and/or temporarily terminated. See Exhibit "B", p.6. Again, Bidsal's objections are without merit. COVID-19 restrictions were lifted at one point in time and further Bidsal has had access to this information for years. CLA is entitled to a full and complete answer.

Moreover, the same points as we made with regard to Interrogatory No. 8 are applicable here.

C. **CONCLUSION**

There is a pattern of obfuscation and delay here that is undeniable and should not be tolerated. Bidsal's attorneys are not novices, they are seasoned experienced litigators; the interposition of meritless and frivolous (and in some respects downright silly) objections (e.g. they cannot state Bidsal's contention regarding the purchase price because "***the calculation of the purchase price is currently the subject of the present arbitration and thus speculative prior to a decision by the Arbitrator and would be premature and conjectural***") is proof of the intentional bad faith nature of the responses. The pattern here is to delay the inevitable; Bidsal providing answers under oath and this arbitration ending. CLA intends to make a motion for summary judgment and is entitled to straightforward and truthful answers. Bidsal knows it and thus the obfuscation.

For the reasons set forth above, Bidsal's responses to CLA's Interrogatories No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8 and No. 10 are deficient and

CLA is entitled to full and complete answers forthwith.

Sincerely,

Louis E. Garfinkel, Esq.

LEG/mb
Attachments
cc: James Shapiro, Esq. (via email – jshapiro@smithshapiro.com)
Doug Gerrard, Esq. (via email - dgerrard@gerrard-cox.com)
Rod Lewin, Esq. (via email – rod@rtlewin.com)

EXHIBIT "A"

EXHIBIT "A"

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Attorneys for Respondent/Counterclaimant
CLA PROPERTIES, LLC

SHAWN BIDSAL, an individual,

Claimant/Counter Respondent

v.

CLA PROPERTIES, LLC, a California limited liability company,

Respondent/Counterclaimant

JAMS Ref. No. 1260005736

CLA PROPERTIES, LLC'S FIRST SET OF INTEROGATORIES TO SHAWN BIDSAL

Respondent/Counterclaimant CLA PROPERTIES, LLC ("CLA"), hereby requests that Claimant/Counter Respondent SHAWN BIDSAL ("BIDSAL") answer each of the Interrogatories set forth herein, separately and fully under oath, as required by NRCP 33, and that Claimant/Counter Respondent BIDSAL'S answers be signed, verified and served within thirty (30) days after service of these Interrogatories.

SECTION I

DEFINITIONS

The terms "YOU" or "YOUR" when appearing in capital letters shall mean Shawn Bidsal.

14A.App.3249

The term "COMMUNICATION" when appearing in capital letters shall mean and refer to any verbal, written or electronic transmission of information, including, without limitation, discussions, conversations, telephone calls, memoranda, letters, e mails, facsimiles, and texts.

The term "DESCRIBE" when appearing in capital letters and used with respect to a "DOCUMENT" or "DOCUMENTS" shall mean to set forth the description of with sufficient particularity so that it can be identified, including without limitation, the date thereof.

The terms "DOCUMENT" or "DOCUMENTS" when appearing in capital letters shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form).

The term "IDENTIFY", when appearing in capital letters with respect to any person or entity, shall mean to state the name, and last known business and residence address and telephone number of such person or entity.

The term "PURCHASE PRICE" when appearing in capital letters in these interrogatories, shall mean the amount of money must be paid by CLA to "YOU" for "YOUR" membership interest in Green Valley Commerce without deduction for offsets.

The terms "RELATING TO" or "RELATED TO" when appearing in capital letters shall mean which concerns, mentions, refers to, discusses, describes, comprises or is part of, consists of, or is in any way logically associated with or connected to.

Whenever the terms "REFLECT", "REFLECTING" or "MENTION" appears in capital letters it means show, evidence, constitute, mention, refer to, or discuss, without any limitations as to time.

The term "SERVICES" when appearing in capital letters shall have the same meaning as used by "YOU" in "YOUR" demand for arbitration where "YOU" sought an "accounting of services each member provided to the company".

14A.App.3250

SECTION II

INTERROGATORIES

INTERROGATORY NO. 1:

If the Judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is not reversed on appeal, state the amount of money (excluding any offsets) that YOU contend would be the PURCHASE PRICE.

INTERROGATORY NO. 2:

If the Judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is not reversed on appeal, set forth in detail YOUR calculation of the PURCHASE PRICE.

INTERROGATORY NO. 3:

DESCRIBE each DOCUMENT that YOU contend supports YOUR calculation of the PURCHASE PRICE as set forth in YOUR response to Interrogatory Nos. 1 and 2.

INTERROGATORY NO. 4:

If YOU contend that YOU are entitled to compensation for SERVICES state each and every fact that supports YOUR contention.

INTERROGATORY NO. 5:

If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC IDENTIFY all persons with knowledge of any facts relating to YOUR contention.

INTERROGATORY NO. 6:

If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC DESCRIBE each DOCUMENT and COMMUNICATION supporting YOUR contention.

INTERROGATORY NO. 7:

If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green

14A.App.3251

Valley Commerce, LLC set forth in detail YOUR calculation of the amount that YOU contend YOU should be paid for YOUR services to Green Valley Commerce, LLC.

INTERROGATORY NO. 8:

If YOUR response to each request for admission served with these interrogatories is not an unqualified admission, for each such request for admission which is not is not an unqualified admission:

(a) State all facts and reasons upon which YOU base YOUR response, including all facts and reasons either (i) upon which YOU base YOUR response and/or (ii) which support YOUR not responding with an unqualified admission; and

(b) IDENTIFY all DOCUMENTS and other tangible things that support YOUR response.

INTERROGATORY NO. 9:

With respect to each of the "disagreements between the members relating to the proper accounting" as set forth in YOUR Demand For Arbitration, for each such disagreement, state YOUR contentions and for each separately state all facts and reasons upon which YOU base YOUR contention.

INTERROGATORY NO. 10

Set forth in detail what you contend were the capital accounts of each the members of Green Valley Commerce, LLC on September 6, 2017.

DATED this 12th day of May, 2020.

LEVINE & GARFINKEL

By: /s/ Louis E. Garfinkel
Louis E. Garfinkel, Esq.
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Email: lgarfinkel@lgealaw.com
Attorneys for Respondent/Counterclaimant
CLA PROPERTIES, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LEVINE & GARFINKEL, and that on the 12th day of May, 2020, I caused the foregoing **CLA PROPERTIES, LLC'S FIRST SET OF INTERROGAROTIES TO SHAWN BIDSAL** to be served as follows:

[X] by sending it via electronic mail service to:

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T: (702) 318-5033 / F: (702) 318-5034
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Attorneys for Claimant/CounterRespondent Shawn Bidsal

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/s/ Melanie Bruner
Melanie Bruner, an Employee of
LEVINE & GARFINKEL

EXHIBIT "B"

EXHIBIT "B"

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Attorneys for Claimant

JAMS

SHAWN BIDSAL, an individual Claimant, vs. CLA PROPERTIES, LLC, a California limited liability company, Respondent.	**Reference #:1260005736** Arbitrator: Hon. David T. Wall (Ret.)

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CLAIMANT SHAWN BIDSAL'S RESPONSES TO RESPONDENT CLA PROPERTIES, LLC'S FIRST SET OF INTERROGATORIES TO SHAWN BIDSAL

TO: RESPONDANT CLA PROPERTIES, LLC ("***CLA***"), and

TO: RODNEY T. LEWIN, ESQ., its attorney, and

TO: LOUIS E. GARFINKEL, ESQ., its attorney.

Claimant SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys of record, SMITH & SHAPIRO, PLLC and GERRARD COX LARSEN, serves his Initial Response to the Respondent CLA's First Set of Interrogatories as follows:

INTERROGATORY NO. 1: If the Judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is not reversed on appeal, state the amount of money (excluding any offsets) that YOU contend would be the PURCHASE PRICE.

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APPENDIX (PX)003012

ANSWER: Bidsal objects to this Interrogatory as calling for speculation. Without waiving said objection, Bidsal contends that the calculation of the PURCHASE PRICE is currently the subject of the present arbitration which was brought to ascertain the PURCHASE PRICE, thus any such speculation, prior to a decision by the arbitrator would be premature and conjectural. Further, Bidsal is currently unable to calculate the PURCHASE PRICE due to a lack of information, which is caused both by the restrictions imposed by the COVID-19 inhibiting and preventing access to the needed records and/or the fact that all of the necessary information has not been obtained through discovery. Finally, the proper calculation of the PURCHASE PRICE can only be determined once the effective date of the transfer is identified. Because the effective date of the transfer has not yet been identified, it is impossible to calculate the PURCHASE PRICE. Bidsal reserves the right to supplement his response to this Interrogatories as discovery progresses and as additional information is made available.

INTERROGATORY NO 2: If the Judgment affirming the April 5, 2019 Award in JAMS Arbitration 1260004569 is not reversed on appeal, set forth in detail YOUR calculation of the PURCHASE PRICE.

ANSWER: Bidsal objects to this Interrogatory as calling for speculation. Without waiving said objection, Bidsal contends that the calculation of the PURCHASE PRICE is currently the subject of the present arbitration which was brought to ascertain the PURCHASE PRICE, thus any such speculation, prior to a decision by the arbitrator would be premature and conjectural. Further, Bidsal is currently unable to calculate the PURCHASE PRICE due to a lack of information, which is caused both by the restrictions imposed by the COVID-19 inhibiting and preventing access to the needed records and/or the fact that all of the necessary information has not been obtained through discovery. Finally, the proper calculation of the PURCHASE PRICE can only be determined once the effective date of the transfer is identified. Because the effective date of the transfer has not yet been identified, it is impossible to calculate the PURCHASE PRICE. Bidsal reserves the right to supplement his response to this Interrogatories as discovery progresses and as additional information is made available.

INTERROGATORY NO. 3: DESCRIBE each DOCUMENT that YOU contend supports YOUR calculation of the PURCHASE PRICE as set forth in YOUR response to Interrogatory Nos. 1 and 2.

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ANSWER: Bidsal objects to this Interrogatory as calling for speculation. Bidsal further objects to this interrogatory as the term "contend" is vague and undefined. Without waiving said objection, see Bidsal's Response to Interrogatory No. 1, which is incorporated herein by this reference. As the purpose of the arbitration is to ascertain the PURCHASE PRICE, identification of documents that may or may not be necessary to support such a calculation would be premature and speculative. Once the COVID-19 restrictions are lifted, Bidsal will be able to access the necessary information and documents and will supplement his disclosures to provide the same.

INTERROGATORY NO. 4: If YOU contend that YOU are entitled to compensation for SERVICES state each and every fact that supports YOUR contention.

ANSWER: Bidsal objects to this interrogatory in that it defines SERVICES as having the "same meaning used by [Shawn Bidsal] in [Shawn Bidsal's] demand for arbitration..." . Bidsal objects to this mischaracterization of evidence, as the term is not one that is/was given meaning by Bidsal alone, but rather is the term, as utilized, in the Green Valley Commerce, LLC ("***GVC***") Operating Agreement, Article II, OFFICES AND RECORDS, Section 03, Records., paragraph e(i) and Article V, MEMBERSHIP INTEREST, Section 01, Contribution to Capital. Further, the interrogatory is vague in that it fails to distinguish between the services rendered prior to the effective date of the transfer and services provided after the effective date of the transfer. Without waiving said objection, Bidsal asserts that the GVC Operating Agreement delineated that contributions to the capital of the company may be made by services rendered. Bidsal has rendered services over the lifetime of Green Valley Commerce LLC and as such is entitled to an accounting for said services rendered. Further, to the extent that Bidsal has rendered services after the effective date of the transaction, those services would not be considered to be capital contributions, and as such, Bidsal would need to be separately compensated for them.

INTERROGATORY NO. 5: If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC, INDENTIFY all persons with knowledge of any facts relating to YOUR contention.

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APPENDIX (PX)003014

14A.App.3257

ANSWER: Bidsal objects to this interrogatory as irrelevant, not proportional to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. Further, Bidsal has been rendering services to GVC since before its inception in May 2011. This interrogatory is seeking **every** name, address and phone number for **any** person who has witnessed Bidsal rendering said services over a nine-year period. Such a request is clearly over broad and unduly burdensome.

INTERROGATORY NO. 6: If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC DESCRIBE each DOCUMENT and COMMUNICATION supporting YOUR contention.

ANSWER: Bidsal objects to this interrogatory as irrelevant, not proportional to the needs of the case, and not reasonably calculated to lead to the discovery of admissible evidence. Bidsal has been rendering services to GVC since before its inception in May 2011. This interrogatory is seeking **every** document and communication related to over nine years of services rendered, which is extremely over broad and unduly burdensome. Additionally, due to the COVID-19 restrictions currently in place, Bidsal access to the documents which would be responsive to this interrogatory has been severely limited and/or temporarily terminated. Without waiving said objection, once the COVID-19 restrictions are lifted, Bidsal will provide a reasonably response to CLA's unreasonable interrogatory.

INTERROGATORY NO. 7: If YOU contend that YOU are entitled to compensation for SERVICES rendered to Green Valley Commerce, LLC set forth in detail YOUR calculation of the amount that YOU contend YOU should be paid for YOUR services to Green Valley Commerce, LLC.

ANSWER: Bidsal objects to this Interrogatory as calling for speculation. Without waiving said objection, Bidsal contends that the calculation and accounting of services rendered is currently a subject of the present arbitration which was brought to ascertain said accounting, thus any such speculation, prior to a decision by the arbitrator would be premature and conjectural. Further, the total compensation will depend on the effective date of the transfer, which has not yet been established. Finally, due to the COVID-19 restrictions currently in place, Bidsal access to the documents and information which would be responsive to this interrogatory has been severely limited and/or temporarily terminated. Without waiving said objection, once the COVID-19 restrictions are lifted, Bidsal will provide a responsive to this interrogatory.

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APPENDIX (PX)003015

INTERROGATORY NO. 8: If YOUR response to each request for admission served with these interrogatories is not an unqualified admission, for each such request for admission which is not is not an unqualified admission:

(a) State all facts and reasons upon which YOU base YOUR response, including all facts and reasons either (i) upon which YOU base YOUR response and/or (ii) which support YOUR not responding with an unqualified admission; and

(b) IDENTIFY all DOCUMENTS and other tangible things that support YOUR response.

ANSWER: Bidsal objects to this interrogatory as a multi-part interrogatory with several discrete subparts. Without waiving the forgoing, Bidsal responds as follows:

(a) The term "FMV" is defined in Section 4.1 of the OPAG as "[t]he 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 FMV as referenced by the formula's contained in the GVC operating agreement was not established per the direction of the operating agreement and cannot be used in the formula.

(b) The term "COP" is defined in Section 4.1 of the OPAG as "'cost of purchase' as it specified in the escrow closing statement at the time of purchase of each property owned by the Company." GVC, at its inception purchased one property and then subsequently subdivided the property into nine separate properties. GVC then sold three out of nine total properties, and purchased one additional property. These divisions, sales, and purchases left GVC, in the summer of 2017 as well as today, owning seven different properties, only one of which had a closing statement associated with it. Thus, it is a physical impossibility to go back to a closing statement that never existed for the properties owned by GVC in 2017. Further,

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formula must take into account the fact that when two of the nine properties were sold, GVC issued return of capital payments / cost of purchase to its members.

(c) Due to the COVID-19 restrictions, Bidsal is unable to verify the capital account balances, which must take into account events which occurred after the properties were originally purchased.

(d) The document responsive to Interrogatory No. 8 is the GVC operating agreement.

INTERROGATORY NO. 9: With respect to each of the "disagreements between the members relating to the proper accounting" as set forth in YOUR Demand for Arbitration, for each such disagreement, state YOUR contentions and for each separately state all facts and reasons upon which YOU base YOUR contention.

ANSWER: Bidsal objects to this interrogatory as the term "contentions" is vague and undefined. Without waiving said objection, Bidsal asserts that his "contentions" are those delineated in the Arbitration Demand. The facts and reasons upon which Bidsal bases his "contentions" are that the two members of GVC, CLA and Bidsal, are unable to agree upon a method of accounting associated with the member's membership interest, including proper calculation of each member's capital accounts, proper calculation of the purchase price, and proper accounting of services each member provided to the company.

INTERROGATORY NO. 10: Set forth in detail what you contend were the capital accounts of each the members of Green Valley Commerce, LLC on September 6, 2017.

ANSWER: Bidsal objects to this interrogatory as the term "contend" is vague and undefined. Without waiving said objection, Bidsal asserts that the business records of GVC speak for themselves and as such should be relied upon in ascertaining the value of the capital accounts on any given day, to include September 6, 2017. Due to the COVID-19 restrictions currently in place, Bidsal access to the documents which would be responsive to this interrogatory has been severely limited and/or temporarily terminated. Without waiving said objection, once the COVID-19 restrictions are lifted and Bidsal is able to access the information and documents to identify the actual response to this Interrogatory, Bidsal will provide a more detailed response.

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Dated this 22nd day of June, 2020.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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Attorneys for Claimant, Shawn Bidsal

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VERIFICATION

I, Shawn Bidsal, do hereby declare under penalty of perjury in accordance with NRS 53.045, that I have read the foregoing **CLAIMANT SHAWN BIDSAL'S RESPONSES TO RESPONDENT CLA PROPERTIES, LLC'S FIRST SET OF INTERROGATORIES TO SHAWN BIDSAL** and know the contents thereof; that the same is true of my knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe it to be true. I declare under penalty of perjury under the laws of the State of Nevada that the forgoing is true and correct.

Shawn Bidsal

APPENDIX (PX)003018

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2020, I served a true and correct copy of the forgoing **CLAIMANT SHAWN BIDSAL'S RESPONSES TO RESPONDENT CLA PROPERTIES, LLC'S FIRST SET OF INTERROGATORIES TO SHAWN BIDSAL**, by emailing a copy of the same, to:

Individual:	Email address:	Role:
Louis Garfinkel, Esq.	LGarfinkel@lgealaw.com	Attorney for CLA
Rodney T Lewin, Esq.	rod@rtlewin.com	Attorney for CLA
Douglas D. Gerrard, Esq.	dgerrard@gerrard-cox.com	Attorney for Bidsal

/s/ James E. Shapiro
Smith & Shapiro, PLLC

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14A.App.3262