

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\* \* \* \* \*

CLA PROPERTIES LLC, A  
CALIFORNIA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

CLA PROPERTIES LLC, A  
CALIFORNIA LIMITED LIABILITY  
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

No. 86438 Electronically Filed  
Nov 03 2023 12:12 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

No. 86817

**APPELLANT'S APPENDIX**

**VOLUME 19**

Robert L. Eisenberg, Esq. (SBN 950)  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Third Floor  
Reno, Nevada 89519  
(775) 786-6868  
[rle@lge.net](mailto:rle@lge.net)  
*Counsel for Appellant*

Todd E. Kennedy, Esq. (SBN 6014)  
KENNEDY & COUVILLIER  
3271 E. Warm Springs, Road  
Las Vegas, Nevada 89120  
(702) 605-3440  
[tkennedy@kclawnv.com](mailto:tkennedy@kclawnv.com)  
*Counsel for Appellant*

## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment	6/17/22	1	1-24
	<u>Exhibit 117</u> : JAMS Final Award dated March 12, 2022		1	25-56
	<u>Exhibit 122</u> : Operating Agreement of Green Valley Commerce, LLC		1	57-85
2.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 1 of 18)	6/22/22	1	86
	Note Regarding Incorrect Index		1	87
	Index [Incorrect]		1	88-98
	<u>Exhibit 101</u> : JAMS Arbitration Demand Form dated February 7, 2020		1	99-133
	<u>Exhibit 102</u> : Commencement of Arbitration dated March 2, 2020		1	134-149
	<u>Exhibit 103</u> : Respondent's Answer and Counter-Claim dated March 3, 2020		1	150-178
	<u>Exhibit 104</u> : Report of Preliminary Arbitration Conference and Scheduling Order dated April 30, 2020		1	179-184
	<u>Exhibit 105</u> : Claimant Shawn Bidsal's Answer to Respondent CLA Properties, LLC's Counterclaim dated May 19, 2020		1	185-190
	<u>Exhibit 106</u> : Notice of Hearing for February 17 through August 3, 2020		1	191-195

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 2)	<u>Exhibit 107</u> : Notice of Hearing for February 17 through February 19, 2021 dated October 20, 2020		1	196-199
	<u>Exhibit 108</u> : Claimant Shawn Bidsal's First Amended Demand for Arbitration dated November 2, 2020		1	200-203
	<u>Exhibit 109</u> : Respondent's Fourth Amended Answer and Counter-Claim to Bidsal's First Amended Demand dated January 19, 2021		1	204-214
	<u>Exhibit 110</u> : Claimant Shawn Bidsal's Answer to Respondent CLA Properties, LLC's Fourth Amended Counterclaim dated March 5, 2021		1	215-220
	<u>Exhibit 111</u> : Notice of Additional Hearing for June 25, 2021 dated April 29, 2021		1	221-226
	<u>Exhibit 112</u> : Notice of Additional Hearing for September 29 through September 30, 2021 dated August 9, 2021		1	227-232
3.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 2 of 18)	6/22/22	1	233
	Note Regarding Incorrect Index		1	234
	Index [Incorrect]		1	235-245
	<u>Exhibit 113</u> : Final Award - Stephen E. Haberfeld, Arbitrator dated April 5, 2019		2	246-267

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 3)	<u>Exhibit 114</u> : 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 dated December 5, 2019		2	268-278
	<u>Exhibit 115</u> : 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 Arbitration's Award dated December 16, 2019		2	279-293
	<u>Exhibit 116</u> : Interim Award dated October 20, 2021		2	294-321
	<u>Exhibit 117</u> : Final Award dated March 12, 2022		2	322-353
4.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 3 of 18)	6/22/22	2	354
	Note Regarding Incorrect Index		2	355
	Index [Incorrect]		2	356-366
	<u>Exhibit 118</u> : Agreement for Sale and Purchase of Loan dated May 19, 2011		2	367-434
	<u>Exhibit 119</u> : Assignment and Assumption of Agreements dated May 31, 2011		2	435-438
	<u>Exhibit 120</u> : Final Settlement Statement – Note Purchase dated June 3, 2011		2	439-440
	<u>Exhibit 121</u> : GVC Articles of Organization dated May 26, 2011		2	441-442

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 4)	<u>Exhibit 122</u> : GVC Operating Agreement		2	443-471
	<u>Exhibit 123</u> : Emails regarding Execution of GVC OPAG dated November 29, 2011 to December 12, 2011		2	472-476
	<u>Exhibit 124</u> : Declaration of CC&Rs for GVC dated March 16, 2011		3	477-557
	<u>Exhibit 125</u> : Deed in Lieu Agreement dated September 22, 2011		3	558-576
	<u>Exhibit 126</u> : Estimated Settlement Statement – Deed in Lieu Agreement dated September 22, 2011		3	577-578
	<u>Exhibit 127</u> : Grant, Bargain, Sale Deed dated September 22, 2011		3	579-583
5.	Appendix to Movant CLA Properties, LLC’s Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 4 of 18)	6/22/22	3	584
	Note Regarding Incorrect Index		3	585
	Index [Incorrect]		3	586-596
	<u>Exhibit 128</u> : 2011 Federal Tax Return dated December 31, 2011		3	597-614
	<u>Exhibit 129</u> : Escrow Closing Statement on Sale of Building C dated September 10, 2012		3	615-617
	<u>Exhibit 130</u> : Distribution Breakdown from Sale of Building C dated April 22, 2013		3	618-621
	<u>Exhibit 131</u> : 2012 Federal Tax Return dated September 10, 2013		3	622-638

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 5)	<u>Exhibit 132</u> : Letter to CLA Properties with 2012 K-1 dated August 8, 2013		3	639-646
	<u>Exhibit 133</u> : Escrow Settlement Statement for Purchase of Greenway Property dated March 8, 2013		3	647-649
6.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 5 of 18)	6/22/22	3	650
	Note Regarding Incorrect Index		3	651
	Index [Incorrect]		3	652-662
	<u>Exhibit 134</u> : Cost Segregation Study dated March 15, 2013		4	663-791
7.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 6 of 18)	6/22/22	4	792
	Note Regarding Incorrect Index		4	793
	Index [Incorrect]		4	794-804
	<u>Exhibit 135</u> : 2013 Federal Tax Return dated September 9, 2014		4	805-826
	<u>Exhibit 136</u> : Tax Asset Detail 2013 dated September 8, 2014		4	827-829
	<u>Exhibit 137</u> : Letter to CLA Properties with 2014 K-1 dated September 9, 2014		4	830-836
	<u>Exhibit 138</u> : Escrow Closing Statement on Sale of Building E dated November 13, 2014		4	837-838
	<u>Exhibit 139</u> : Distribution Breakdown from Sale of Building E dated November 13, 2014		4	839-842

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 7)	<u>Exhibit 140</u> : 2014 Federal Tax Return dated February 27, 2015		4	843-862
	<u>Exhibit 141</u> : Escrow Closing Statement on Sale of Building B dated August 25, 2015		4	863-864
	<u>Exhibit 142</u> : Distribution Breakdown from Sale of Building B dated August 25, 2015		4	865-870
	<u>Exhibit 143</u> : 2015 Federal Tax Return dated April 6, 2016		4	871-892
	<u>Exhibit 144</u> : 2016 Federal Tax Return dated March 14, 2017		5	893-914
	<u>Exhibit 145</u> : Letter to CLA Properties with 2016 K-1 dated March 14, 2017		5	915-926
	<u>Exhibit 146</u> : 2017 Federal Tax Return dated April 15, 2017		5	927-966
	<u>Exhibit 147</u> : Letter to CLA Properties with 2017 K-1 dated April 15, 2017		5	967-972
	<u>Exhibit 148</u> : 2018 Federal Tax Return dated August 2, 2019		5	973-992
	<u>Exhibit 149</u> : Letter to CLA Properties with 2018 K-1 dated April 10, 2018		5	993-1003
8.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 7 of 18)	6/22/22	5	1004
	Note Regarding Incorrect Index		5	1005
	Index [Incorrect]		5	1006-1016
	<u>Exhibit 150</u> : 2019 Federal Tax Return (Draft) dated March 20, 2020		5	1017-1053

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 8)	<u>Exhibit 151</u> : Letter to CLA Properties with 2019 K-1 dated March 20, 2020		5	1054-1063
	<u>Exhibit 152</u> : Emails Regarding CLA's Challenges to Distributions dated January 26 to April 22, 2016		5	1064-1082
	<u>Exhibit 153</u> : Buy-Out Correspondence – Bidsal Offer dated July 7, 2017		5	1083-1084
	<u>Exhibit 154</u> : Buy-Out Correspondence – CLA Counter dated August 3, 2017		5	1085-1086
	<u>Exhibit 155</u> : Buy-Out Correspondence – Bidsal Invocation dated August 5, 2017		5	1087-1088
	<u>Exhibit 156</u> : Buy-Out Correspondence – CLA Escrow dated August 28, 2017		5	1089-1093
	<u>Exhibit 157</u> : CLA Responses to First Set of Interrogatories dated June 22, 2020		5	1094-1102
	<u>Exhibit 158</u> : GVC Lease and Sales Advertising dated April 25, 2018		6	1103-1174
	<u>Exhibit 159</u> : Property Information dated August 10, 2020		6	1175-1177
9.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 8 of 18)	6/22/22	6	1178
	Note Regarding Incorrect Index		6	1179
	Index [Incorrect]		6	1180-1190
	<u>Exhibit 160</u> : Deposition Transcript of David LeGrand dated March 20, 2018 (with Exhibits 1-39)		6 7 8 9	1191-1351 1352-1580 1581-1806 1807-1864

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
10.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 9 of 18)	6/22/22	9	1865
	Note Regarding Incorrect Index		9	1866
	Index [Incorrect]		9	1867-1877
	<u>Exhibit 161</u> : Deed – Building C dated September 10, 2012		9	1878-1884
	<u>Exhibit 162</u> : Deed Building E dated November 13, 2014		9	1885-1893
	<u>Exhibit 163</u> : Email from Ben Golshani to Shawn Bidsal dated September 22, 2011		9	1894-1897
	<u>Exhibit 164</u> : Deed of Trust Notes (annotated) dated July 17, 2007		9	1898-1908
	<u>Exhibit 165</u> : Assignment of Lease and Rents dated July 17, 2007		9	1909-1939
	<u>Exhibit 166</u> : CLA Payment of \$404,250.00 dated May 29, 2011		9	1940-1941
	<u>Exhibit 167</u> : Operating Agreement For Country Club, LLC dated June 15, 2011		9	1942-1970
	<u>Exhibit 168</u> : Email from David LeGrand to Shawn to Bidsal and Bedn Gloshani dated September 16, 2011		9	1971-2001
	<u>Exhibit 169</u> : GVC General Ledger 2011 dated December 31, 2011		9	2002-2004
	<u>Exhibit 170</u> : Green Valley Trial Balance Worksheet, Transaction Listing dated June 7, 2012		9	2005-2010

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 10)	<u>Exhibit 171</u> : Correspondence from Lita to Angelo re Country Blub 2012 Accounting dated January 21, 2016		9	2011-2013
	<u>Exhibit 172</u> : Email from Shawn Bidsal re Letter to WCICO dated January 21, 2016		9	2014-2017
	<u>Exhibit 173</u> : GVC Equity Balance Computation dated June 30, 2017		9	2018-2019
	<u>Exhibit 174</u> : Email from Ben Golshani to Jim Main dated July 21, 2017		9	2020-2021
	<u>Exhibit 175</u> : Email Communication between Ben Golshani and Jim Main dated July 25, 2017		9	2022-2025
	<u>Exhibit 176</u> : Email Communication from James Shapiro dated August 16, 2017		9	2026-2031
	<u>Exhibit 177</u> : Email Communication between Ben Golshani and Shawn Bidsal dated August 16, 2017		9	2032-2033
	<u>Exhibit 178</u> : Email Communication between Rodney T. Lewin and James Shapiro dated November 14, 2017		9	2034-2035
	<u>Exhibit 179</u> : Letter from Ben Golshani to Shawn Bidsal dated December 26, 2017		9	2036-2037
	<u>Exhibit 180</u> : Letter from Shawn Bidsal to Ben Golshani dated December 28, 2017		9	2038-2039
	<u>Exhibit 181</u> : Arbitration Final Award dated April 5, 2019		10	2040-2061
	<u>Exhibit 182</u> : Email from Ben Golshani to Shawn Bidsal dated June 30, 2019		10	2062-2063

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 10)	<u>Exhibit 183</u> : Email from Ben Golshani to Shawn Bidsal dated August 20, 2019		10	2064-2065
	<u>Exhibit 184</u> : Email Communication between CLA and Shawn Bidsal dated June 14, 2020		10	2066-2067
	<u>Exhibit 185</u> : Claimant Shawn Bidsal's First Supplemental Responses to Respondent CLA Properties, LLC's First Set of Interrogatories to Shawn Bidsal dated October 2, 2020		10	2068-2076
	<u>Exhibit 186</u> : Claimant Shawn Bidsal's Responses to Respondent CLA Properties, LLC's Fifth Set of Requests for Production of Documents Upon Shawn Bidsal dated February 19, 2021		10	2077-2081
11.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 10 of 18)	6/22/22	10	2082
	Note Regarding Incorrect Index		10	2083
	Index [Incorrect]		10	2084-2094
	<u>Exhibit 187</u> : Claimant Shawn Bidsal's Responses to Respondent CLA Properties, LLC's Sixth Set of Requests for Production of Documents Upon Shane Bidsal dated February 22, 2021		10	2095-2097
	<u>Exhibit 188</u> : 2019 Notes re Distributable Cash Building C dated July 11, 2005		10	2098-2099

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 11)	<u>Exhibit 189</u> : 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 dated December 6, 2019		10	2100-2110
	<u>Exhibit 190</u> : Plaintiff Shawn Bidsal's Motion to Vacate Arbitration Award dated April 9, 2019		10	2111-2152
	<u>Exhibit 191</u> : Notice of Appeal dated January 9, 2020		10	2153-2155
	<u>Exhibit 192</u> : Case Appeal Statement dated January 9, 2020		10	2156-2160
	<u>Exhibit 193</u> : Respondent's Motion for Stay Pending Appeal dated January 17, 2020		10 11	2161-2286 2287-2325
12.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 11 of 18)	6/22/22	11	2326
	Note Regarding Incorrect Index		11	2327
	Index [Incorrect]		11	2328-2338
	<u>Exhibit 194</u> : Notice of Entry of Order Granting Respondent's Motion for Stay Pending Appeal dated March 10, 2020		11	2339-2344
	<u>Exhibit 195</u> : Notice of Posting Case in Lieu of Bond dated March 20, 2020		11	2345-2349
	<u>Exhibit 196</u> : (LIMITED) Arbitration #1 Exhibits 23-42 (Portions of 198 admitted: Exs. 26 and 40 within 198)		11	2350-2412

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 12)	<u>Exhibit 197</u> : Rebuttal Report Exhibit 1 Annotated (Gerety Schedule) dated July 11, 2005		11	2413-2416
	<u>Exhibit 198</u> : Chris Wilcox Schedules dated August 13, 2020		11	2417-2429
	<u>Exhibit 199</u> : Rebuttal Report Exhibit 3 dated December 31, 2017		11	2430-2431
	<u>Exhibit 200</u> : Distribution Breakdown dated November 13, 2014 and August 28, 2015		11	2432-2434
	<u>Exhibit 201</u> : Respondent's 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 Rodey T. Lewin in Support Thereof dated May 20, 2020		11 12	2435-2530 2531-2547
13.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 12 of 18)	6/22/22	12	2548
	Note Regarding Incorrect Index		12	2549
	Index [Incorrect]		12	2550-2560
	<u>Exhibit 202</u> : Claimant Shawn Bidsal's Opposition Respondent CLA Properties, LLC's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager dated June 10, 2020 (with Exhibits 1-62)		12 13 14	2561-2775 2776-3016 3017-3155
	<u>Exhibit 203</u> : Request for Oral Arguments: Respondent CLA Properties, LLC's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager dated June 17, 2020		14	3156-3158

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 13)	<u>Exhibit 204</u> : Respondent's Reply Memorandum of Point 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 dated June 24, 2020		14	3159-3179
	<u>Exhibit 205</u> : 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 dated July 7, 2020		14	3180-3193
	<u>Exhibit 206</u> : CLA'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 dated July 13, 2020		14	3194-3213
	<u>Exhibit 207</u> : Order on Pending Motions dated July 20, 2020		14	3214-3221
14.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 13 of 18)	6/22/22	14	3222
	Note Regarding Incorrect Index		14	3223
	Index [Incorrect]		14	3224-3234
	<u>Exhibit 208</u> : CLA Properties, LLC's Motion to Compel Answers to First Set of Interrogatories to Shawn Bidsal dated July 16, 2020		14 15	3235-3262 3263-3292

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 14)	<u>Exhibit 209</u> : Exhibits to CLA Properties, LLC's Motion to Compel Answers to First Set of Interrogatories to Shawn Bidsal dated July 16, 2020		15	3293-3332
	<u>Exhibit 210</u> : Claimant's Opposition to Respondent's Motion to Compel Answers to First Set of Interrogatories to Shawn Bidsal and Countermotion to Stay Proceedings dated July 24, 2020		15	3333-3456
	<u>Exhibit 211</u> : Respondent CLA Properties, LLC Reply to Opposition by Claimant (Bidsal) to CLA's Motion to Compel Further Answers to Interrogatories dated July 27, 2020		15	3457-3464
	<u>Exhibit 212</u> : CLA Properties, LLC's Reply in Support of Motion to Compel Answers to First Set of Interrogatories and Opposition to Countermotion to Stay Proceedings dated July 28, 2020		15	3465-3489
	<u>Exhibit 213</u> : Order on Respondent's Motion to Compel and Amended Scheduling Order dated August 3, 2020		15	3490-3494
	<u>Exhibit 214</u> : Claimant's Emergency Motion to Quash Subpoenas and for Protective Order dated June 25, 2020		16	3495-3524
	<u>Exhibit 215</u> : CLA Properties, LLC's Opposition to Emergency Motion to Quash Subpoenas and for Protective Order dated June 29, 2020		16	3525-3536
	<u>Exhibit 216</u> : Claimant's Reply to Opposition to Motion to Quash Subpoenas and for Protective Order dated June 30, 2020		16	3537-3539

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 14)	<u>Exhibit 217</u> : Order on Pending Motions dated July 20, 2020		16	3540-3547
15.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 14 of 18)	6/22/22	16	3548
	Note Regarding Incorrect Index		16	3549
	Index [Incorrect]		16	3550-3560
	<u>Exhibit 218</u> : CLA Properties, LLC's Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal and for Production of Documents dated October 7, 2020		16	3561-3616
	<u>Exhibit 219</u> : Rodney Lewin and James Shapiro Email Chain dated October 19, 2020		16	3617-3619
	<u>Exhibit 220</u> : Claimant's Opposition to Respondent's Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal And for Production of Documents dated October 19, 2020		16	3620-3629
	<u>Exhibit 221</u> : CLA Properties, LLC's Reply to Opposition to Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal and for Production of Documents dated October 22, 2020		16	3630-3650
	<u>Exhibit 222</u> : Order on Respondent's Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal and for Production of Documents dated November 9, 2020		16	3651-3657

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 15)	<u>Exhibit 223</u> : CLA Properties, LLC's Motion to Continue Proceedings dated November 5, 2020		16	3658-3663
	<u>Exhibit 224</u> : Order on Respondent's Motion to Continue Proceedings and Second Amended Scheduling Order dated November 17, 2020		16	3664-3669
	<u>Exhibit 225</u> : Letter to Honorable David Wall (Ret.) Requesting Leave to Amend dated January 19, 2021		16	3670-3676
	<u>Exhibit 226</u> : Respondent's Fourth Amended Answer and Counterclaim to Bidsal's First Amended Demand dated January 19, 2021		16	3677-3687
	<u>Exhibit 227</u> : Claimant's Opposition to Respondent / Counterclaimant's Motion for Leave to file Fourth Amended Answer and Counterclaim dated January 29, 2021		16	3688-3732
	<u>Exhibit 228</u> : Respondent / Counterclaimant's Reply in Support of Motion for Leave to File Fourth Amended Answer and Counterclaim dated February 2, 2021		16	3733-3736
	<u>Exhibit 229</u> : Order on Respondent's Pending Motions dated February 4, 2021		16	3737-3743
	<u>Exhibit 230</u> : CLA Properties, LLC's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated January 26, 2021		17	3744-3793

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 15)	<u>Exhibit 231</u> : Claimant's Opposition to Respondent / Counterclaimant's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated January 29, 2021		17 18	3794-3993 3994-4029
	<u>Exhibit 232</u> : 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 dated February 1, 2021		18	4030-4032
	<u>Exhibit 233</u> : CLA Properties, LLC's Reply in Support of Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated February 3, 2021		18	4033-4038
	<u>Exhibit 234</u> : Order on Respondent's Pending Motions dated February 4, 2021		18	4039-4045
16.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 15 of 18)	6/22/22	18	4046
	Note Regarding Incorrect Index		18	4047
	Index [Incorrect]		18	4048-4058
	<u>Exhibit 235</u> : CLA Properties, LLC's Motion for Orders (1) 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 Sales of the Membership Interest in Issue in this Arbitration is Consumated and the Membership Interest is Conveyed dated February 5, 2021		18	4059-4101

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 16)	<u>Exhibit 236</u> : Claimant's Opposition to Respondent / Counterclaimant's Motion for Orders (1) Compelling Claimant To Restore / Add CLA to All Green Valley Bank Accounts; (2) Provide CLA with Keys to All 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 dated February 19, 2021		18	4102-4208
	<u>Exhibit 237</u> : Order on Respondent's Motion for Various Orders dated February 22, 2021		18	4209-4215
	<u>Exhibit 238</u> : CLA Motion in Limine re Bidsal's Evidence re Taxes dated March 5, 2021		18	4216-4222
	<u>Exhibit 239</u> : Claimant's Opposition to CLA's Motion in Limine Regarding Bidsal's Evidence re Taxes dated March 11, 2021		18	4223-4229
	<u>Exhibit 240</u> : Ruling – Arbitration Day 1 p. 11 dated March 17, 2021		18	4230-4231
	<u>Exhibit 241</u> : CLA Properties, LLC's Motion in Limine Re Failure to Tender dated March 5, 2021		19	4232-4329
	<u>Exhibit 242</u> : Claimant Shawn Bidsal's Opposition to Respondent CLA Properties, LLC's Motion in Limine Re Failure to Tender dated March 11, 2021		19	4330-4354
	<u>Exhibit 243</u> : CLA Properties, LLC's Reply to Shawn Bidsal's Opposition Re Failure to Tender dated March 12, 2021		19	4355-4430

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 16)	<u>Exhibit 244</u> : Ruling – Arbitration Day 1 pp 15-17 dated March 17, 2021		19	4431-4434
	<u>Exhibit 245</u> : CLA’s Motion to Withdraw Exhibit 188 dated March 26, 2021		19	4435-4437
	<u>Exhibit 246</u> : Claimant’s Opposition to CLA’s Motion to Withdraw Exhibit 188 dated March 31, 2021		19	4438-4439
	<u>Exhibit 247</u> : CLA’s Reply to Bidsal’s Opposition to the Motion to Withdraw Exhibit 188 dated March 31, 2021		19	4440-4442
	<u>Exhibit 248</u> : Order on Respondent’s Motion to Withdraw Exhibit 188 dated April 5, 2021		19	4443-4445
17.	Appendix to Movant CLA Properties, LLC’s Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 16 of 18)	6/22/22	19	4446
	Note Regarding Incorrect Index		19	4447
	Index [Incorrect]		19	4448-4458
	<u>Exhibit 249</u> : CLA Properties, LLC’s Brief Re: (1) Waiver of the Attorney-Client Privilege; and (2) Compelling the Testimony of David LeGrand, Esq. dated May 21, 2021		19	4459-4474
	<u>Exhibit 250</u> : Claimant Shawn Bidsal’s Brief Regarding the Testimony of David LeGrand dated June 11, 2021		20	4475-4569
	<u>Exhibit 251</u> : CLA’s Properties, LLC Supplemental Brief Re: (1) Waiver of the Attorney-Client Privilege; and (2) Compelling the Testimony of David LeGrand, Esq. dated July 9, 2021		20	4570-4577

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 17)	<u>Exhibit 252</u> : Claimant Shawn Bidsal's Supplemental Brief Regarding the Testimony of David LeGrand dated July 23, 2021		20	4578-4595
	<u>Exhibit 253</u> : Order Regarding Testimony of David LeGrand dated September 10, 2021		20	4596-4604
	<u>Exhibit 254</u> : Claimant Shawn Bidsal's Application for Award of Attorney's Fees and Costs dated November 12, 2021		20	4605-4687
	<u>Exhibit 255</u> : Respondent / Counterclaimant CLA Properties, LLC's Opposition to Claimant Bidsal's Application for Attorney's Fees and Costs dated December 3, 2021		21	4688-4757
	<u>Exhibit 256</u> : Claimant's Reply in Support of Claimant Shawn Bidsal's Application for Attorney's Fees and Costs dated December 17, 2021		21	4758-4806
	<u>Exhibit 257</u> : Respondent / Counterclaimant CLA Properties, LCC's Supplemental Opposition to Claimant's Application for Attorney's Fees and Costs dated December 23, 2021		21	4807-4838
	<u>Exhibit 258</u> : Response to CLA Properties' Rogue Supplemental Opposition dated December 29, 2021		21	4839-4946
	<u>Exhibit 259</u> : Claimant Shawn Bidsal's Supplemental Application for Award of Attorney's Fees and Costs dated January 12, 2022		21 22	4847-4930 4931-4964

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 17)	<u>Exhibit 260</u> : Respondent's Second Supplemental Opposition to Application for Attorney's Fees and Costs dated January 26, 2022		22	4965-4998
	<u>Exhibit 261</u> : Claimant's Second Supplemental Reply in Support of Claimant Shawn Bidsal's Application for Award of Attorney Fees and Costs dated February 15, 2022		22	4999-5052
18.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 17 of 18)	6/22/22	22	5053
	Note Regarding Incorrect Index		22	5054
	Index [Incorrect]		22	5055-5065
	<u>Exhibit 262</u> : Transcript of Proceedings – Honorable Stephen E. Haberfeld Volume 1 dated May 8, 2018		23	5066-5287
	<u>Exhibit 263</u> : Transcript of Proceedings – Honorable Stephen E. Haberfeld Volume 2 dated May 9, 2018		23 24	5288-5313 5314-5549
	<u>Exhibit 264</u> : Arbitration Hearing Transcript Day 1 dated March 17, 2021		25 26	5550-5797 5798-5953
	<u>Exhibit 265</u> : Arbitration Hearing Transcript Day 2 dated March 18, 2021		26 27 28	5954-6046 6047-6260 6261-6341
	<u>Exhibit 266</u> : Arbitration Hearing Transcript Day 3 dated March 19, 2021		28 29 30	6342-6505 6506-6705 6706-6798
	<u>Exhibit 267</u> : Arbitration Hearing Transcript Day 4 dated April 26, 2021		30 31	6799-6954 6955-7117

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
19.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 18 of 18)	6/22/22	31	7118
	Note Regarding Incorrect Index		31	7119
	Index [Incorrect]		31	7120-7130
	<u>Exhibit 268</u> : Arbitration Hearing Transcript Day 5 dated April 27, 2021		31 32	7131-7202 7203-7358
	<u>Exhibit 269</u> : Reporter's Transcript dated June 25, 2021		32	7359-7410
	<u>Exhibit 270</u> : Remote Transcript of Proceedings dated August 5, 2021		33	7411-7531
	<u>Exhibit 271</u> : Transcript of Proceedings Arbitration dated September 29, 2021		33 34	7532-7657 7658-7783
	<u>Exhibit 272</u> : Transcript of Hearing Proceedings dated January 5, 2022		34	7784-7814
	<u>Exhibit 273</u> : Transcript of Telephonic Hearing Proceedings dated February 28, 2022		34	7815-7859
	<u>Exhibit 274</u> : Appellant Shawn Bidsal's Opening Brief ( <i>Supreme Court of Nevada, Appear from Case No. A-19-795188-P, District Court, Clark County, NV</i> ) dated November 24, 2020		35	7860-7934
	<u>Exhibit 275</u> : Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award ( <i>Case No. A-19-795188-P, District Court, Clark County, NV</i> ) dated July 15, 2019		35	7935-7975

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 19)	<u>Exhibit 276</u> : Order of Affirmance (In Re: Petition of CLA Properties, LLC C/W 80831 Nos. 80427; 80831, <i>Order of Affirmance</i> , unpublished Deposition) dated March 17, 2022		35	7976-7981
	<u>Exhibit 277</u> : 2011-2019 Green Valley Commerce Distribution		35	7982-7984
20.	Bidsal's Opposition to CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment and Bidsal's Countermotion to Confirm Arbitration Award	9/1/22	35	7985-8016
	<u>Exhibit 1</u> : Declaration of Shawn Bidsal in Support of Claimant Shawn Bidsal's Opposition to Respondent CLA Properties, LLC Motion to Resolve Member Dispute Re Which Manage Should be Day to Day Manager dated June 10, 2020		35	8017-8027
	<u>Exhibit 2</u> : Affidavit of Benjamin Golshani in Opposition to Respondent's Motion for Stay Pending Appeal dated January 31, 2020		35	8028-8041
	<u>Exhibit 3</u> : Articles of Organization for Green Valley Commerce, LLC dated May 26, 2011		35	8042-8043
	<u>Exhibit 4</u> : Final Settlement Statement for Green Valley Commerce, LLC dated September 3, 2011		35	8044-8045
	<u>Exhibit 5</u> : Grant, Bargain and Sale Deed dated September 22, 2011		35	8046-8050
	<u>Exhibit 6</u> : Estimated Settlement Statement dated September 22, 2011		35	8051-8052

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 20)	<u>Exhibit 7</u> : Declaration of Covenants, Conditions and Restrictions and Reservation of Comments for Green Valley Commerce Center dated March 16, 2012		35 36	8053-8097 8098-8133
	<u>Exhibit 8</u> : Seller's Closing Statement – Final dated September 10, 2012		36	8134-8136
	<u>Exhibit 9</u> : Operating Agreement for Green Valley Commerce, LLC		36	8137-8165
	<u>Exhibit 10</u> : Schedule with Check of Distributions sent from Shawn Bidsal to Benjamin Golshani		36	8166-8169
	<u>Exhibit 11</u> : Seller's Closing Statement – Final dated November 14, 2014		36	8170-8171
	<u>Exhibit 12</u> : Schedule of Distributions		36	8172-8175
	<u>Exhibit 13</u> : Seller's Settlement Statement dated August 31, 2015		36	8176-8177
	<u>Exhibit 14</u> : CLA Properties, LLC's Election to Purchase Membership Interest dated August 3, 2017		36	8178-8179
	<u>Exhibit 15</u> : Correspondence from Rodney T. Lewin to James E. Shapiro Re Proof of Funds to Purchase Membership Interest		36	8180-8184
	<u>Exhibit 16</u> : Demand for Arbitration Form dated September 26, 2017		36	8185-8190
	<u>Exhibit 17</u> : JAMS Arbitration Final Award dated April 4, 2019		36	8191-8212

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 20)	<u>Exhibit 18</u> : Demand for Arbitration Form dated February 7, 2020		36	8213-8247
	<u>Exhibit 19</u> : Respondent's Answer and Counter-Claim dated March 4, 2020		36	8248-8276
	<u>Exhibit 20</u> : JAMS Final Award dated March 12, 2022		36	8277-8308
	<u>Exhibit 21</u> : Order of Affirmance dated March 17, 2022		36	8309-8314
	<u>Exhibit 22</u> : Remittitur from Supreme Court of the State of Nevada dated June 10, 2022		36	8315-8319
	<u>Exhibit 23</u> : Correspondence from James E. Shapiro to Benjamin Golshani Re Offer to Purchase Membership Interest dated July 7, 2017		36	8320-8321
	<u>Exhibit 24</u> : Cashier's Check		36	8322-8323
21.	CLA's Reply in Support of Motion to Vacate (Partially) Arbitration Award	10/7/22	37	8324-8356
22.	CLA's Opposition to Shawn Bidsal's Countermotion to Confirm Arbitration Award	10/7/22	37	8357-8359
	<u>Exhibit 1</u> : Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment dated June 17, 2022		37	8360-8445
	<u>Exhibit 2</u> : CLA's Reply in Support of Motion to Vacate [Partially] Arbitration Award dated October 7, 2022		37	8446-8479
23.	Bidsal's Reply in Support of Bidsal's Countermotion to Confirm Arbitration Award	10/31/22	37	8480-8505

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 23)	<u>Exhibit 25</u> : Arbitration Hearing Partial Transcript Day 3 dated March 19, 2021		37	8506-8511
24.	Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award	3/20/23	37	8512-8521
25.	Notice of Entry of Order {Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award dated March 20, 2023}	3/21/23	37	8522-8533
26.	Transcript of Hearing Re: Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment dated February 7, 2023	4/11/23	38	8534-8660
27.	CLA Properties, LLC's Notice of Appeal	4/17/23	38	8661-8672
28.	CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Rights as to the Fees and Right to Return if Appeal is Successful and Request for Order Shortening Time	5/4/23	38	8673-8680
	<u>Exhibit A</u> : Declaration of Todd Kennedy, Esq. dated April 27, 2023		38	8681-8684
29.	Bidsal's Opposition to CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Right as to the Fees and Right to Return if Appeal is Successful on Order Shortening Time	5/8/23	38	8685-8692

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 29)	<u>Exhibit 1:</u> Transcript of Proceedings Re Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment dated April 11, 2023		38 39	8693-8782 8783-8802
	<u>Exhibit 2:</u> JAMS Final Award dated March 12, 2022		39	8803-8834
30.	Recorder's Transcript of Pending Motions dated May 9, 2023	5/12/23	39	8835-8878
31.	Recorder's Transcript of Pending Motion dated May 11, 2023	5/15/23	39	8879-8888
32.	Order Regarding Bidsal's Motion to Reduce Award to Judgment and for an Award for Attorney Fees and Costs and Judgment	5/24/23	39	8889-8893
33.	Order Denying CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Rights as to the Fees and Right to Return if Appeal is Successful	5/24/23	39	8894-8898
34.	Notice of Entry of Order Denying CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Rights as to the Fees and Right to Return if Appeal is Successful	5/24/23	39	8899-8905
35.	Notice of Entry of Order Regarding Bidsal's Motion to Reduce Award to Judgment and for an Award for Attorney Fees and Costs and Judgment	5/25/23	39	8906-8915
36.	CLA Properties, LLC's Supplemental Notice of Appeal	6/20/23	39	8916-8917
37.	CLA Properties, LLC's Errata to Supplemental Notice of Appeal	6/23/23	39	8918-8931

# **EXHIBIT 241**

Rodney T. Lewin, CAL.SBN. 71664  
 Law Offices of Rodney T. Lewin, APC  
 A Professional Corporation  
 8665 Wilshire Boulevard, Suite 210  
 Beverly Hills, California 90211  
 (310) 659-6771  
 Email: rod@rtlewin.com

Louis E. Garfinkel, Esq.  
 Nevada Bar No. 3416  
 LEVINE & GARFINKEL  
 1671 W. Horizon Ridge Pkwy, Suite 230  
 Henderson, NV 89012  
 Tel: (702) 673-1612/Fax: (702) 735-2198  
 Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)

SHAWN BIDSAL, an individual,

Claimant,

v.

CLA PROPERTIES, LLC, a California  
 limited liability company,

Respondent /Counterclaimant

JAMS Ref. No. 1260005736

**CLA PROPERTIES, LLC's MOTION IN  
 LIMINE RE FAILURE TO TENDER**

**I. INTRODUCTION**

Despite the issue of the alleged failure to “Tender” being resolved in the (i) first arbitration; (ii) the Judgment entered by Judge Kishner; and (iii) in the Arbitrator’s July 20, 2020 Order regarding change of management, Bidsal continues to assert that as an affirmative claim. (See Bidsal’s First Amended Demand for Arbitration, paragraphs A and B which assert that the buyout was never exercised because CLA never tendered the purchase price and that constituted a waiver of the right to purchase Bidsal's Membership Interest.<sup>1</sup>)

<sup>1</sup> James Shapiro confirmed to Rodney Lewin on March 3, 2021 that Bidsal intended to pursue this claim.

1     **II. BACKGROUND**

2             In the Green Valley Commerce LLC ("Green Valley") Operating Agreement, a  
3     mandatory "buy-sell" provision was agreed to. Creating an "exit" plan for business  
4     relationships where one party sets a value and the other chooses to buy or sell is hardly new.  
5     The party wanting out is under no compulsion to initiate a process but if he does, then the  
6     other party gets to choose whether to buy or sell. That provides some protection to the latter  
7     against the initiating party's setting the price too low.

8             That is what Bidsal and CLA agreed upon and set forth in the Operating Agreement.  
9     It is found in Article V, Section 4 of the Operating Agreement, a copy of which is attached as  
10    Exhibit "1" hereto.

11            Stating he was acting "pursuant to and on the terms and conditions set forth  
12    in Section 4 of Article V of the Company's Operating Agreement", Bidsal offered to buy  
13    CLA's Green Valley membership interest based upon Bidsal's "best estimate of the current  
14    fair market value of the Company is [at] \$5,000,000.00 (the 'FMV')." CLA responded to  
15    Bidsal's offer by choosing to buy Bidsal's membership interest (instead of selling its interest)  
16    based on the same \$5,000,000.00. Bidsal, who had counted on CLA not having the money to  
17    buy his membership interest, then sought to avoid having to sell contending that unless his  
18    offer was accepted the Green Valley Operating Agreement required that there be an appraisal  
19    to set the FMV. This claim was utterly meritless.

20            CLA then filed for arbitration, asserting that it had the right and asking for an Order  
21    compelling Bidsal to transfer his interest in Green Valley using \$5 million as the Fair Market  
22    Value of Green Valley. (A copy of CLA's Demand for Arbitration is attached as Exhibit "2").

23            That dispute went to arbitration in September, 2017 and, after a two day hearing (May  
24    25    26    27    28

8 and May 9, 2018) on April 5, 2019 the Arbitrator, Judge Stephen E. Haberfeld, issued an Award in favor of CLA (attached as Exhibit "3"). The Award was later (December 6, 2019) confirmed and reduced to a Judgment by Judge Joanna S Kishner, District Court Judge, Clark County Nevada, who not only confirmed, but independently reached the same conclusion (attached as Exhibit "4").<sup>2</sup>

In item 1 of the Relief Granted by Judge Haberfeld's Award, appearing on page 19 thereof, Bidsal was ordered to transfer his membership interest:

"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."

### III. **THE TENDER ISSUE HAS ALREADY BEEN RESOLVED**

The so-called Tender issue has been resolved.

First, in the first arbitration, CLA successfully sought to force Bidsal to sell using the \$5,000,000.00 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 if Bidsal was correct, he has lost that claim by failing to assert it.

In ordering the transfer, any issue of Tender (which Bidsal never raised in the

---

<sup>2</sup> In connection with the Petition to Confirm the Arbitration Award, Bidsal filed a Motion to Vacate the Award which Judge Kishner denied.

1 arbitration, in federal court or state court) no longer could exist. That issue has been  
 2 subsumed in the Judgement. Stated differently, the “Tender” issue is behind us, and is not  
 3 available now to defeat CLA’s becoming the sole owner of Green Valley.  
 4

5 Second, this issue was decided when in connection with CLA's motion to replace  
 6 Bidsal as the day-to-day manager, Bidsal, FOR THE FIRST TIME, raised the issue, that is,  
 7 that CLA failed to tender the purchase price and has therefore waived the right to force the  
 8 purchase of the membership interest. That issue was briefed by both parties in supplemental  
 9 briefs as ordered by the Arbitrator. In ruling on the motion, the July 20, 2020 Order stated  
 10 that:  
 11

12 "Claimant's contention at the Motion hearing and in supplemental briefing that  
 13 Claimant cannot be removed as day-to-day manager in part because Respondent failed  
 14 to tender payment for Claimant's interest is without merit, and for no other reason than  
 15 as the result of the determination by Judge Habersfeld in the prior arbitration that  
 16 Claimant shall transfer his interest in GV to Respondent." (See Order attached as  
 17 Exhibit “5”, p.4, footnote 1).

### 18 **III. ANY TENDER BY CLA WAS EXCUSED**

19 Even if the Tender issue not previously resolved, the undisputed evidence shows that  
 20 any obligation of CLA to tender has been excused by Bidsal’s conduct.

21 Exhibit "6" attached hereto shows that on August 15, 2017 CLA’s owner, Ben  
 22 Golshani, wrote, **“I am planning on closing escrow to purchase your membership interest**  
 23 **in both entities pursuant to my elections to buy at the price you offered. Since we are**  
 24 **both located in Los Angeles, I suggest we use a local escrow company.”** The next day  
 25 Bidsal responded, **“We cannot open any escrow since we we [sic] do not agree on this**  
 26 **matter.”**

27 Even if there had not then been a tender, Bidsal’s refusal to proceed and timely close  
 28

1 excused any need for tender. Noteworthy is that Bidsal never contended that there had been a  
2 failure of proper tender!

3 On August 28 another attempt was made to get Bidsal to open an escrow and perform.  
4 CLA's Exhibit "7" shows that whatever amount was needed was on hand and Bidsal was  
5 told, "Please be advised that my client has all of the funds required to close the escrow for  
6 purchase of Mr. Bidsal's membership interest in Green Valley commerce [sic], LLC as shown  
7 by the attached statements. All that remains is that we agree upon escrow and your client  
8 performs as required under the Operating Agreement".  
9

10 But Bidsal never so agreed or performed. Indeed, three days later Mr. Bidsal's  
11 attorney, responding to the August 28 letter confirmed in Exhibit "8" Bidsal's continuing  
12 refusal to proceed without an appraisal, a demand that he had no right to make. For that  
13 reason, any requirement for tender was excused. There is no requirement to make tender  
14 when the other side states it will not proceed. Moreover, in responding to CLA's demand to  
15 open escrow, Mr. Shapiro's **made no contention that the evidence of the available funds**  
16 **was not an adequate tender or that the amount was not sufficient!**  
17

18 So it cannot be disputed that CLA offered to open escrow and close, provided proof of  
19 funds, and that Bidsal refused.  
20

21 Both individually and through its counsel CLA wrote to Bidsal attempting to get the  
22 escrow opened. CLA's deposit of funds in escrow could not and did not arise until the  
23 escrow was opened—the escrow which Bidsal refused to open. Any CLA obligation of  
24 payment or tender was excused unless and until Bidsal acknowledged that he was going to  
25 abide by the Operating Agreement and proceed with opening an escrow.  
26

27 In 7510 Perla Del Mar Ave Trust vs. Bank of America, 458 P. 3d 348, 351 (Nev.  
28

2020) the Court stated:

**"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." (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 \$5,000,000.00 fair market valuation. Rather than proceed to sell his membership interest in the 30 days as set forth in the Operating Agreement, Bidsal demanded an appraisal and refused to proceed without one. 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 Exhibit \_\_\_\_.

Just as in Perla Del Mar, by his "conduct" Bidsal made it clear he was not going to proceed and close as required by the Operating Agreement. As such, tender, to the extent required and not made, was waived.

The evidence as well as the prior arbitration award establishes that Bidsal's insistence on an appraisal and refusal to proceed with the 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).

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).

For all of the foregoing reasons, CLA submits that this Motion in Limine should be granted and that no evidence on the issue of Tender shall be admissible.

Respectfully submitted:

Dated: March 5, 2021

LAW OFFICES OF RODNEY T. LEWIN,  
A Professional Corporation

By: /s/ Rodney T. Lewin, Esq

RODNEY T. LEWIN,  
Attorneys for CLA

### **CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, N.R.C.P. 5(b), and EDCR 7.26, I hereby certify that I am the principal of Law Offices of Rodney T. Lewin, and that on the 5th day of March, 2021, I served a true and correct copy of the foregoing CLA PROPERTIES, LLC's MOTION IN LIMINE RE TENDER by:

X Electronic Service via Jams Portal

Dated: March 5, 2021.

LAW OFFICES OF RODNEY T. LEWIN,  
A Professional Corporation

By: /s/ Rodney T. Lewin, Esq

RODNEY T. LEWIN,  
Attorneys for CLA

## **EXHIBIT “1”**

## **EXHIBIT “1”**

# 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.

BG SB

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

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

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

**State of Formation** shall mean the State of Nevada.

## **Article II.**

### **OFFICES AND RECORDS**

#### **Section 01    Registered Office and Registered Agent.**

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

The resident agent shall be appointed by the Member Manager.

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

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

#### **Section 02    Limited Liability Company Offices.**

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

#### **Section 03    Records.**

§ 6

PB

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

- (a) A current list of the full name and last known business address of each Member and Managers separately identifying the Members in alphabetical order;
- (b) A copy of the filed Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any document has been executed;
- (c) Copies of the Limited Liability Company's federal income tax returns and reports, if any, for the three (3) most recent years;
- (d) Copies of any then effective written operating agreement and of any financial statements of the Limited Liability Company for the three (3) most recent years;
- (e) Unless contained in the Articles of Organization, a writing setting out:
  - (i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and which each Member has agreed to contribute;
  - (ii) The items as which or events on the happening of which any additional contributions agreed to be made by each Member are to be made;
  - (iii) Any right of a Member to receive, or of a Manager to make, distributions to a Member which include a return of all or any part of the Member's contribution; and
  - (iv) Any events upon the happening of which the Limited Liability Company is to be dissolved and its affairs wound up.
- (f) The Limited Liability Company shall also keep from time to time such other or additional records, statements, lists, and information as may be required by law.
- (g) If any of the above said records under Section 3 are not kept within the State of Formation, they shall be at all times in such condition as to permit them to be delivered to any authorized person within three (3) days.

#### **Section 04 Inspection of Records.**

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

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

### **Article III.**

#### **MEMBERS' MEETINGS AND DEADLOCK**

##### **Section 01 Place of Meetings.**

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

##### **Section 02 Annual Meetings.**

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

##### **Section 03 Special Meetings.**

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

##### **Section 04 Action in Lieu of Meeting.**

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

##### **Section 05 Notice.**

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

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

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

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

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

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

#### **Section 06 Waiver of Notice.**

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

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

#### **Section 07 Presiding Officials.**

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

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

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

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

- (A) Alter the Preferred Allocations provided for in *Exhibit "B"*;
- (B) Agree to continue the business of the Company after a Dissolution Event;
- (C) Approve any loan to any Manager or any guarantee of a Manager's obligations; and
- (D) Authorize or approve a fundamental change in the business of the Company.
- (E) Approve a sale of substantially all of the assets of the Company.
- (F) Approve a change in the number of Managers or replace a Manager or engage a new Manager.

**Section 13 Meeting by Telephonic Conference or Similar Communications Equipment.**

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

**Section 14. Deadlock.**

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

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

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

#### **Article IV. MANAGEMENT**

##### **Section 01    Management.**

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

##### **Section 02    Rights, Powers and Obligations of Management.**

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

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

BG  
PB

- (a) To deal in leasing, development and contracting of services for improvement of the properties owned subject to both Managers executing written authorization of each expense or payment exceeding \$ 20,000;
- (b) To prosecute, defend and settle lawsuits and claims and to handle matters with governmental agencies;
- (c) To open, maintain and close bank accounts and banking services for the Limited Liability Company.
- (d) To incur and pay all legal, accounting, independent financial consulting, litigation and other fees and expenses as the Management may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred.
- (e) To execute and deliver any contracts, agreements, instruments or documents necessary, advisable or appropriate to evidence any of the transactions specified above or contemplated hereby and on behalf of the Limited Liability Company to exercise Limited Liability Company rights and perform Limited Liability Company obligations under any such agreements, contracts, instruments or documents;
- (f) To exercise for and on behalf of the Limited Liability Company all the General Powers granted by law to the Limited Liability Company;
- (g) To take such other action as the Management deems necessary and appropriate to carry out the purposes of the Limited Liability Company or this Agreement; and
- (h) Manager shall not pledge, mortgage, sell or transfer any assets of the Limited Liability Company without the affirmative vote of at least ninety percent in Interest of the Members.

### **Section 03 Removal.**

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

## **Article V. MEMBERSHIP INTEREST**

### **Section 01 Contribution to Capital.**

BG  
JD

The Member contributions to the capital of the Limited Liability Company : wholly or partly, by cash, by personal property, or by real property, or service unanimous consent of the Members, other forms of contributions to capital of a company authorized by law may be authorized or approved. Upon receipt of the 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

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.

$(FMV - COP) \times 0.5$  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.

$(FMV - COP) \times 0.5 +$  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.

BC 10

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

### **DISTRIBUTION OF PROFITS**

#### **Section 03    Qualifications and Conditions.**

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

#### **Section 04    Record Date.**

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

#### **Section 05    Participation in Distribution of Profit.**

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

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

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

#### **Section 07    Date of Payment of Distribution of Profit.**

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

### **Article VI.**

### **ISSUANCE OF MEMBERSHIP INTEREST CERTIFICATES**

#### **Section 01    Issuance of Certificate of Interest.**

BG  
RB

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

## **Section 02    Transfer of Certificate of Interest.**

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

## **Section 03    Lost, Stolen or Destroyed Certificates.**

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

- (a) makes proof by affidavit, in form and substance satisfactory to the Management, that a previously issued Certificate has been lost, destroyed or stolen;
- (b) requests the issuance of a new Certificate before the Company has notice that the Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
- (c) Satisfies any other reasonable requirements imposed by the Management.

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

## **Article VII. AMENDMENTS**

### **Section 01    Amendment of Articles of Organization.**

86  
10

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

**Section 02 Amendment, Etc. of Operating Agreement.**

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

**Article VIII.**

**COVENANTS WITH RESPECT TO, INDEBTEDNESS,  
OPERATIONS, AND FUNDAMENTAL CHANGES**

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

**Section 01 Title to Company Property.**

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

**Section 02 Effect of Bankruptcy, Death or Incópetency 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.

B G  
PB

**Article X.**  
**MISCELLANEOUS**

**a. Fiscal Year.**

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

**b. Financial Statements; Statements of Account.**

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

**c. Events Requiring Dissolution.**

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

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

B.G.  
JP

**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.**

B.G.  
-  
PB

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

### **I. 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.

**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.

BC  
PB

## 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

B.G. 98

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.

BE  
10

**Member:**

Shawn Bidsal  
Shawn Bidsal, Member

CLA Properties, LLC

by Benjamin Golshani  
Benjamin Golshani, Manager

**Manager/Management:**

Shawn Bidsal  
Shawn Bidsal, Manager

Benjamin Golshani  
Benjamin Golshani, 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

8/6/08  
AB

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

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

5

**ALLOCATION OF PROFITS AND LOSSES; TAX AND ACCOUNTING MATTERS**

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

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

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

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

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

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

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

- 5.1.2 Allocations With Respect to Property Solely for tax purposes, in determining each Member's allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to revalued property where the Company's property is revalued pursuant to paragraph (b)(2)(iv)(f) of Section 1.704-1 of the Income Tax Regulations, shall be allocated to the Members in the manner (as to revaluations, in the same manner as) provided in Section 704(c) of the Code. The allocation shall take into account, to the full extent required or permitted by the Code, the difference between the adjusted basis of the property to the Member contributing it (or, with respect to property which has been revalued, the adjusted basis of the property to the Company) and the fair market value of the property determined by the Members at the time of its contribution or revaluation, as the case may be.
- 5.1.3 Minimum Gain Chargeback Notwithstanding anything to the contrary in this Section 2.1, if there is a net decrease in Company Minimum Gain or Company Nonrecourse Debt Minimum Gain (as such terms are defined in Sections 1.704-2(b) and 1.704-2(i)(2) of the Income Tax Regulations, but substituting the term "Company" for the term "Partnership" as the context requires) during a Company taxable year, then each Member shall be allocated items of Company income and gain for such year (and, if necessary, for subsequent years) in the manner provided in Section 1.704-2 of the Income Tax Regulations. This provision is intended to be a "minimum gain chargeback" within the meaning of Sections 1.704-2(f) and 1.704-2(i)(4) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.
- 5.1.4 Qualified Income Offset. Subject to the provisions of subsection 2.1.3, but otherwise notwithstanding anything to the contrary in this Section 2.1, if any Member's Capital Account has a deficit balance in excess of such Member's obligation to restore his or its Capital Account balance, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of Section 1.704-1 of the Income Tax Regulations, then sufficient amounts of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be allocated to such Member in an amount and manner sufficient to eliminate such deficit as quickly as possible. This provision is intended to be a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Income Tax Regulations and shall be interpreted and implemented as therein provided.
- 5.1.5 Depreciation Recapture. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, gain recognized (or deemed recognized under the provisions hereof) upon the sale

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

- 5.1.6 Loans If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and subsections 2.1.2 – 2.1.4, inclusive, of this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.
- 5.1.7 Tax Credits Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members under subsection 2.1.1 hereof, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated.
- 5.1.8 Change of Pro Rata Interests. Except as provided in subsections 2.1.6 and 2.1.7 hereof or as otherwise required by law, if the proportionate interests of the Members of the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided in section 2.1.1 during each such portion of the taxable year in question.
- 5.1.9 Effect of Special Allocations on Subsequent Allocations. Any special allocation of income or gain pursuant to subsections 2.1.3 or 2.1.4 hereof shall be taken into account in computing subsequent allocations of income and gain pursuant to this Section 9.1 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 2.1 if such special allocations of income or gain under subsection 2.1.3 or 2.1.4 hereof had not occurred.
- 5.1.10 Nonrecourse and Recourse Debt. Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.7042(b)(4) of the

Income Tax Regulations shall be allocated to the Members bearing the economic risk of loss with respect to such debt in accordance with Section 1704-2(i)(1) of the Income Tax Regulations. Items of deduction and loss attributable to recourse liabilities of the Company, within the meaning of Section 1.752-2 of the Income Tax Regulations, shall be allocated among the Members in accordance with the ratio in which the Members share the economic risk of loss for such liabilities.

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

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

### 5.3 Tax Status and Returns.

- 5.3.1 Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.
- 5.3.2 The Manager(s) shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within one-hundred twenty (120) days after the end of each calendar year, the Manager(s) shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare his or its federal, state and local income tax returns in accordance with applicable law then prevailing.
- 5.3.3 Unless otherwise provided by the Code or the Income Tax Regulations there under, the current Manager(s), or if no Manager(s) shall have been elected, the Member holding the largest Percentage Interest, or if the Percentage Interests be equal, any Member shall be deemed to be the "Tax Matters

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

BG  
F.B.

**EXHIBIT B**

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

**PREFERRED ALLOCATION AND DISTRIBUTION SCHEDULE**

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

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

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

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

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

Losses shall be allocated according to Capital Accounts.

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

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

BC  
PB

## **EXHIBIT “2”**

## **EXHIBIT “2”**

OFC copy



# 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	Shawn Bidsal		
ADDRESS	14309 Sherman Way Boulevard, Suite 201		
CITY	Van Nuys	STATE	California ZIP 91405
PHONE	818-901-8800	FAX	EMAIL wc1co@yahoo.com

## RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY	James E. Shapiro		
FIRM/COMPANY	Smith & Shapiro		
ADDRESS	2520 St. Rose Parkway, Suite 220		
CITY	Henderson	STATE	Nevada ZIP 89074
PHONE	702-318-5033	FAX	702-318-5034 EMAIL jshapiro@smithshapiro.com

## FROM CLAIMANT

Add more claimants on page 7.

CLAIMANT NAME	CLA Properties, LLC		
ADDRESS	2801 South Main Street		
CITY	Los Angeles	STATE	California ZIP 90007
PHONE	213-718-2416	FAX	EMAIL bengol7@yahoo.com

## CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY	(1) Rodney T. Lewin and (2) Louis Garfinkel (info on attached)		
FIRM/COMPANY	Law Offices Rodney T. Lewin, APC		
ADDRESS	8665 Wilshire Boulevard, Suite 210		
CITY	Beverly Hills	STATE	California ZIP (90211
PHONE	310-659-6771	FAX	310-659-7354 EMAIL rod@rtlewin.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 ("Green Valley"), each with a 50% membership interest. Green Valley is governed by its Operating Agreement dated June 15, 2011. Article V Section 4 of the Operating Agreement is captioned Purchase or Sell Right among Members. In effect the provisions of Section 4 are buy-sell rights whereby one member can offer to buy out the other (the former called "Offering Member" and the latter called "Remaining Member") at a formula price based on the fair market value of Green Valley (called "FMV"). The Remaining Member then has the right either (1) to sell at the price based on the FMV stated by Offering Member, (2) demand an appraisal to determine FMV or (3) buy out the Offering Member at the same FMV.

On July 7, 2017 Respondent through his counsel (and there labelled "Offering Member") offered to buy out Claimant (there labelled "Remaining Member") at a price based on \$5,000,000 fair market value of Green Valley (there labelled "FMV"). In a timely fashion Claimant responded (directly to Respondent) in part that it "elects and exercises its option to purchase your 50% membership interest in the Company on the terms set forth in the July 7, 2017 letter based on your \$5,000,000 valuation of the Company." Respondent has refused to sell his interest, but instead has demanded an appraisal to determine FMV.

In fact Section 4.2 in part provides that "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. . ." It does not provide that the Offering Member can after setting the FMV himself can then demand an appraisal; that was the sole right of the Remaining Member (option (2) above). But Claimant did not exercise that option. Rather it elected the third option, to buy out Respondent based on the FMV that Respondent established.

Any doubt in this regard is removed by the concluding paragraph of Section 4.2 which states: "The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) . . . 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)."

AMOUNT IN CONTROVERSY (US DOLLARS)



# 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. [After providing for possible resolution through representatives which has taken place without success it states] [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 ~~for~~ fees and expenses of attorneys, accountants and other experts) to the prevailing party." (Other details follow within the section.)

## 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

DATE September 26, 2017

NAME  
(PRINT/TYPED)

CLA Properties, LLC, by Rodney T. Lewin, its attorney

**ATTACHMENT**

The information for Louis Garfinkel is as follows:

Louis E. Garfinkel, Esq.  
Nevada Bar No. 3416  
Levine, Garfinkel & Eckersley  
8880 W. Sunset Road, Suite 390  
Las Vegas, NV 89148  
Tel: (702) 673-1612  
Fax: (702) 735-2198

The relief sought is as follow: Respondent be ordered to transfer his interest in Green Valley Commerce, LLC ("Green Valley") to Claimant upon payment of the price determined in accordance with Section 4 of the Operating Agreement for Green Valley using five million dollars as the fair market value of Green Valley.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of  
4 18 and not a party to the within action; my business address is 8665 Wilshire Boulevard, Suite  
5 210, Beverly Hills California 90211-2931.

6 On September 26, 2017, I served the foregoing document described as **DEMAND  
FOR ARBITRATION FORM** on the interested parties in this action by placing a true copy  
7 thereof enclosed in a sealed envelope addressed as follows:

8 James E. Shapiro  
9 Smith & Shapiro  
2520 St. Rose Parkway, Suite 220  
Henderson, Nevada 89074

Shawn Bidsal  
14309 Sherman Way, Suite 201  
Van Nuys, California 91405

11 X **BY MAIL:** I caused such envelope to be deposited in the mail at Beverly Hills,  
12 California. The envelope was mailed with postage thereon fully prepaid. I am "readily  
13 familiar" with the firm's practice of collection and processing correspondence for mailing. It is  
14 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.

15        **VIA OVERNITE EXPRESS** I caused such packages to be placed in the Overnight Express  
16 pick up box for overnight delivery.

17        **VIA E-MAIL TO:** \_\_\_\_\_

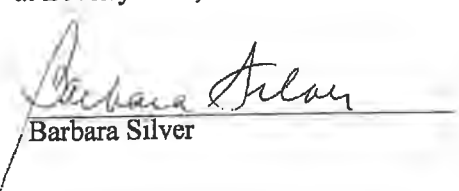
18        **BY FACSIMILE.** Pursuant to Rule 2005. The fax number that I used is set forth above.  
19 The facsimile machine which was used complied with Rule 2003(3) and no error was reported  
by the machine. Pursuant to Rule 2005(i), the machine printed a transmission record of the  
transmission

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

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

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

25 Executed on September 26, 2017 at Beverly Hills, California.

26   
27 Barbara Silver  
28

## **EXHIBIT “3”**

## **EXHIBIT “3”**

**IAMS 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.

/////

**I**  
**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<sup>1</sup> — 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,<sup>2</sup>

<sup>1</sup> 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."

<sup>2</sup> 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,"<sup>3</sup> "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.

---

<sup>3</sup> 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 - COP) 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,<sup>4</sup> 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,<sup>5</sup> 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.

---

<sup>4</sup> 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.

<sup>5</sup> 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

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/offerator 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,<sup>6</sup> 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

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

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

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

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" set

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

and sale price of "the Membership Interest" which was the subject of the parties' Section 4.2-compliant offer and acceptance.<sup>7</sup>

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

---

<sup>7</sup> 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. <sup>8</sup> Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

--- 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.<sup>8</sup> 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)

---

<sup>8</sup> Similarly, the Arbitrator has not considered any other instance in which Mr. Bidsal contended that he allegedly had appraisal rights.

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

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<sup>9</sup> --- 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.<sup>10</sup>

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

<sup>9</sup> Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345 (1969) ("Brunzell").

<sup>10</sup> 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.

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) \$1,358.63, 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 be 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."<sup>11</sup> --- 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-

---

<sup>11</sup> 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.<sup>12</sup> Both sides had Southern California counsel, as well as Nevada counsel, as part of their trial teams and Messrs. Bidsal and Golshami 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,<sup>13</sup> as were their billed hours of service, in the circumstances.<sup>14</sup> That is so notwithstanding the

<sup>12</sup> 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).

<sup>13</sup> The hourly rates of Messrs. Lewin and Agay are below comparable Southern California prevailing hourly rates for comparable legal services and relevant experience.

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

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 Bunzell 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.<sup>15</sup>

/////

---

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

<sup>15</sup> 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)."

**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.

/////

/////

/////

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

**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:

Rodney T. Lewin Esq.  
L/O Rodney T. Lewin  
8665 Wilshire Blvd.  
Suite 210  
Beverly Hills, CA 90211  
Phone: 310-659-6771  
rod@rtlewin.com

Parties Represented:  
CLA Properties, LLC

James E. Shapiro Esq.  
Sheldon A. Herbert Esq.  
Smith & Shapiro  
3333 E Serene Ave.  
Suite 130  
Henderson, NV 89074  
Phone: 702-318-5033  
jshapiro@smithshapiro.com  
sherbert@smithshapiro.com

Parties Represented:  
Shawn Bidsal


Louis E. Garfinkel Esq.  
Levine Garfinkel Eckersley & Angioni  
1671 W. Horizon Ridge Parkway  
Suite 230  
Henderson, NV 89102  
Phone: 702-735-0451  
lgarfinkel@lgkattorneys.com

Parties Represented:  
CLA Properties, LLC

Daniel Goodkin Esq.  
Goodkin & Lynch  
1875 Century Park East  
Suite 1860  
Los Angeles, CA 90067  
Phone: 310-853-5730  
dgoodkin@goodkinlynch.com

Parties Represented:  
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  
alieu@jamsadr.com

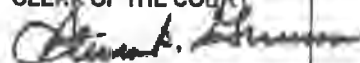
## EXHIBIT "C"

## EXHIBIT "C"

## **EXHIBIT “4”**

## **EXHIBIT “4”**

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



1 **NEOJ**

2 Louis E. Garfinkel, Esq.

3 Nevada Bar No. 3416

4 LEVINE GARFINKEL & ECKERSLEY

5 1671 W. Horizon Ridge Pkwy, Suite 230

6 Henderson, NV 89012

7 Tel: (702) 673-1612

8 Fax: (702) 735-0198

9 Email: lgarfinkel@lgealaw.com

10 *Attorneys for Petitioner CLA Properties LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CLA PROPERTIES LLC, a limited liability  
14 company,

15 Petitioner,

16 vs.

17 SHAWN BIDSAL, an individual,

18 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**

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

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Opposition and Counter-petition to Vacate the Arbitrator's Award, a copy of which is attached as Exhibit  
2 "1."

3 Dated this 16<sup>th</sup> day of December, 2019  
4

5 LEVINE & GARFINKEL

6  
7 By: Louis E. Garfinkel  
8 Louis E. Garfinkel, Esq. (Nevada Bar No. 3416)  
9 1671 W. Horizon Ridge Pkwy, Suite 230  
10 Henderson, NV 89012  
11 Tel: (702) 673-1612 / Fax: (702) 735-0198  
12 Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)  
13 *Attorneys for Petitioner CLA Properties LLC*  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 16<sup>th</sup> 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

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

James E. Shapiro, Esq.  
Nevada Bar No. 7907  
Aimee M. Cannon, Esq.  
Nevada Bar No. 11780  
Smith & Shapiro, PLLC  
3333 E. Serene Ave, Suite 130  
Henderson, NV 89074  
T: (702) 318-5033/F: (702) 318-5034  
Email: [ishapiro@smithshapiro.com](mailto:ishapiro@smithshapiro.com)  
[acannon@smithshapiro.com](mailto:acannon@smithshapiro.com)  
*Attorneys for Respondent Shawn Bidsal*

  
Melanie Bruner, an Employee of  
LEVINE & GARFINKEL

**EXHIBIT “1”**

**EXHIBIT “1”**

Electronically Filed  
12/6/2019 8:49 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4  
5  
6 **IN THE MATTER OF THE PETITION OF**  
7 **CLA PROPERTIES LLC**

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

8 **ORDER GRANTING PETITION FOR**  
9 **CONFIRMATION OF ARBITRATION**  
10 **AWARD AND ENTRY OF JUDGMENT**  
11 **AND DENYING RESPONDENT'S**  
12 **OPPOSITION AND**  
13 **COUNTERPETITION TO VACATE**  
14 **THE ARBITRATOR'S AWARD**

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

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

24 **I. PROCEDURAL AND FACTUAL BACKGROUND**

25 CLA Properties, LLC (Petitioner or CLA) and Shawn Bidsal (Respondent or Mr.  
26 Bidsal) were the sole members of Green Valley, LLC (Green Valley), a Nevada limited  
27

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

4 It is undisputed that Mr. Golshani on behalf of CLA, along with Respondent  
 5 executed an Operating Agreement for Green Valley (Operating Agreement) on June 15,  
 6 2011. Section 4 of Article 5 (Section 4) of the Operating Agreement contained  
 7 provisions regarding how the membership interest of one member could be purchased  
 8 and/or sold to the other member. The Operating Agreement allows members to initiate  
 9 the purchase or sale of one member's interest by the other. These provisions were  
 10 drafted by third party attorney, David LeGrand, and then were modifications made.  
 11 More specifically, Section 4 allowed the offering member to buy out the remaining  
 12 member at a price based upon a valuation of the fair market value of Green Valley. It is  
 13 then that the remaining member is given the option to buy or sell pursuant to the  
 14 valuation or demand an appraisal.  
 15

16 Section 4 of Article V commences on page 10 and the relevant  
 17 portions read as follows:  
 18

19  
 20 **Section 4. Purchase or Sell Right among Members.**

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

23 **Section 4.1 Definitions.**

24 Offering Member means the member who offers to purchase the  
 25 membership Interest(s) of the Remaining Member(s). "Remaining  
 members" means the Members who received an offer (from  
 Offering Member) to sell their shares.

26 "COP" means the cost of purchase" as it is specified in the  
 27 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 determined by Section 4.2, based on the following formula.

$(FMV - COP) \times 0.5$  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

1 refused to sell his interest to Petitioner and instead stated that he had a right to have a  
2 fair market value appraisal of his membership interest. The parties disputed whether  
3 the Operating Agreement provided that Respondent had a right to seek a fair market  
4 valuation of his interest or whether the Agreement provided that Respondent had to sell  
5 his share at the \$5 million dollar price.  
6

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

9 Article III, Section 14.1 of the Operating Agreement of Green Valley is entitled  
10 "Dispute Resolution" and contains an arbitration provision whereby the parties agreed  
11 the dispute would be resolved exclusively by arbitration. Section 14.1 states in  
12 pertinent part:  
13

14 The representative shall promptly meet in good faith effort  
15 to resolve the dispute.

16 If the representatives do not agree upon a decision within  
17 thirty (30) calendar days after reference of the matter to  
18 them, any controversy, dispute or claim arising out of or  
19 relating in any way to this Agreement or the transaction  
20 arising hereunder shall be settled exclusively by arbitration  
21 in the City of Las Vegas, Nevada. Such arbitration shall be  
22 administered by JAMS in accordance with its then  
23 prevailing expedited rules, by one independent and impartial  
24 arbitrator selected in accordance with such rules. The  
25 arbitration shall be governed by the United States  
26 Arbitration Act, 9 U.S.C. § 1, *et seq.* . . . The award  
27 rendered by the arbitrator shall be final and not subject  
28 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

1 Arbitrator Stephen E. Haberfeld (Arbitrator) was appointed in JAMS Arbitration  
2 Number 1260004569. On April 5, 2019, the Arbitrator entered the Award in favor of  
3 Petitioner and ordered Respondent to transfer his 50% membership interest in Green  
4 Valley to Petitioner, free and clear of all liens and encumbrances. Further, the Award  
5 ordered the transfer by sale at a price computed at \$5 million, in accordance with  
6 Section 4. Lastly, the Award granted Petitioner \$298,256.00 plus attorneys' fees and  
7 costs. Conversely, Respondent was awarded nothing on the counterclaim.  
8

9 On May 21, 2019, Petitioner filed the Petition for Confirmation of Arbitration  
10 Award and Entry of Judgment, which asserted that Respondent failed to comply with the  
11 Arbitrator's Award. On July 15, 2019, Respondent filed an Opposition to CLA's Petition  
12 for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to  
13 Vacate Arbitration Award.  
14

15 Petitioner argued that Respondent is required to transfer his fifty (50%) percent  
16 Membership Interest in Green Valley Commerce, LLC (Green Valley), free and clear of  
17 all liens and encumbrances, to CLA Properties, LLC. Petitioner further argued the price  
18 is specifically to be computed pursuant to Section 4.2 of the Operating Agreement, and  
19 with the Fair Market Value portion of the formula fixed as five million dollars. Petitioner  
20 contends that the ruling of the Arbitrator both as to the sale price and the attorney fees  
21 awarded is correct and should be affirmed.  
22

23 Respondent argued the Court should vacate the Award because the Arbitrator  
24 interpreted Section 4.2 of the Operating Agreement as a "forced buy-sell" agreement.  
25 Further, Respondent disagrees with the Arbitrator's findings that the subject contract  
26 provision was drafted by Respondent, rather than third-party, David LeGrand. Lastly,  
27  
28

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

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

## 10 11 II. ANALYSIS

12 At the November 12, 2019 hearing, the parties agreed that this Court has  
13 jurisdiction to review the Arbitrator's Award pursuant to Nevada Revised Statute  
14 38.244(2). Moreover, the parties agreed the Court's decision to vacate the Award is.  
15 properly governed by United States Arbitration Act, 9 U.S.C. § 9. Respondent also  
16 analyzed the Motions pursuant to Nevada Revised Statute 38. The parties further  
17 agreed that regardless if the Court utilized the federal or state standard, the result would  
18 be the same. The dispute is whether the Court should affirm or vacate the Arbitrator's  
19 award.  
20

21 Having reviewed the papers and pleadings on file herein, including, but not  
22 limited to, exhibits and affidavits; having heard oral arguments of the parties in excess  
23 of ninety minutes, the Court finds that the Arbitration award should be affirmed. The  
24 language of the Operating Agreement supports the decision of Arbitrator Haberfeld. (Ex.  
25 MM, App 1088). The Court finds that Arbitrator Haberfeld's analysis that the offering  
26  
27  
28

1 member does not have a right to an appraisal in the instant scenario is supported by the  
2 language of the Operating Agreement and the testimony of the witnesses including that  
3 of David LeGrand as well as the other evidence presented.

4 Although Respondent contends that the Arbitrator interpreted Section 4.2 of the  
5 Operating Agreement as a "forced buy-sell" agreement, the decision sets forth that the  
6 labeling of the Agreement was not the controlling factor, but instead it was the language  
7 of the Agreement as supported by the evidence presented at the Arbitration. The fact  
8 that the final provision in the Agreement was not the same language initially drafted by  
9 Mr. LeGrand has not been shown by Respondent to merit setting aside the Arbitrator's  
10 findings under either the federal or state standards. Further, the Arbitrator said that his  
11 decision would be the same, even if Mr. Golshani had been the draftsman. See, e.g.,  
12 17 of Ex. MM pg 9, APP 1088 at 1097. Thus, whether both parties modified the  
13 language in some respect or if Respondent's position is adopted that it was only Mr.  
14 Golshani, the outcome is the same—there was not sufficient evidence that the  
15 Arbitrator's decision should be vacated based on his interpretation of who drafted  
16 the provision.

17 Further, while Respondent contends the Arbitrator exceeded his authority by  
18 ignoring the plain language definition of "FMV" (fair market value), as stated in the  
19 Operating Agreement, there is insufficient support or evidence to support that  
20 contention. Instead, Arbitrator's Haberfeld's decision clearly articulates the evidence he  
21 relied on in making his decision and he supported that decision to the extent necessary  
22 to have it affirmed both under state and federal law. While Respondent disagrees with  
23 the decision, he has not established pursuant to the plethora of case law cited in both  
24  
25  
26  
27  
28

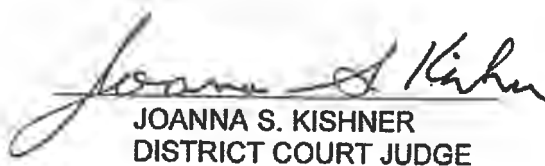
IT IS HEREBY ORDERED, ADJUDGED, and DECREED that pursuant to the Operating Agreement, 9 U.S.C. § 9 and Nevada Revised Statute 38.244(2), Petitioner's Confirmation of Arbitration Award and Entry of Judgement is GRANTED. Accordingly, the Court ORDERS Judgment in favor of Petitioner CLA Properties, LLC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

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

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

3  
4 **IT IS FURTHER ORDERED ADJUDGED, and DECREED** that Respondent's  
5 Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of  
6 Judgment and Counterpetition to Vacate Arbitration Award is DENIED.<sup>1</sup>  
7

8 Dated this 5<sup>th</sup> day of December, 2019.  
9

10  
11   
12 JOANNA S. KISHNER  
13 DISTRICT COURT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

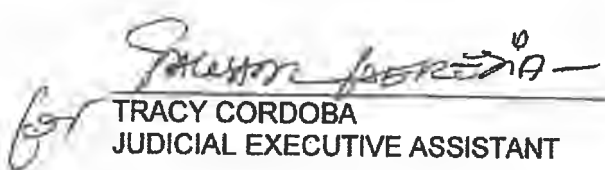
27 <sup>1</sup> Any request for fees and/or costs for the present action before the state District Court is not presently  
28 before the Court and thus, if any request were to be made it would need to be by separate Motion.

**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:

**Louis E. Garfinkel, Esq.**  
**1671 W. HORIZON RIDGE PKWY, STE. 230**  
**HENDERSON, NV. 89031**

**James E. Shapiro, Esq.**  
**2400 SAINT ROSE PKWY, STE. 220**  
**HENDERSON, NV. 89074**

  
**TRACY CORDOBA**  
**JUDICIAL EXECUTIVE ASSISTANT**

## **EXHIBIT “5”**

## **EXHIBIT “5”**

HON. DAVID T. WALL (Ret.)  
 JAMS  
 3800 Howard Hughes Pkwy., 11<sup>th</sup> 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.<sup>1</sup>

**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 (9<sup>th</sup> 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

<sup>1</sup> 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.

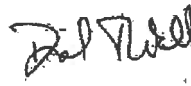
Claimant also avers that some of the subpoenas are overbroad by requesting all documents regarding “the arbitrations between Shawn Bidsal and CLA, including this current arbitration.” To the extent the subpoena can be interpreted to require the production of documents not relevant to the current Arbitration 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:

James E. Shapiro Esq.  
Smith & Shapiro  
3333 E Serene Ave.  
Suite 130  
Henderson, NV 89074  
Phone: 702-318-5033  
jshapiro@smithshapiro.com  
Parties Represented:  
Shawn Bidsal

Louis E. Garfinkel Esq.  
Levine Garfinkel & Eckersley  
1671 West Horizon Ridge Parkway  
Suite 230  
Henderson, NV 89012  
Phone: 702-217-1709  
lgarfinkel@lgealaw.com  
Parties Represented:  
CLA Properties, LLC

Rodney T. Lewin Esq.  
L/O Rodney T. Lewin  
8665 Wilshire Blvd.  
Suite 210  
Beverly Hills, CA 90211  
Phone: 310-659-6771  
rod@rtlewin.com  
Parties Represented:  
CLA Properties, LLC

Douglas D. Gerrard Esq.  
Gerrard Cox & Larsen  
2450 St. Rose Pkwy.  
Suite 200  
Henderson, NV 89074  
Phone: 702-796-4000  
dgerrard@gerrard-cox.com  
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.

  
Michelle Samaniego  
JAMS  
MSamaniego@jamsadr.com

**Louis Garfinkel**

---

**From:** Michelle Samaniego <MSamaniego@jamsadr.com>  
**Sent:** Monday, July 20, 2020 9:46 AM  
**To:** jshapiro@smithshapiro.com; Louis Garfinkel; rod@rtlewin.com; dgerrard@gerrard-cox.com  
**Cc:** rda@rtlewin.com  
**Subject:** Bidsal, Shawn vs. CLA Properties, LLC - JAMS Ref No. 1260005736  
**Attachments:** Order on Pending Motions.pdf

Counsel,

Please see the attached Order on Pending Motions being served via email only.

Best,  
 Michelle



**Michelle L. Samaniego**  
 Case Coordinator

**JAMS - Local Solutions. Global Reach.™**  
 3800 Howard Hughes Parkway  
 11<sup>th</sup> Floor  
 Las Vegas, NV 89123  
 P: 702-835-7808 | F: 702-437-5267  
[www.jamsadr.com](http://www.jamsadr.com)

Follow us on [LinkedIn](#) and [Twitter](#).

JAMS Las Vegas welcomes you back! We're retooled and ready to resolve your disputes. Schedule an in-person, virtual or hybrid hearing.

## **EXHIBIT “6”**

## **EXHIBIT “6”**

**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

## **EXHIBIT “7”**

## **EXHIBIT “7”**

RODNEY T. LEWIN  
NOREEN SPENCER LEWIN\*  
CHANDLER OWEN BARTLETT  
ALLYSON P. WITTNER

*Law Offices of*  
**RODNEY T. LEWIN**  
A PROFESSIONAL CORPORATION  
8665 WILSHIRE BOULEVARD, SUITE 210  
BEVERLY HILLS, CALIFORNIA 90211-2931  
TELEPHONE: (310) 659-6771  
TELECOPIER: (310) 659-7354

RANDALL A. SPENCER\*  
RICHARD D. AGAY  
MICHAEL Y. LAVAE  
OF COUNSEL  
\*ALSO LICENSED IN ILLINOIS  
  
WRITER'S EMAIL:  
ROD@RTLEWIN.COM

August 28, 2017

Via email and fax  
[jshapiro@smithshapiro.com](mailto:jshapiro@smithshapiro.com)  
(702) 318-5034

James E. Shapiro, Esq.  
Smith & Shapiro  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074

Re: Green Valley Commerce, LLC, a Nevada Limited Liability  
Company; **Proof of Funds to Purchase Membership Interest**

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.

Cordially,

Very truly yours,

LAW OFFICE OF RODNEY T. LEWIN  
A Professional Corporation  
RODNEY T. LEWIN

RTL/b  
Attachments  
Cc: Client via email  
Louis Garfinkel via email

F:\7157\letters\shapiro-082817



wellsfargo.com

August 23, 2017

Wells Fargo Bank  
141 W Adams Blvd  
Los Angeles, CA 90007

CLA Properties, LLC  
2801 S Main st  
Los Angeles, CA 90007

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	Date Opened	Current Balance*
0846	12/09/2015	2,010,051.54

\*The 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 of 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.

This letter is strictly confidential and the information herein is solely for Customer's lawful use. This letter is given in good faith, without legal liability. Wells Fargo does not represent and warrant that this information is complete or accurate and any errors or omissions in the information shall not be a basis for a claim against Wells Fargo. Wells Fargo does not undertake or accept any duty, responsibility, liability or obligation that may arise from providing this letter and/or for any reliance being placed upon information in this letter or for any loss or damage that may result from reliance being placed upon it. Wells Fargo does not assume any duty or obligation to you or any other person or entity by providing this information and this information is subject to change without notice to you. Wells Fargo does not undertake any duty to update you in the event any deposit account relationship referenced above is, or is the process of being, modified, terminated or cancelled. By requesting and utilizing this information, you agree to indemnify, defend, and hold Wells Fargo harmless from and against any claim resulting from the disclosure and use of the information by you, or from the breach by you of any agreement, representation or warranty herein.

If you have any questions, please contact me at: 213 745 7208.

A representative will be happy to assist you, as follows:

Monday – Thursday: 9:00 AM - 5:00 PM Pacific

Friday: 9:00 AM - 5:00 PM Pacific

Saturday: 9:00 AM - 5:00 PM Pacific

Thank you. We appreciate your business.

Sincerely,

  
Teresita Rosas

Assistant Branch Manager  
Wells Fargo Bank, N.A.

Together we'll go far





wellsfargo.com

August 23, 2017

Wells Fargo Bank  
141 W Adams Blvd  
Los Angeles, CA 90007

CLA Properties, LLC  
2801 S Main St  
Los Angeles, CA 90007

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	Date Opened	Current Balance*
0846	12/09/2015	2,010,051.54

\*The 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 of 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.

This letter is strictly confidential and the information herein is solely for Customer's lawful use. This letter is given in good faith, without legal liability. Wells Fargo does not represent and warrant that this information is complete or accurate and any errors or omissions in the information shall not be a basis for a claim against Wells Fargo. Wells Fargo does not undertake or accept any duty, responsibility, liability or obligation that may arise from providing this letter and/or for any reliance being placed upon information in this letter or for any loss or damage that may result from reliance being placed upon it. Wells Fargo does not assume any duty or obligation to you or any other person or entity by providing this information and this information is subject to change without notice to you. Wells Fargo does not undertake any duty to update you in the event any deposit account relationship referenced above is, or is the process of being, modified, terminated or cancelled. By requesting and utilizing this information, you agree to indemnify, defend, and hold Wells Fargo harmless from and against any claim resulting from the disclosure and use of the information by you, or from the breach by you of any agreement, representation or warranty herein.

If you have any questions, please contact me at: 213 745 7208.

A representative will be happy to assist you, as follows:

Monday – Thursday: 9:00 AM - 5:00 PM Pacific

Friday: 9:00 AM - 5:00 PM Pacific

Saturday: 9:00 AM - 5:00 PM Pacific

Thank you. We appreciate your business.

Sincerely,

  
 Teresita Rosas

Assistant Branch Manager  
Wells Fargo Bank, N.A.

Together we'll go far



## **EXHIBIT “8”**

## **EXHIBIT “8”**



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](mailto: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:

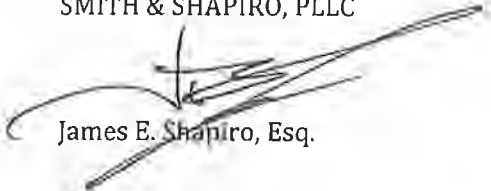
- (3) Commercial Appraisals, 2415 E Camelback Rd, Ste 700, Phoenix AZ 85016, 602-254-3318.
- (4) US Property Valuations, 3219 E Camelback Rd, Phoenix AZ 85018, 602-315-4560.

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

[smithshapiro.com](mailto:smithshapiro.com)

Main 2520 St. Rose Parkway, Suite 220 Henderson, NV 89074  
West 2915 Lake East Drive Las Vegas, NV 89117

Office 702.318.5033  
Fax 702.318.5034

## **EXHIBIT 242**

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

James E. Shapiro, Esq.  
 Aimee M. Cannon, Esq.  
 SMITH & SHAPIRO, PLLC  
 3333 E. Serene Ave., Suite 130  
 Henderson, Nevada 89074  
 O: (702) 318-5033

Douglas D. Gerrard, Esq.  
 GERRARD COX LARSEN  
 2450 St. Rose Pkwy., Suite 200  
 Henderson, Nevada 89074  
 O: (702) 796-4000

*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.)

**CLAIMANT SHAWN BIDSAL'S OPPOSITION TO  
 RESPONDENT CLA PROPERTIES, LLC'S  
 MOTION IN LIMINE RE FAILURE TO TENDER**

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 Opposition (the "Opposition") to Respondent CLA PROPERTIES, LLC's ("CLA") Motion In Limine Re Failure to Tender (the "Motion"). This 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 11th day of March, 2021.

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 Claimant*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### PREFATORY STATEMENT

By its instant Motion, CLA seeks an arbitration order preventing Bidsal from admitting into evidence at the Arbitration Hearing any documents, information or argument related to CLA's failure to tender funds to purchase Bidsal's membership interest in Green Valley Commerce, LLC ("GVC"). Aside from being a motion for summary judgment inappropriately cloaked and presented as a motion in limine, CLA's Motion lacks both factual and legal support and as such, it must be denied.

### II.

#### STATEMENT OF FACTS

##### A. BACKGROUND.

As your Honor is well apprised of the facts surrounding this Arbitration, Bidsal will focus on the facts as they pertain to CLA's two-time lack of tender of payment for Bidsal's membership interest in GVC (the "Membership Interest").

##### B. THE INITIAL BUY-OUT CORRESPONDENCE.

On July 7, 2017, Bidsal offered to purchase CLA's Membership Interest in GVC "pursuant to and on the terms and conditions set forth in Section 4 of Article V of the Company's Operating Agreement." A true and correct copy of Bidsal's July 7, 2017 Initial Offer Letter is attached hereto as *Exhibit "1"* and is incorporated herein by this reference. No purchase price was delineated in Bidsal's offer letter ("Bidsal's Initial Offer Letter"). *See also* the GVC operating agreement ("GVC OPAG") contained in the Motion at Ex. 1.

On August 3, 2017, CLA responded, stating that it was electing to exercise an option to purchase Bidsal's Membership Interest "on the terms set forth in the July 7, 2017 letter based on [Bidsal's] \$5,000,000.00 valuation of the Company ("CLA's Counteroffer"). The purchase will be all cash, with escrow to close within 30 days from the date hereof." A true and correct copy of CLA's Counteroffer is attached hereto as *Exhibit "2"* and is incorporated herein by this request. Once again, no purchase price was delineated. *Id.*

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

1 On August 5, 2017 Bidsal responded to CLA, stating that he invoked his right to establish  
 2 the FMV by appraisal and provided CLA the names of appraisers (“**Bidsal’s Invocation Letter**”).  
 3 A true and correct copy of Bidsal’s Invocation Letter is attached hereto as ***Exhibit “3”*** and is  
 4 incorporated herein by this reference. Once again, no purchase price was delineated. *Id.*

5 On August 15, 2017, Golshani emailed Bidsal, stating “...I am waiting for a concrete  
 6 proposal from you. Right now, I am planning on closing escrow to purchase your membership  
 7 interest in both entities pursuant to my elections to buy at the price you offered.” *See* Motion at Ex.  
 8 6. This email is perplexing as (1) Bidsal never offered a sum specific price for the purchase of  
 9 either membership interest (his or CLA’s), (2) CLA has not offered a specific price for the purchase  
 10 of Bidsal’s membership interest, in fact as of now, there is no set price for Bidsal’s interest (which  
 11 is the primary issue to be determined in this Arbitration) and (3) CLA hadn’t opened escrow, so  
 12 there was no escrow to close. *Id.*

13 Bidsal, realizing CLA’s flawed plan responded back on August 16, 2017, stating, “we can  
 14 not open escrow since we do not agree on this matter, I am open to meet you and further discuss a  
 15 resolution,” *See* Motion at Ex. 6. This email captured Bidsal’s state of mind at the time. First, the  
 16 two individuals had not agreed on any sort of purchase price for either member’s interest and second  
 17 Bidsal was willing to continue to negotiate to get to a resolution.

18 On August 28, 2017, still having no set purchase price, CLA responded that it had the funds  
 19 to close escrow for the purchase of Bidsal’s Membership Interest (“**CLA’s Funds Letter**”). *See*  
 20 Motion at Ex. 7. CLA further stated that “[a]ll that remains is that we agree upon escrow and your  
 21 client performs as required under the Operating Agreement.” *Id.* This correspondence confirmed  
 22 that CLA had not opened escrow and had not deposited the funds to purchase Bidsal’s Membership  
 23 Interest into escrow. This fact is not surprising, as a purchase price still had not been identified by  
 24 either party (and still has not been identified and will not be identified until your honor issues his  
 25 ruling in this Arbitration). It would have been telling if CLA had placed a fixed amount into escrow  
 26 or tendered actual payment of the amount it asserted the purchase price was supposed to be,  
 27 however these scenarios never happened. *Id.*

28 ///

On August 31, 2017 Bidsal responded to CLA pointing out the folly of CLA's statement that "[a]ll that remains is that we agree upon escrow and your client performs as required under the Operating Agreement." *See* Motion at Ex. 8.

**C. CLA's FIRST FAILURE TO TENDER PAYMENT.**

Rather than respond to the August 31, 2017 correspondence, CLA filed JAMS Arbitration No. 1260004569 (the "First Arbitration"). *See* Motion at Ex. 2. Nowhere in any of the Buy-Out Correspondence did Bidsal say that he refused to proceed with the sale of his Membership Interest to CLA, as CLA alleges in its Motion at 4:27-28. In fact, Bidsal's Invocation Letter, is invoking his right to establish "FMV" via appraisers, **to assist in identifying the purchase price** for his Membership Interest. *See* Exhibit "2". Likewise, after CLA prematurely announced that it would like to open escrow to effectuate the sale in CLA's Funds Letter, Bidsal did not instruct CLA not to transfer the funds or announce that he would not proceed with the sale. *See* Motion at Exs. 7 and 8. On the contrary in Bidsal's August 31, 2017 letter he stated, "the ball is in Mr. Golshani's court" and "Once Mr. Golshani provides this information, we will be able to move forward." *See* Motion at Ex. 8. This is not language of an individual rejecting a tender of funds, but rather of one that is waiting for the additionally needed information to move forward on CLA's counteroffer.

It is also very important to consider the actions that CLA did not take after receiving Bidsal's August 31, 2017 letter. CLA did not identify a sales price for Bidsal's Membership Interest, did not place funds into an escrow account identified for the purchase of Bidsal's Membership Interest and CLA did not mail a check for its claimed purchase price to Bidsal. This failure to act is most likely due to the fact that no purchase price had been set for Bidsal's Membership Interest.

**D. THE FIRST ARBITRATION**

The First Arbitration was filed by CLA. CLA as claimant only asked the arbitrator for determination of the fair market value (FMV) and which member had the right to buy the other member. CLA could have asked (but never did ask) the arbitrator to determine the purchase price for Bidsal's membership interest. Thus, the First Arbitration determined that, when calculating the purchase price, the FMV would be \$5,000,000.00, but did not set a price for the purchase. *See* Motion at Ex. 3. Instead, the arbitrator set the sale to commence within "...ten (10) days of the

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

issuance of this Final Award...” and 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)...” *Id.*(emphasis added) As the Final Award was issued on April 5, 2019, ten days passed on April 15, 2019. Nowhere in the Final Award can the word “tender” be found. *Id.* Nowhere in the Final Award was it determined that (1) payment in full had been made from CLA to Bidsal, or (2) that Bidsal had rejected payment from CLA. *Id.* Despite CLA’s attempt to try to spin the Final Award as being case determinative on the issue of tender, nothing could be further from the truth.

Because the First Arbitration did not address the issue of tender of payment, the Eighth Judicial District did not, indeed could not, *sua sponte* take the matter up and issued no order that referenced tender of payment. *See* Motion at Ex. 4.

#### **E. CLA’S SECOND FAILURE TO TENDER PAYMENT.**

Despite having the Final Award, CLA did not write a check to Bidsal for his Membership Interest in GVC, did not transfer what CLA considered the purchase price to be to Bidsal for his Membership Interest in GVC, nor did CLA open an escrow account to effectuate the purchase of Bidsal’s Membership Interest in GVC after receiving the Final Award.

Bidsal, not knowing what CLA proposed as payment for his Membership Interest in GVC and having not received a nickel to effectuate the purchase, was left with little choice but to retain his Membership Interest and continue managing GVC, which is exactly what he did. Realizing that the two men had reached a détente and no funds would be forthcoming from CLA, Bidsal filed the present Arbitration to ascertain if CLA still held the right to purchase his interest, and if so, what was the purchase price for his Membership Interest.

### **III.**

#### **STATEMENT OF AUTHORITIES**

#### **A. LEGAL STANDARD FOR TENDERING PAYMENT.**

In Bank of America, N.A. v. SFR Investments Pool 1, LLC, 134 Nev Adv. Opn. 72, 427 P.3d 113 (2018) 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*,

1 or with conditions on which the tendering party has a right to insist.” *Id.* at 117 and 118 (emphasis  
 2 added). Obviously, this holding makes it clear that the first and most important rule of tender is  
 3 that it must include “payment in full”, which has obviously never occurred in this case. The Nevada  
 4 Supreme Court’s 2018 decision created a hyper-focus on what constitutes valid tender in Nevada,  
 5 with Lenders claiming to have tendered payment merely by sending a letter promising to pay the  
 6 superpriority lien amount of the HOA, whatever that amount was determined to be.

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

11 [I]t is the generally accepted rule that a promise to make a payment at a later date  
 12 or once a certain condition has been satisfied cannot constitute a valid tender. *See*  
 13 Southfork Invs. Grp., Inc. v. Williams, 706 So. 2d 75, 79 (Fla. Dist. Ct. App.  
 14 1998) (“To make an effective tender, the debtor must actually attempt to pay the  
 15 sums due; mere offers to pay, or declarations that the debtor is willing to pay, are  
 16 not enough.”); Cochran v. Griffith Energy Serra, Inc., 191 Md. App. 625, 993  
 17 A.2d 153, 166 (Md. Ct. Spec. App. 2010) (“A tender is an offer to perform a  
 18 condition or obligation, coupled with the present ability of immediate  
 19 performance, so that if it were not for the refusal of cooperation by the party to  
 20 whom tender is made, the condition or obligation would be immediately  
 21 satisfied.” (emphasis added) (internal quotation marks omitted)); Graff v.  
 22 Burnett, 226 Neb. 710, 414 N.W.2d 271, 276 (Neb. 1987) (“To determine  
 23 whether a proper tender of payment has been made, we have stated that a tender  
 24 is more than a mere offer to pay. A tender of payment is an offer to perform,  
 25 coupled with the present ability of immediate performance, which, were it not  
 26 for the refusal of cooperation by the party to whom tender is made, would  
 27 immediately satisfy the condition or obligation for which the tender is made.”  
 28 (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.

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

28 ///

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

3           **Second**, for CLA to have made an effective tender, CLA must actually have  
4 delivered the sum it claims the purchase price to be, because mere offers to pay, or declarations that  
5 the debtor is willing to pay, are not enough.

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

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

11           **Fifth**, and most important, the general rule is that an offer to pay without actual  
12 payment is not a valid tender. See also, 74 Am. Jur. 2d Tender § 1 (2012) and 86 C.J.S. Tender §  
13 24 (2017).

14           **1.       No Tender Prior to the First Arbitration.**

15           **a.       It is factually impossible for CLA to have tendered the purchase price**  
16 **when the purchase price has still not been identified.**

17           As an initial matter, it is factually impossible for a tender of the purchase  
18 price to have been made when the amount of the purchase price has still not been determined.  
19 Indeed, that is the primary issue to be decided by the Arbitrator in this arbitration. While CLA could  
20 have completed its own calculation of the purchase price, then tendered that amount, that did not  
21 occur. At no time did CLA ever attempt to do anything more than claim that they had the funds.  
22 Certainly they never actually offered to pay Bidsal any amount of money, let alone the purchase  
23 price, and CLA has not presented any evidence which would even suggest otherwise.

24           **b.       Failure to Tender Under Perla Del Mar Rules**

25           CLA has many excuses for failing to tender the purchase price for Bidsal's  
26 Membership Interest, however, it does not assert that it TENDERED the purchase price; because it  
27 cannot. CLA first says the tender issue has been resolved, which it has not. Second, CLA says that  
28 CLA was excused from tendering the purchase price, which it was not. What CLA is unable to

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

1 assert is that it (1) made payment to Bidsal in full for the purchase of his Membership Interest, (2)  
 2 without conditions, (3) and that had Bidsal not refused the payment, the sale would have been  
 3 consummated. However, these are the conditions that must be satisfied to have a valid tender of  
 4 payment under both Perla Del Mar and SFR Investments Pool 1. The first failure to tender payment  
 5 occurred in 2017 when CLA failed to set a claimed purchase price. Despite on ongoing dialogue  
 6 between the parties, never once was an actual purchase price asserted or claimed by CLA.  
 7 Additionally, even without claiming a purchase price, CLA felt the need to attach conditions to its  
 8 counteroffer: using a local escrow company, having the purchase be all cash, and that closing occur  
 9 within 10 or even 30 days. *See* Exhibit “2”. *See also* Motion at Ex. 6. However, setting all of that  
 10 aside, CLA never delivered any claimed purchase amount to Bidsal or to a third-party holding  
 11 company. So, even if Bidsal refused to accept the allegedly proffered funds, which he never did,  
 12 his purported refusal was not the roadblock for closing the sale. The roadblock for closing the sale  
 13 is that CLA never identified a sum certain purchase price and never delivered a claimed purchase  
 14 price.

15 In the present Motion CLA highlights the language in Perla Del Mar, “An actual tender is  
 16 unnecessary where it is apparent the other party will not accept it.” *See* Motion at 6:3-5. However,  
 17 they fail to cite any language in any referenced letter or email for which Bidsal states that he will  
 18 not accept valid tender. Instead, what we see is that from Bidsal’s Invocation Letter on, Bidsal was  
 19 attempting to set a value of the price that CLA would have to pay for his Membership Interest. In  
 20 fact, Bidsal clearly stated that he “does hereby invoke his right to establish the FMV by appraisal.”  
 21 *See* Exhibit “3”. From August 5, 2017 on, Bidsal is attempting to clarify the values necessary to  
 22 apply figures to the Formula delineated in the GVC OPAG. *Id.* Clearly if he were refusing to sell,  
 23 he would never be asking for actions that would apply values to the purchase Formula, such an  
 24 assertion is nonsensical.

25 On August 16, 2021, after CLA asserts that it is “...planning on closing escrow to purchase  
 26 your membership interest...at the price you offered,” Bidsal does not say, I won’t transfer my  
 27 Membership Interest, he says that Bidsal and CLA can “meet...and further discuss a resolution.”  
 28 *See* Motion at Ex. 6. A resolution is necessary because (1) Bidsal never delineated a price to

1 purchase CLA's membership interest in Bidsal's Initial Offer Letter and (2) even if he did, which  
 2 he did not, it would not be the same price that Bidsal would be paid under the Formula as Bidsal  
 3 and CLA had made different Capital Contributions and capital contributions are a part of the buy-  
 4 sale formula in the GVC OPAG. *See* Exhibit "1". *See also* Motion at Ex. 1.

5 Finally, on August 31, 2017, Bidsal once again, tries to solidify a value for his Membership  
 6 Interest noting that an "FMV" still needed to be established and stated, "[o]nce Mr. Golshani  
 7 provides this information, we will be able to move forward." The reference to moving forward is  
 8 clearly moving forward with CLA's purchase of Bidsal's Membership Interest. At no point in time  
 9 has Bidsal ever indicate that he was not willing to accept a valid tender of payment.<sup>1</sup>

10 **c. A Promise to Pay at a Later Date Does NOT Constitute Tender**

11 CLA has asserted that its August 28, 2017 letter served as a sufficient tender.  
 12 This assertion fails under the La Perla analysis. First, and most importantly, this letter was not  
 13 accompanied by a check or cash in the amount CLA was asserting it owed Bidsal to exercise the  
 14 "buy-sale" provision, and thus, under clear Nevada law **it was not a valid tender**. Second, as  
 15 mentioned above, CLA never stated what it believed the purchase price to be. Obviously, this  
 16 means that the August 28, 2017 letter contained no offer of a specific purchase price. Third,  
 17 although the August 28, 2017 letter makes a hearsay statement that as of August 23, 2017, CLA  
 18 had a bank balance of \$2,010,051.54, there was no assurance that those funds were available on  
 19 August 28, 2017 and these funds were not deposited into any escrow to insure good funds were  
 20 available for the purchase. **CLA never relinquished control of any funds, never drafted a check**  
 21 **to Bidsal and never even identified a purchase price for Bidsal's Membership Interest**. Thus,  
 22 the August 28<sup>th</sup> letter is nothing more than an offer to pay some **unspecified amount** at a later date  
 23 (not to exceed \$2,010,051.54). The fact that Golshani tacked on his bank account information is a  
 24 red herring. Golshani is not CLA and CLA is not Golshani. As Golshani is not a member to the  
 25 GVC OPAG his solvency was irrelevant in 2017 and remains irrelevant in 2021, unless he is  
 26 admitting that CLA is his alter-ego.

27 <sup>1</sup> The reason is obvious. Without a purchase price, the issue of tender was moot. The parties were not even  
 28 thinking about tender of the purchase price because neither party had identified what they believed the  
 purchase price to be, let alone agreed on what it should be.

1           **2.       No Tender After the Conclusion of the First Arbitration.**

2           CLA additionally argues that Bidsal lost the tender claim by failing to assert it in the  
3 First Arbitration. The Final Award makes it clear that the arbitrator in First Arbitration did not make  
4 any decision with regard to the tender issue. *See* Motion at Ex. 3. In fact, CLA admits that it filed  
5 for arbitration "...asserting that it had the right and asking ***for an Order compelling Bidsal to***  
6 ***transfer his interest in Green Valley using \$5 million as the Fair Market Value of Green Valley.***"  
7 *See* Motion at 2:24-25. By its own admission CLA was only seeking an order defining Fair Market  
8 Value being set at \$5 million and an order compelling Bidsal to transfer his interest in GVC. Tender  
9 was not identified as an issue because the purchase price had not been established. Based on the  
10 fact that the arbitrator in the First Arbitration was not tasked to consider tender and did not consider  
11 tender as an issue, the issue was not adjudicated in the First Arbitration and could not have been  
12 ratified by the Eighth Judicial District Court. However, even if your Honor reaches an alternate  
13 conclusion, the arbitrator in the First Arbitration, could not have adjudicated on facts that had not  
14 yet happened.

15           The Final Award in the First Arbitration was issued on April 5, 2019, stating,

16           Within ten (10) days of the issuance of this Final Award, Respondent Sharam  
17 Bidsal also known as Shawn Bidsal ("Mr. Bidsal") shall (A) transfer his fifty  
18 percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green  
19 Valley"), free and clear of all liens and encumbrances, to Claimant CLA Properties,  
20 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 Dollar sand No Cents (\$5,000,000.00) and,***  
***further, (B) execute any and all documents necessary to effectuate such sale and***  
***transfer.***

21           *See* Motion at Ex. 3 (emphasis added). Clearly the arbitrator did not intend for Bidsal to make the  
22 transfer of his Membership Interest without payment and yet, CLA STILL failed to tender the  
23 claimed purchase price to Bidsal after the Final Award. In fact, CLA didn't even provide a proof  
24 of funds after the Final Award.<sup>2</sup> CLA did not send Bidsal a check for the claimed sale amount and  
25 did not open escrow. Additionally, the Motion provides not a single piece of evidence that Bidsal  
26 refused to consummate the sale at this point. The last correspondence from Bidsal that is proffered

27 \_\_\_\_\_  
28 <sup>2</sup> CLA has never provided any evidence that it had sufficient funds to pay Bidsal in 2019, nor any time since.

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

as evidence of his refusal to accept a tendered purchase price is from 2017, two years prior to the Final Award. *See* Motion at Ex. 8. The Arbitrator could not have possibly contemplated that CLA would refuse to tender the purchase price for Bidsal's Membership Interest after being ordered to do so "Within ten (10) days of the issuance of the Final Order..." nor is it reasonable to presume that Bidsal was mandated to transfer his fifty percent (50%) Membership Interest in GVC without compensation, yet the arbitrator left it up to CLA and Bidsal to calculate what the purchase price would be in accordance with the formula set forth in the OPAG. If CLA wants an effective date at anytime in the past, then it was incumbent upon CLA to tender the purchase price to Bidsal (or into escrow) before or concurrently with Bidsal's acceptance (or rejection) of the proffered funds and THAT SIMPLY NEVER HAPPENED.

### 3. CLA Argues that the Purchase Price Claimed Equates to Funds Available.

CLA has asserted that its August 28, 2017 letter served as a sufficient tender.<sup>2</sup> It appears that CLA is making an argument that by showing "funds available" in CLA's Funds Letter, that figure was the amount that CLA was tendering and that "Mr. Shapiro's [sic] **made no contention that the evidence of the available funds was not adequate tender or that the amount was not sufficient!**". This argument is new and extremely interesting! According to Black's Law Dictionary, the term "tender" is "[a]n offer of money; the act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits being due, in satisfaction of such claim or demand, without any stipulation or condition. *See* Black's Law Dictionary Free Online Legal Dictionary 2<sup>nd</sup> Ed. (emphasis added).

If you consider CLA's stance above in conjunction with the definition of "tender" under Black's Law Dictionary, it appears that CLA is stating that the admittedly due amount to Bidsal for his Membership Interest was the amount of available funds identified in the Funds Letter (\$3,113,219.54).<sup>3</sup> If that assertion is true, and that was the price that CLA intended to transfer to Escrow, there is little doubt that Bidsal would have consummated the sale. If CLA denies that the

<sup>3</sup> CLA's Motion at Ex. 7 is an incomplete copy of the Funds Letter. The Funds Letter attached a proof of funds that was partially in CLA accounts and partially in accounts of Golshani, as "CEO of CLA Properties" "...maintaining business checking accounts..." A true and correct copy of CLA's Funds Letter (to include the page mission from the Motion at Ex. 7) is attached hereto as **Exhibit "4"** and is incorporated herein by this reference.

1 available funds it identified was the amount admittedly due to Bidsal, then it is essentially admitting  
2 that it did not tender these identified funds and thus no tender took place in 2017. CLA seems to be  
3 negating the entire point of this Arbitration by saying that it admits that the amount due to Bidsal  
4 for his Membership Interest is \$3,113,219.50. If that is the case, Bidsal accepts and we can eliminate  
5 that issue from the present arbitration proceedings.

6 **IV.**

7 **CONCLUSION**

8 For the reasons set forth above, Claimant respectfully requests that CLA's Motion be denied  
9 in its entirety. Alternatively, Claimant requests that your Honor find that CLA admitted that the  
10 amount due to Bidsal to purchase his Membership Interest is \$3,113,219.50.

11 Dated this 11<sup>th</sup> day of March, 2020.

12 SMITH & SHAPIRO, PLLC

13 /s/ James E. Shapiro  
14 James E. Shapiro, Esq.  
15 Aimee M. Cannon, Esq.  
16 3333 E. Serene Ave., Suite 130  
Henderson, NV 89074  
*Attorneys for Petitioner, Shawn Bidsal*

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 11<sup>th</sup> day of June, 2020, I served a true and correct copy of the forgoing **CLAIMANT SHAWN BIDSAL'S OPPOSITION TO RESPONDENT CLA PROPERTIES, LLC'S MOTION TO IN LIMINE RE FAILURE TO TENDER**, by submitting the same via JAMS e-filing system, and by e-serving a copy of the same via JAMS e-filing service, to:

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

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

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

# **Exhibit “1”**

# **Exhibit “1”**



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

July 7, 2017

Via first class U.S. Mail & certified U.S. Mail to:

**CLA Properties, LLC**  
Attn: Benjamin Golshani  
2801 S. Main St.  
Los Angeles, CA 90007

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

**OFFER TO PURCHASE MEMBERSHIP INTEREST**

Dear Mr. Golshani,

By this letter, SHAWN BIDSAL (the "**Offering Member**"), owner of Fifty Percent (50%) of the outstanding Membership Interest in Green Valley Commerce, LLC, a Nevada limited liability company (the "**Company**") does hereby formally offer to purchase CLA Properties, LLC's (the "**Remaining Member**") Fifty Percent (50%) of the outstanding Membership Interest in the Company pursuant to and on the terms and conditions set forth in Section 4 of Article V of the Company's Operating Agreement.

The Offering Member's best estimate of the current fair market value of the Company is \$5,000,000.00 (the "**FMV**"). Unless contested in accordance with the provisions of Section 4.2 of Article V of the Operating Agreement, the forgoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold.

Upon receipt of this notice, the Remaining Member has certain rights and obligations, as set forth in Section 4.2 of Article V of the Operating Agreement. This notice shall trigger the time periods and procedures set forth therein.

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 “2”**

# **Exhibit “2”**

**CLA PROPERTIES, LLC**  
**2801 S. Main Street, Los Angeles, CA 90007**

August 3, 2017

***Via Fed Ex and U.S. Mail and Email***

Shahram "Shawn" Bidsal  
 14039 Sherman Way Boulevard  
 Suite 201  
 Van Nuys, California 91405

Re: Green Valley Commerce, LLC, a Nevada Limited Liability Company

**CLA's Election to Purchase Membership Interest**

Dear Shawn:

By this letter, CLA Properties, LLC, the owner of 50% of the outstanding membership interest in Green Valley Commerce, LLC, a Nevada limited liability company (the "Company"), in response to your July 7, 2017 Offer To Purchase Membership Interest, hereby in accordance with section 4, Article v of the agreement, elects and exercises its option to purchase your 50% membership interest in the Company on the terms set forth in the July 7, 2017 letter based on your \$5,000,000.00 valuation of the Company. The purchase will be all cash, with escrow to close within 30 days from the date hereof. We will contact you regarding setting up the escrow. I trust that there has not been any distribution of the cash on hand that I have not approved of (either before or after July 7, 2017), nor should there be any such distributions, nor should any agreements be entered into, including any sale agreements, without CLA's written consent.

Thank you.

Sincerely,

CLA Properties, LLC

By   
 Benjamin Golshani, Manager

cc: James E. Shapiro, Esq.  
 Smith & Shapiro  
 2520 St. Rose Parkway, Suite 220  
 Henderson, NV 89074

# Exhibit “3”

# Exhibit “3”



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

August 5, 2017

Via FedEx Overnight & email to:

**Benjamin Golshani**  
2801 S. Main St.  
Los Angeles, CA 90007  
[ben@claproperties.com](mailto:ben@claproperties.com)

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

**RESPONSE TO COUNTEROFFER TO PURCHASE MEMBERSHIP INTEREST**

Dear Mr. Golshani,

This letter is in response to your August 3, 2017 letter relating to the Membership Interest in Green Valley Commerce, LLC, a Nevada limited liability company (the "Company").

By this letter, and in accordance with Article V, Section 4 of the Company's Operating Agreement, SHAWN BIDSAL, owner of Fifty Percent (50%) of the outstanding Membership Interest in the Company, does hereby invoke his right to establish the FMV by appraisal.

Mr. Bidsal's two MIA Appraisers for the Nevada properties are:

- (1) Lubawy & Associate, 3034 south durango, suite 100, Las Vegas NV 89117, 702-242-9369; and
- (2) Valuation Consultant, Keith Harper, 4200 Cannoli Circle, Las Vegas NV 89103, 702-222-0018.

Mr. Bidsal's two MIA Appraisers for the Arizona properties are:

- (3) Commercial Appraisals, 2415 E Camelback Rd, Ste 700, Phoenix AZ 85016, 602-254-3318; and
- (4) US Property Valuations, 3219 E Camelback Rd, Phoenix AZ 85018, 602-315-4560.

Please provide my office with two MIA appraisers within two weeks.

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

Sincerely,

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro

James E. Shapiro, Esq.

cc: Shawn Bidsal

smithshapiro.com

J:\15426\2017.Green Valley Commerce LLC\ltr.CLA Properties.2017-08-05.(Response to Offer of Purchase).doc Main 2520 St. Rose Parkway, Suite 220 Henderson, NV 89074 Office 702.318.5033  
2915 Lake East Drive Las Vegas, NV 89117 Fax 702.318.5034

**APPENDIX (PX)004080**

**BIDSAL000031** 19A.App.4349

**Exhibit “4”**

**Exhibit “4”**

RODNEY T. LEWIN  
NOREEN SPENCER LEWIN\*  
CHANDLER OWEN BARTLETT  
ALLYSON P. WITTNER

*Law Offices of*  
**RODNEY T. LEWIN**  
A PROFESSIONAL CORPORATION  
8665 WILSHIRE BOULEVARD, SUITE 210  
BEVERLY HILLS, CALIFORNIA 90211-2931  
TELEPHONE: (310) 659-6771  
TELECOPIER: (310) 659-7354

RANDALL A. SPENCER\*  
RICHARD D. AGAY  
MICHAEL Y. LAVAEE  
OF COUNSEL  
\*ALSO LICENSED IN ILLINOIS

WRITER'S EMAIL:  
ROD@RTLWIN.COM

August 28, 2017

Via email and fax  
[jshapiro@smithshapiro.com](mailto:jshapiro@smithshapiro.com)  
(702) 318-5034

James E. Shapiro, Esq.  
Smith & Shapiro  
2520 St. Rose Parkway, Suite 220  
Henderson, NV 89074

Re: Green Valley Commerce, LLC, a Nevada Limited Liability  
Company; **Proof of Funds to Purchase Membership Interest**

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.

Cordially,

Very truly yours,

LAW OFFICE OF RODNEY T. LEWIN  
A Professional Corporation  
RODNEY T. LEWIN

RTL/b  
Attachments  
Cc: Client via email  
Louis Garfinkel via email

F:\7157\letters\shapiro-082817  
**APPENDIX (PX)004082**

**BIDSAL000032** App.4351



wellsfargo.com

August 23, 2017

Wells Fargo Bank  
141 W Adams Blvd  
Los Angeles, ca 90007

CLA Properties, LLC  
2801 S Main st  
Los Angeles, CA 90007

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	Date Opened	Current Balance*
0846	12/09/2015	2,010,051.54

\*The 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 of 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.

This letter is strictly confidential and the information herein is solely for Customer's lawful use. This letter is given in good faith, without legal liability. Wells Fargo does not represent and warrant that this information is complete or accurate and any errors or omissions in the information shall not be a basis for a claim against Wells Fargo. Wells Fargo does not undertake or accept any duty, responsibility, liability or obligation that may arise from providing this letter and/or for any reliance being placed upon information in this letter or for any loss or damage that may result from reliance being placed upon it. Wells Fargo does not assume any duty or obligation to you or any other person or entity by providing this information and this information is subject to change without notice to you. Wells Fargo does not undertake any duty to update you in the event any deposit account relationship referenced above is, or is the process of being, modified, terminated or cancelled. By requesting and utilizing this information, you agree to indemnify, defend, and hold Wells Fargo harmless from and against any claim resulting from the disclosure and use of the information by you, or from the breach by you of any agreement, representation or warranty herein.

If you have any questions, please contact me at: 213 745 7208.

A representative will be happy to assist you, as follows:

Monday – Thursday: 9:00 AM - 5:00 PM Pacific

Friday: 9:00 AM - 5:00 PM Pacific

Saturday: 9:00 AM - 5:00 PM Pacific

Thank you. We appreciate your business.

Sincerely,

Teresita Rosas

Assistant Branch Manager  
Wells Fargo Bank, N.A

Together we'll go far





wellsfargo.com

August 23, 2017

Wells Fargo Bank  
141 W Adams Blvd  
Los Angeles, CA 90007

CLA Properties, LLC  
2801 S Main St  
Los Angeles, CA 90007

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	Date Opened	Current Balance*
0846	12/09/2015	2,010,051.54

\*The 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 of 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.

This letter is strictly confidential and the information herein is solely for Customer's lawful use. This letter is given in good faith, without legal liability. Wells Fargo does not represent and warrant that this information is complete or accurate and any errors or omissions in the information shall not be a basis for a claim against Wells Fargo. Wells Fargo does not undertake or accept any duty, responsibility, liability or obligation that may arise from providing this letter and/or for any reliance being placed upon information in this letter or for any loss or damage that may result from reliance being placed upon it. Wells Fargo does not assume any duty or obligation to you or any other person or entity by providing this information and this information is subject to change without notice to you. Wells Fargo does not undertake any duty to update you in the event any deposit account relationship referenced above is, or is the process of being, modified, terminated or cancelled. By requesting and utilizing this information, you agree to indemnify, defend, and hold Wells Fargo harmless from and against any claim resulting from the disclosure and use of the information by you, or from the breach by you of any agreement, representation or warranty herein.

If you have any questions, please contact me at: 213 745 7208.

A representative will be happy to assist you, as follows:

Monday – Thursday: 9:00 AM - 5:00 PM Pacific

Friday: 9:00 AM - 5:00 PM Pacific

Saturday: 9:00 AM - 5:00 PM Pacific

Thank you. We appreciate your business.

Sincerely,

  
Teresita Rosas

Assistant Branch Manager  
Wells Fargo Bank, N.A

Together we'll go far





110 East 9th Street  
Los Angeles, CA 90079  
t: (213) 362-1200  
f: (213) 362-1201  
www.habbank.com

HAB/LA/2568/17

August 25, 2017

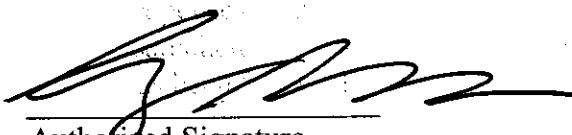
**TO WHOM IT MAY CONCERN**

This is to certify that Mr. Benjamin Golshani, CEO of CLA Properties is maintaining business checking accounts and other allied accounts with us satisfactorily since 1996. The available balance in the accounts as of August 24, 2017 has been \$1,103,168.00.

The accounts have remained in good standing throughout.

This certificate has been issued upon the specific request of the customer without any risk and responsibility on the part of our bank or any of its employees.

In case of any questions, please contact Arpine Nahapetyan at 213-362-0589.

  
Authorized Signature  
Authorized Signature

## **EXHIBIT 243**

Rodney T. Lewin, CAL.SBN. 71664  
 Law Offices of Rodney T. Lewin, APC  
 A Professional Corporation  
 8665 Wilshire Boulevard, Suite 210  
 Beverly Hills, California 90211  
 (310) 659-6771  
 Email: rod@rtlewin.com

Louis E. Garfinkel, Esq.  
 Nevada Bar No. 3416  
 LEVINE & GARFINKEL  
 1671 W. Horizon Ridge Pkwy, Suite 230  
 Henderson, NV 89012  
 Tel: (702) 673-1612/Fax: (702) 735-2198  
 Email: [lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com)

For Respondent / Counterclaimant CLA Properties, LLC

SHAWN BIDSAL, an individual,

Claimant,

v.

CLA PROPERTIES, LLC, a California  
 limited liability company,

Respondent /Counterclaimant

JAMS Ref. No. 1260005736

**CLA PROPERTIES, LLC's REPLY TO  
 SHAWN BIDSAL'S OPPOSITION RE  
 FAILURE TO TENDER**

**BIDSAL'S OPPOSITION IS MISLEADING AND DISINGENUOUS**

The Opposition submitted by Claimant Shawn Bidsal ("Bidsal") reaches new levels of misdirection. Not only does it raise a brand new issue -- the alleged failure to tender after the arbitration award—it deceitfully hides and fails to disclose important and critical information that should have been brought to your Honor's attention.

Bidsal first raised the tender issue in connection with the motion brought by CLA Properties, LLC ("CLA") to replace Bidsal as the manager. Your Honor instructed both parties to submit briefing on that issue and never once in connection with that did Bidsal raise

1 the claim that there was a failure to tender **after the Arbitration Award** had been made. The  
2 first time this issue was mentioned by Bidsal was in his Trial Brief which was served late in  
3 the evening on March 10, **and after CLA's motion in limine was filed**, and now in his  
4 Opposition to the instant motion. CLA offers this brief response because of the importance of  
5 this issue:  
6

7 First, Bidsal cannot get around the fact that he repudiated his obligations under the  
8 contract. Even after the Arbitration Award was issued on April 5, 2019 he failed to withdraw  
9 his repudiation of his obligations or tender his own performance. CLA was under no  
10 obligation to continue to ask Bidsal to perform when he continuously made it clear that he  
11 was not going to perform. The facts that Bidsal have failed to disclose to your Honor show  
12 that after the Arbitration Award Bidsal continued to demonstrate that his repudiation was  
13 continuing and that he was going to continue to refuse to perform. His conduct made it clear  
14 that any tender, even were it necessary (which it was not) would have been futile.  
15

16 The Arbitration Award was issued on April 5, 2019. **FOUR DAYS LATER**, before  
17 the ink had barely dried, on April 9, 2019, Bidsal filed a Motion to Vacate the Arbitration  
18 Award in federal court (see Exhibit "A" hereto). That motion was dismissed for lack of  
19 jurisdiction, but Bidsal continued to assert his refusal to abide by the Arbitration Award by  
20 filing *another* Motion to Vacate the Arbitration Award before Judge Kishner, which was also  
21 denied.  
22

23 After Judge Kishner confirmed the Arbitration Award, denied Bidsal's Motion to  
24 Vacate, and entered Judgment, Bidsal filed an Appeal attempting to overturn the Arbitration  
25 Award. He then filed a Motion to Stay Enforcement of the Judgment which was granted.  
26 Copies of Bidsal's (i) Notice of Appeal, his (ii) Statement of the Appellant's Case, his (iii)  
27  
28

1 Motion to Stay Enforcement, and the (iv) Order Staying Enforcement are attached hereto as  
 2 Exhibits "B", "C", "D" and "E", respectively. In order to stay the case, Bidsal was required to  
 3 post a bond in the sum of \$298,256.00. A copy of Bidsal's Notice of Posting a Bond is  
 4 attached hereto as Exhibit "F." All of these should have been presented by Bidsal to your  
 5 Honor. The reasons why he failed to do so should be obvious.

7 This Arbitration followed.

8 So here's what happened: Bidsal's first attempt to assert lack of tender was rejected  
 9 by your Honor, so now, on the eve of trial, Bidsal has attempted to change course with a new  
 10 and frivolous theory about lack of tender after the arbitration even though his conduct  
 11 reaffirmed his earlier breach and repudiation of his obligation to perform. He failed to  
 12 withdraw his earlier refusals to perform and has prevented CLA from consummating the  
 13 purchase. All of his conduct is totally inconsistent with any willingness to perform. With  
 14 respect Bidsal's claims about lack of tender, the law simply does not required futile acts.

17 Respectfully submitted:

18 Dated: March 12, 2021

LAW OFFICES OF RODNEY T. LEWIN,  
 A Professional Corporation  
 By: /s/ Rodney T. Lewin, Esq  
 RODNEY T. LEWIN,  
 Attorneys for CLA

### 21 CERTIFICATE OF SERVICE

22 Pursuant to NEFCR 9, N.R.C.P. 5(b), and EDCR 7.26, I hereby certify that I am the  
 23 principal of Law Offices of Rodney T. Lewin, and that on the 12th day of March, 2021, I served a  
 24 true and correct copy of the foregoing CLA PROPERTIES, LLC's MOTION IN LIMINE RE  
 25 TENDER by:

27 X Electronic Service via Jams Portal

1 Dated: March 12, 2021.

LAW OFFICES OF RODNEY T. LEWIN,  
A Professional Corporation

By: /s/ Rodney T. Lewin, Esq

RODNEY T. LEWIN,  
Attorneys for CLA Properties, LLC

**EXH. A**

James E. Shapiro, Esq.  
Nevada Bar No. 7907  
[jshapiro@smithshapiro.com](mailto:jshapiro@smithshapiro.com)  
Sheldon A. Herbert, Esq.  
Nevada Bar No. 5988  
[sherbert@smithshapiro.com](mailto:sherbert@smithshapiro.com)  
SMITH & SHAPIRO, PLLC  
3333 E. Serene Ave., Suite 130  
Henderson, Nevada 89074  
702-318-5033  
*Attorneys for Plaintiff/Movant,  
Shawn Bidsal*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SHAWN BIDSAL,

Plaintiff/Movant,

Case No.

vs.

CLA, PROPERTIES, LLC, a California limited  
liability company,  
Defendant.

**PLAINTIFF SHAWN BIDSAL'S MOTION TO  
VACATE ARBITRATION AWARD**

COMES NOW, Plaintiff Shawn Bidsal ("*Bidsal*") moves, pursuant to 9 U.S.C. §§ 6, 10, and 11 and Rule 7(b)(1) of the Federal Rules of Civil Procedure, to vacate the JAMS Arbitration Award delivered on April 5, 2019 (the "*Award*") in the matter of *CLA Properties, LLC v. Shawn Bidsal*, JAMS No. Reference #:1260004569 (the "*Arbitration Proceeding*").

This Motion is based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file with the Court in this matter, and any oral argument the Court may wish to entertain in the premises.

\\

\\

\\

\\

\\

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

1 DATED this 9<sup>th</sup> day of April, 2019.

2 SMITH & SHAPIRO, PLLC

3 /s/ James E. Shapiro

4 James E. Shapiro, Esq.

5 Nevada Bar No. 7907

6 Sheldon A. Herbert, Esq.

7 Nevada Bar No. 5988

8 3333 E. Serene Ave., Suite 130

9 Henderson, Nevada 89074

10 *Attorneys for Plaintiff/Movant,*

11 *Shawn Bidsal*

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**TABLE OF CONTENTS**

MEMORANDUM OF POINTS AND AUTHORITIES .....	1
I. INTRODUCTION.....	1
II. STATEMENT OF BASIS TO VACATE AWARD.....	1
III. STATEMENT OF FACTS.....	2
A. BIDSAL’S PAST INVESTMENT EXPERIENCE .....	2
B. BIDSAL’S AND GOLSHANI’S BUSINESS VENTURE .....	2
C. THE FORMATION OF GREEN VALLEY COMMERCE .....	3
D. THE HISTORY, PROPOSAL AND DRAFTING OF GOLSHANI’S BUY-SELL PROVISIONS IN SECTION 4 OF THE OPERATING AGREEMENT .....	4
1. The Initial Draft OPAG.....	4
2. LeGrand’s Initial Operating Agreement Drafts that the Arbitrator Inexplicably Relied Upon for His Ruling, But Were Undeniably Not Used in the Final Operating Agreement.....	4
3. Golshani Drafted Buy-Sell Language For The OPAG.....	6
4. Golshani Added an Appraisal Process to the Buy-Sell for Fairness Purposes..	8
E. THE MANAGEMENT AND OPERATION OF GREEN VALLEY .....	10
F. MISSION SQUARE .....	11
G. THE INITIATING BUY-OUT OFFER AND GOLSHANI’S ATTEMPT TO CHANGE THE TERMS OF THE TRANSACTION.....	11
H. THE ARBITRATION PROCEEDING.....	13
1. Demand for Arbitration.....	13
2. Arbitration Merits Hearing.....	13
3. Merits Order and Objections to Proposed Awards.....	13
4. Final Award.....	15

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

IV.	STATEMENT OF AUTHORITIES.....	16
A.	LEGAL STANDARD FOR VACATUR OF ARBITRATION AWARDS .....	16
B.	THE ARBITRATOR EXCEEDED HIS POWERS.....	16
1.	The Arbitrator Made Factual Findings To Support His Desired.....	17
	Outcome Which Were Directly Contradicted By The Plain,	
	Uncontroverted Evidence .....	18
(a)	The Undisputed Evidence Clearly Demonstrated That Section 4 of the	
	Operating Agreement was drafted by Golshani,	
	Not Bidsal.....	20
(b)	The Undisputed Evidence Clearly Demonstrated That the “Dutch	
	Action” Concept Was Not Used in Drafting Section 4 .....	20
(c)	The Undisputed Evidence Clearly Demonstrated “Rough Justice” Was	
	Never Part Of The Consideration For Section 4 .....	21
2.	The Arbitrator Failed to Draw his Ruling from the Essence of the”	
	Agreement .....	21
3.	The Arbitrator Recognized the Law, but Manifestly Disregarded it.....	23
4.	The Arbitrator Exceeded his Authority .....	24
5.	The Award is Irreconcilable with Undisputed Dispositive Facts.....	25
C.	THE ARBITRATOR IS GUILTY OF PARTIALLY AND MISBEHAVIOR BY	
	WHICH THE RIGHTS OF BIDSAL H AVE BEEN PREJUICED.....	26
D.	LEGAL STANDARD ON MODIFYING AND CORRECTING	
	ARBITRATION AWARDS .....	29
1.	The Arbitrator Included Matters Not Submitted to Him.....	29
E.	THE ATTORNEYS’ FEES AWARDED SHOULD BE VACATED AS WELL	31
V.	CONCLUSION .....	34

**TABLE OF AUTHORITIES****CASES**

1		
2		
3	<u>American First Federal Credit Union v. Soro</u> , 359 P.3d 105 (Nev. 2015).....	23
4	<u>Anvui, LLC v. GL Dragon, LLC</u> , 123 Nev. 212, 163 P.3d 405 (2007).....	22, 25
5	<u>Arbitration Between Bosack v. Soward</u> , 573 F.3d 891 (9th Cir. 2009).....	31-32
6	<u>ASPIC Eng'g &amp; Constr. Co. v. ECC Centcom Constructors LLC</u> , Case No. 17-16510 (9th Cir.,	
7	January 28, 2019) .....	17
8	<u>Barney v. Mt. Rose Heating &amp; Air Conditioning</u> , 192 P.3d 730, 124 Nev. Adv. Op. No. 71	
9	(Sept. 18, 2008) .....	33
10	<u>Biller v. Toyota Motor Corp.</u> , 668 F.3d 655 (9th Cir. 2012) .....	21
11	<u>Bosack v. Soward</u> , 586 F.3d 1096, 1104 (9th Cir. 2009).....	23
12	<u>Brunzell v. Golden Gate National Bank</u> , 85 Nev. 345, 455 P.2d 31 (1969).....	32
13	<u>Californians for Responsible Toxics Management v. Kizer</u> , 259 Cal. Rptr. 599 (Ct. App. 1989) ...	
14	<u>Chavez v. Netflix</u> , 75 Cal. Rptr. 3d 413 (Ct. App. 2008).....	32
15	<u>Collins v. D.R. Horton, Inc.</u> , 505 F.3d 874 (9th Cir. 2007) .....	23
16	<u>Copeland v. Marshall</u> , 641 F.2d 880 D.C. Cir. (1980).....	32
17	<u>Coutee v. Barrington Capital Group, L.P.</u> , 336 F.3d 1128 (9th Cir. 2003).....	24
18	<u>Davis v. Beling</u> , 279 P.3d 501 (Nev. 2011) .....	
19	<u>Hughes Aircraft Co. v. Electronic Space Technicians</u> , Local 1553, AFL-CIO, 822 F.2d 827 (9th	
20	Cir. 1987) .....	30
21	<u>Ives v. Leasing</u> , 19 Ariz. 208, 168 P. 506 (1917) .....	
22	<u>Jock v. Sterling Jewelers, Inc.</u> , 646 F.3d 113 (2nd Cir. 2011) .....	30
23	<u>Ketchum v. Moses</u> , 103 Cal. Rptr. 2d 377 (2001) .....	32
24	<u>Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.</u> , 341 F.3d 987 (9th Cir. 2003) .....	16, 26
25	<u>Lagstein v. Certain Underwriters at Lloyd's, London</u> , 607 F.3d 634 (9th Cir. 2010) .....	21
26	<u>Lewis v. Saint Mary's Heath First D. Nev. 2005</u> , 402 F. Supp. 2d 1182 .....	22, 25
27	<u>Lincoln Nat'l Life Ins. Co. v. Payne</u> , 374 F.3d 672, 675 (8th Cir. 2004) .....	23
28	<u>Major League Baseball Players Ass'n. v. Garvey</u> , 532 U.S. 504, 121 S. Ct. 1724 (2001).....	17

1	<u>Oxford Health Plans, LLC v. Sutter</u> , 569 U.S. 564, 133 S. Ct. 2064 (2013) .....	17, 22
2	<u>Pacific Motor Trucking Co. v. Automotive Machinists Union</u> , 702 F.2d 176 (9th Cir. 1983).....	17, 22
3	<u>San Maritime Compania De Navegacion, S.A. v. Saguenay Terminals Ltd.</u> , 293 F.2d 796 (9th	
4	Cir. 1961) .....	23
5	<u>Schoenduve Corp. v. Lucent Technologies</u> , 442 F.3d 727 (9th Cir. 2006).....	30
6	<u>Serrano v. Unruh</u> , 652 P.2d 985, fn. 21 (Cal. 1982) .....	32
7	<u>Stolt-Nielsen, S.A. v. Animal Feeds International</u> , 130 S. Ct. 1758 (2010) .....	16-17, 22
8	<u>Thayer v. Wells Fargo Bank</u> , 112 Cal. Rptr. 2d 284 (Ct. App. 2001) .....	32
9	<u>United Steelworkers of America v. Enterprise Wheel &amp; Car Corp.</u> , 363 U.S. 593,	
10	80 S. Ct. 1358 (1960) .....	17
11	<u>Williams v. Waldman</u> , 108 Nev. 466, 836 P.2d 614 (1992) .....	18
12	<u>Woods v. Woods</u> , Nev. Sup. Ct. No. 72665 (July 27, 2018) .....	33

SMITH &amp; SHAPIRO, PLLC

3333 E. Serene Ave., Suite 130

Henderson, NV 89074

O:(702)318-5033 F:(702)318-5034

**OTHER LEGAL AUTHORITY**

1		
2	9 U.S.C. § 1 .....	1
3	9 U.S.C. § 6 .....	i
4	9 U.S.C. § 9 .....	i
5	9 U.S.C. § 10 .....	i
6	9 U.S.C. § § 10(a)(2) .....	26
7	9 U.S.C. § § 10(a)(3) .....	16
8	9 U.S.C. § § 10(a)(4) .....	i, 14
9	9 U.S.C. § 11 .....	29
10	9 U.S.C. §§ 11(b) .....	29
11	9 U.S.C. § 12 .....	32
12	Rule 7(b)(1) .....	i
13	7 C.J.S. Attorney Client § 191 a. (2), p. 1080 .....	32
14	5 Am.Jur., Attorneys at Law, section 198 .....	32
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This case is about the attempted break-up of a limited liability company, Green Valley  
5 Commerce, LLC (“**Green Valley**”), by its members, under the buy-sell provisions of Green  
6 Valley’s operating agreement (the “**OPAG**”). It is also about the unfair advantage taken by one  
7 of the LLC members, CLA Properties, LLC (“**CLAP**”), of the other member, Bidsal, through a  
8 twisted interpretation of the OPAG which was never contemplated by either member. The  
9 Arbitration Proceeding was brought to sort out the parties’ differences in interpretation of the  
10 OPAG, yet the arbitrator committed plain error, blatantly recognized but disregarded the law,  
11 misconstrued the undisputed facts, and exceeded his powers when rendering the Award in favor  
12 of CLAP. In other words, the Arbitrator’s ruling ignores the evidence, makes up evidence that  
13 does not exist, and interprets the parties’ agreement in a way that is expressly contradicted by  
14 the express words of the agreement and the documents that can be used to interpret the  
15 agreement. Therefore, intervention by the United States District Court is necessary, under the  
16 provisions of 9 U.S.C. § 1 *et seq.*, as referenced by the terms of the OPAG.

17 **II.**

18 **SUMMARY OF BASIS TO VACATE AWARD**

19 As is set forth in more detail below, the basis on which this Motion to Vacate is based  
20 are as follows:

21 1. The Arbitrator made factual findings to support his desired outcome, which were  
22 directly contradicted by the plain, uncontroverted evidence, by:

23 (a) finding that Section 4 of the Operating Agreement was drafted by Shawn  
24 Bidsal. (*See* Sections III(D) and IV(B)(1)(a) of the Motion)

25 (b) finding that a forced buy-sell agreement or “Dutch Auction” was used in  
26 Section 4.2, notwithstanding clear evidence to the contrary. (*See* Sections III(D) and  
27 IV(B)(1)(b) of the Motion)  
28

(c) finding that Section 4.2 employed a “form of cost-effective ‘rough justice’”, when the concept was never part of the drafting of Section 4.2. (*See* Sections III(D) and IV(B)(1)(c) of the Motion)

2. The Arbitrator failed to draw his ruling from the essence of the Operating Agreement. (*See* Sections III(D) and IV(B)(2) of the Motion)

3. The Arbitrator recognized the law, but manifestly disregarded it. (*See* Section IV(B)(3) of the Motion)

4. The Arbitrator exceeded his authority. (*See* Section IV(B)(4) of the Motion)

5. The Award is irreconcilable with undisputed dispositive facts. (*See* Section IV(B)(5) of the Motion)

6. The Arbitrator is guilty of partiality and misbehavior by which the rights of Bidsal have been prejudiced. (*See* Section IV(C) of the Motion)

### III.

#### **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 “I”*** and incorporated by this reference herein at 346:15-20 (Appendix Vol. I: APPENDIX53<sup>1</sup>). 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 “1” at 346:21 – 347:3 (App. Vol. I: APP53-54).

##### **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 “1” at 349:14-16 and 359:1-8 (App. Vol. I: APP55, 65). Recognizing the opportunities available in real estate (an area that Golshani did not have any experience in), in 2009-10, Golshani approached Bidsal about investment

<sup>1</sup> For brevity sake, all future references to “APPENDIX” will be simply made to “APP”.

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

1 opportunities. *See* Exhibit “1” at 349:18-23 (App. Vol. I: APP55). Bidsal agreed to partner  
2 with Golshani.

3 Bidsal’s infrastructure was already in place when Golshani first approached him, and,  
4 over a period of time, they formulated terms of a joint investment. *See* Exhibit “1” at 350:4-8  
5 and 351:9-17 (App. Vol. I: APP56-57). Ultimately, Golshani, through his entity CLAP,  
6 invested with Bidsal in Green Valley Commerce, LLC (“Green Valley”) because of Bidsal’s  
7 expertise, experience, knowledge, and infrastructure. *See* Exhibit “1” at 395:3-9 (App. Vol. I:  
8 APP91).

9 Golshani and Bidsal agreed that Golshani would put up more money than Bidsal, but  
10 that Bidsal would be putting in sweat equity in the form of the management of the property. *See*  
11 Exhibit “1” at 115:3-6 (App. Vol. I: APP11). Golshani was more than willing to invest 70% of  
12 the funds needed, but that the profit would be split 50/50. *See* Exhibit “1” at 51:6-12 & 216:9-  
13 13 (App. Vol. I: APP8 & 26).

14 **C. THE FORMATION OF GREEN VALLEY COMMERCE.**

15 Bidsal located commercial real property at 3 Sunset Way, Henderson, Nevada 89014  
16 (the “Green Valley Commerce Center”). *See* Exhibit “1” at 353:6-8 (App. Vol. I: APP59).  
17 The Green Valley Commerce Center was subject to a defaulted note, which was an exceptional  
18 value because there is greater risk with a note that is subject to potential defenses before it is  
19 foreclosed, and a great deal is involved in converting the note to fee simple title. *See* Exhibit  
20 “1” at 353:14-354:2 (App. Vol. I: APP59-60).

21 On May 26, 2011, Bidsal formed Green Valley. *See* Exhibit “1” at 356:13 - 357:5  
22 (App. Vol. I: APP62-63). *See also* a true and correct copy of the Articles of Organization for  
23 Green Valley, attached hereto as **Exhibit “2”** and incorporated by this reference herein (App.  
24 Vol. I: APP98-99).

25 Ultimately, Bidsal and Golshani were successful in purchasing the note secured by a  
26 deed of trust against the Green Valley Commerce Center. *See* Exhibit “1” at 357:21-358:6  
27 (App. Vol. I: APP63-64). Bidsal was ultimately successful, in converting the note into a deed-  
28 in-lieu of foreclosure. *See* Exhibit “1” at 358:4-6 and 363:20-25 (App. Vol. I: APP64, 68). On

September 22, 2011, Green Valley obtained title to the Green Valley Commerce Center. *See* a true and correct copy of the Grant, Bargain, Sale Deed for the Green Valley Commerce Center, attached hereto as ***Exhibit “3”*** and incorporated by this reference herein (App. Vol. I: APP100-4).

**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 “1” at 360:11-18 (App. Vol. I: APP66). *See also* a true and correct copy of Chain’s June 17, 2011 email with the form operating agreement, attached hereto as ***Exhibit “4”*** and incorporated by this reference herein (App. Vol. I: APP105-30). 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 “1” at 360:23-361:8 (App. Vol. I: APP66-67).

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 “4” (App. Vol. I: APP105-30). *See also* a true and correct copy of LeGrand’s June 17, 2011 and June 27, 2011 emails with attachments, attached hereto as ***Exhibit “5” and “6”*** and incorporated by this reference herein (App. Vol. I: APP131-206).

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

LeGrand’s first couple 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*

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

Exhibits “5” and “6”. *Id.* See also a true and correct copy of LeGrand’s July 22, 2011 email, attached hereto as **Exhibit “7”** and incorporated by this reference herein (App. Vol. II: APP207-58). 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 “8”** and incorporated by this reference herein at DL137 & 148-150 (App. Vol. II: APP259-89 at 260, 271-3).

On August 18, 2011, LeGrand introduced new buy-sell language which LeGrand referred to as “Dutch Auction” language (the “**Dutch Auction language**”)<sup>2</sup>. See a true and correct copy of LeGrand’s August 18, 2011 email is attached hereto as **Exhibit “9”** and incorporated by this reference herein at DL211-212 (App. Vol. II: APP298-348). This is the first time that true buy-sell language was proposed and 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 “9” at DL211. *Id.* at APP303. LeGrand testified that this language did **not** end up in the final executed OPAG. See Exhibit “1” at 316:12-15 (App. Vol. I: APP45). Rather, the parties continued to negotiate the terms of proposed operating agreement, and in LeGrand’s September 16, 2011 draft of the operating agreement (the 5<sup>th</sup> 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 “10”** and incorporated by this reference herein (App. Vol. II: APP349-78).

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 “11”** and incorporated by this reference herein at DL288 (*emphasis added*) (App. Vol. II: APP379-380). Consistent with the

---

<sup>2</sup> LeGrand readily admitted that his use of the phrase “Dutch Auction” is different than how a “Dutch Auction” is currently defined. See Exhibit “1” at 315:13-15 (App. Vol. I: APPENDIX0044). However, LeGrand repeatedly uses the phrase “Dutch Auction” to refer to his proposed buy-sell concept.

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

1 first buy-sell language that required an appraisal, LeGrand's email confirmed that the "Dutch  
2 Auction" concept was not sensible nor what the parties were looking for. *Id.* Attached to that  
3 email was a new draft of the operating agreement, which included some new buy-sell language,  
4 but which is not even close to what ultimately ended up in Section 4. *See* a true and correct  
5 copy of LeGrand's September 20, 2011 email, attached hereto as ***Exhibit "12"*** and  
6 incorporated by this reference herein at DL301 (*emphasis added*) (App. Vol. II: APP381-412 at  
7 APP394). LeGrand testified that Golshani and Bidsal wanted a buy-sell provision in the  
8 OPAG, but LeGrand refused to confirm that it was a "forced buy/sell" even after counsel for  
9 Golshani pressed him to do so. *See* Exhibit "1" at 273:8-13 (App. Vol. I: APP41). Rather,  
10 LeGrand stated that he was trying to draft a "vanilla style" buy-sell provision. *See* Exhibit "1"  
11 at 274:15-17 (App. Vol. I: APP42).

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

13 Golshani was not happy with any of the language proposed by LeGrand, and as  
14 such, on September 22, 2011, Golshani emailed Bidsal some buy-sell language that Golshani  
15 himself came up with. *See* a true and correct copy of Golshani's September 22, 2011 email,  
16 attached hereto as ***Exhibit "13"*** and incorporated by this reference herein (App. Vol. II:  
17 APP413-6). To be clear, this was language that Golshani drafted and was proposing to Bidsal.  
18 *Id.* Golshani called his initial draft of the proposed language a "ROUGH DRAFT", which,  
19 after some modifications, ultimately ended up in Section 4. *Id.*; *See also* a true and correct  
20 copy of the OPAG ultimately executed by the parties, attached hereto as ***Exhibit "14"*** and  
21 incorporated by this reference herein at pp. 10-11 (App. Vol. II: APP417-45 at APP427-8). On  
22 October 26, 2011, Golshani emailed Bidsal a revised version of his earlier "ROUGH DRAFT",  
23 which Golshani identified as "ROUGH DRAFT 2". *See* a true and correct copy of Golshani's  
24 October 26, 2011 email, attached hereto as ***Exhibit "15"*** and incorporated by this reference  
25 herein (App. Vol. I: APP446-9). Again, Golshani, not Bidsal, was the one who made the  
26 changes, and it is this language that was used in the final Operating Agreement. *Id.*

27 The changes between ROUGH DRAFT and ROUGH DRAFT 2 are important in  
28 helping understand the negotiations and intent of the parties. There is no dispute that Golshani

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

1 drafted the ROUGH DRAFT, nor that he made all of the changes to ROUGH DRAFT 2. See  
 2 Exhibits “13” and “15” (App. Vol I: APP446-9 & Vol II: APP413-6). One of the changes made  
 3 by Golshani was intentionally changing the triggering event for a buy-sell transaction from an  
 4 offer by one member “*to sell his or its Member’s Interest* in the Company to the other  
 5 Members” to an offer by that member “*to purchase the Remaining Member’s Interest* in the  
 6 Company.” See Exhibit “13” and “15” (App. Vol. II: APP413-6, 446-9). See also a true and  
 7 correct copy of a demonstrative exhibit used at the Merits Hearing which explained the proper  
 8 procedure for a company break-up, attached hereto as *Exhibit “16”* and incorporated by this  
 9 reference herein (App. Vol. II: APP450-1). See also Exhibit “1” at 376:17-25, 377:6-8, 378:13-  
 10 17, and 379:1-4 (App. Vol. I: APP76-79). It is also significant to note that there is no draft that  
 11 includes both “sell” and “purchase” in the same sentence. *Id.*

12 A short time later, Golshani sent a fax to LeGrand containing his ROUGH DRAFT 2  
 13 buy-sell language. See a true and correct copy of LeGrand’s November 10, 2011 email  
 14 referencing Golshani’s fax, attached hereto as *Exhibit “17”* an incorporated by this reference  
 15 herein (App. Vol. II: APP452-3). See also Exhibit “1” at 318:7-9 (App. Vol. I: APP46).  
 16 LeGrand then made a few minor changes to Golshani’s ROUGH DRAFT 2, renamed it  
 17 “DRAFT 2”, and circulated the DRAFT 2 to Bidsal and Golshani. See Exhibit “14” and “15”  
 18 (App. Vol. II: APP417-45, 446-9). See also a true and correct copy of DRAFT 2, attached  
 19 hereto as *Exhibit “18”* and incorporated by this reference herein (App. Vol. II: APP454-6). See  
 20 also Exhibit “1” at 318:10-14 and 318:23-319:5 (App. Vol. I: APP46-47). However, the  
 21 differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. See Exhibit “15” and “18”  
 22 (App. Vol. II: APP446-9, 454-6). See also a true and correct copy of a demonstrative exhibit  
 23 from the Merits Hearing comparing the two drafts, attached hereto as *Exhibit “19”* and  
 24 incorporated by this reference herein (App. Vol. III: APP457-8). See also Exhibit “1” at  
 25 320:11-17 and 321:19-22 (App. Vol. I: APP48-9). Rather, LeGrand simply took Golshani’s  
 26 language and inserted it almost untouched into the Operating Agreement. *Id.*

27 \\\

28 \\\

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

3           During the course of their discussions, both Bidsal and Golshani wanted to have  
 4           protections for both parties in equity and fairness. *See also* Exhibit “1” at 381:18-22 (App. Vol.  
 5           I: APP80). Consequently, an appraisal process was added to the buy-sell provision. *See also*  
 6           Exhibit “1” at 31:8-14 (App. Vol. I: APP7). Bidsal and Golshani discussed the what-ifs while  
 7           the OPAG was being prepared and that the buy-sell procedure would begin when one member  
 8           makes an offer to purchase. *See also* Exhibit “1” at 381:16-25 (App. Vol. I: APP80).

9           Bidsal explained the mechanics of what they discussed: the initial offer is made on the  
 10          member’s estimate of value. *See also* Exhibit “1” at 382:1-5 (App. Vol. I: APP81). The other  
 11          side looks at it. *See also* Exhibit “1” at 382:6-7 (App. Vol. I: APP81). If he is willing to sell at  
 12          that number, they are done. *Id.* If he is not happy with the number, they go to an appraisal  
 13          process. *See also* Exhibit “1” at 382:12-15 (App. Vol. I: APP81). Initially, they talked about  
 14          three appraisers, but it was too cumbersome so they went with two appraisers. *See also* Exhibit  
 15          “1” at 382:12-383:1 (App. Vol. I: APP81-2). If the other side decided to make a counteroffer,  
 16          then they would go through the appraisal process to determine FMV, fair market value, by  
 17          appraisal. *See also* Exhibit “1” at 383:14-17 (App. Vol. I: APP82). At the same time, there  
 18          was no scenario where one side made an offer to purchase and the other side twisted it around  
 19          and make a counteroffer to purchase at that number. *See also* Exhibit “1” at 227:13-19 and  
 20          383:21-25 (App. Vol. I: APP33, 82). Not only was that not discussed, but Golshani’s changes  
 21          from ROUGH DRAFT to ROUGH DRAFT 2 intentionally made it clear that the triggering  
 22          event would be an “offer to purchase...” as opposed to “an offer to sell...”. *See* Exhibits  
 23          “13”, “15”, and “16” (App. Vol. II: APP413-6, 446-9, 450-1). *See also* Exhibit “1” at 226:1-5,  
 24          376:17-25, 377:6-8, 378:13-17, 379:1-4, and 384:1-4 (App. Vol. I: APP32, 76-79, 83).

25          As more fully described below, if the Remaining Member chose the first option (roman  
 26          numeral “i”), by accepting the Offering Member’s offer to purchase, then they would go to the  
 27          specific intent provision. *See* Exhibit “1” at 257:11-24 (App. Vol. I: APP37). *See also* Exhibit  
 28          “14” (App. Vol. II: APP417-45). If the Remaining Member chose the second option (roman

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

1 numeral “ii”), by making a counteroffer, then they would go through the appraisal process and  
2 go back to the same specific intent provision. *See* Exhibit “1” at 257:25-258:16 (App. Vol. I:  
3 APP37-8). *See also* Exhibit “14” (App. Vol. II: APP417-45). As soon as the Remaining  
4 Member made an election to make a counteroffer, they would have to continue with the rest of  
5 the sentence and complete an appraisal based on FMV. *See* Exhibit “1” at 262:15-19 (App.  
6 Vol. I: APP39). *See also* Exhibit “14” (App. Vol. II: APP417-45).

7 FMV is a defined word in Section 4.2 as the medium of two appraisals, and it is further  
8 defined in Section 4.1 (which refers back to Section 4.2). *See* Exhibit “1” at 263:20-24 (App.  
9 Vol. I: APP40). *See also* Exhibit “14” (App. Vol. II: APP417-45). This interpretation is the  
10 only logical interpretation and explains why the last paragraph of Section 4.2 uses “this  
11 provision” and separately the phrase “...according to the procedure set forth in Section 4.” It  
12 also explains why the “specific intent” language appears at the end of the buy-sell procedure  
13 contained in Section 4.2 as opposed to appearing at the beginning of Section 4.

14 All told, Bidsal, Golshani, and LeGrand spent more than 6 months negotiating the terms  
15 of the proposed OPAG and produced at least seven different revisions before it was ultimately  
16 signed. *See* Exhibits “5”, “6”, “7”, “8”, “9”, “10”, “11”, “12”, and “14” (App. Vol. I: APP131-  
17 412; Vol. II: APP417-45). Bidsal never drafted any of the revisions. *See* Exhibit “1” at 208:6-  
18 7, 384:18-23, and 387:13-15 (App. Vol. I: APP22, 83, 85). Rather, Golshani brought in hard  
19 copies of different versions of the OPAG when he came to Bidsal’s office to meet with him.  
20 *See* Exhibit “1” at 385:8-12 and 19-21 (App. Vol. I: APP84). To the extent any changes were  
21 not made by LeGrand, they were made by Golshani. *See* Exhibit “1” at 152:20-22 (App. Vol. I:  
22 APP12).

23 By August 3, 2012, the OPAG had been signed by Bidsal and Golshani. *See* Exhibit  
24 “14” (App. Vol. II: APP417-45). *See also* a true and correct copy of an August 3, 2012 email  
25 sent to Bidsal, attached hereto as **Exhibit “20”** and incorporated by this reference herein (App.  
26 Vol. III: APP459-89). *See also* Exhibit “1” at 213:22-25 (App. Vol. I: APP24). While the  
27 language of Section 4 in the signed OPAG was slightly different than Golshani’s ROUGH  
28 DRAFT 2, the changes are minor and were made by Golshani prior to signing. *See* Exhibit “1”

1 at 214:4-11 (App. Vol. I: APP25). *See also* Exhibits “14” and “15” (App. Vol. II: APP417-49).  
2 More importantly, the intent of the parties that the initial offer *not be* an offer to buy or sell, but  
3 solely an offer to buy, remained.

4 **E. THE MANAGEMENT AND OPERATION OF GREEN VALLEY.**

5 After Green Valley acquired the Green Valley Commerce Center, Bidsal and Golshani  
6 decided to sell some of the buildings. *See* Exhibit “1” at 365:3-7 (App. Vol. I: APP70). As  
7 part of this process, Bidsal subdivided the Green Valley Commerce Center into separate  
8 buildings, creating a building association, conducting a reserve study for the building  
9 association, and commissioning survey work. *See* Exhibit “1” at 365:18 - 366:11 (App. Vol. I:  
10 APP7-1). Bidsal did “most of the work” in handling the subdivision process and working with  
11 the surveyors and Bidsal, alone, handled the management and leasing of the Green Valley  
12 Commerce Center. *See also* Exhibit “1” at 114:9-15 & 19-21 (App. Vol. I: APP10).

13 Ultimately, Bidsal, as part of his management activities, was able to sell buildings B, C,  
14 and E of the Green Valley Commerce Center for a profit. *See* Exhibit “1” at 369:4-5 (App.  
15 Vol. I: APP73). Further, when the buildings sold, the proceeds from one of the properties were  
16 used to purchase a new property through a 1031 exchange. *See* Exhibit “1” at 369:17 - 370:1  
17 (App. Vol. I: APP60). The proceeds from the sale of the other two buildings were paid to  
18 Golshani and Bidsal for their respective capital percentages. *Id.* The formula used to  
19 determine the allocation of proceeds is contained in Exhibit B of the OPAG. *See* Exhibit “1” at  
20 389:19-24 (App. Vol. I: APP8). *See also* Exhibit “14” (App. Vol. II: APP417-45).

21 Even though Golshani took a very limited personal role in the sale of a property, every  
22 sale was done with Golshani’s approval. *See* Exhibit “1” at 373:18-20 (App. Vol. I: APP75).  
23 Golshani admitted that Bidsal would send him emails with information about the properties and  
24 their values “all the time.” *See* Exhibit “1” at 175:19-23 (App. Vol. I: APP21). *See also*  
25 Exhibit “21” (App. Vol. III: APP490-518). Following the sales, Green Valley still owns five  
26 buildings in the Green Valley Commerce Center, and another property in Arizona. *See*  
27 Exhibit “1” at 370:18-23 (App. Vol. I: APP74).

28 \\\

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

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

1 **F. MISSION SQUARE.**

2 If there was any doubt left as to who drafted Section 4 of the OPAG, that doubt was  
 3 resolved in early 2013. In April 2013, Golshani and Bidsal formed another company, Mission  
 4 Square, LLC (“Mission Square”), using the Green Valley OPAG as the starting point, which,  
 5 according to LeGrand “is based upon the GVC OPAG that has Ben’s language on buy sell.”  
 6 See a true and correct copy of LeGrand’s June 19, 2013 email, attached hereto as *Exhibit “23”*  
 7 and incorporated by this reference herein at 1. (*emphasis added*) (App. Vol. III: APP526-84).  
 8 LeGrand’s reference to “Ben’s language” is based, in part, on the fact that Golshani, over the  
 9 course of several drafts, perfected the buy-sell language and spearheaded the corrections with  
 10 LeGrand. See Exhibit “1” at 389:8-14 (App. Vol. I: APP86). No testimony was presented by  
 11 Golshani to undermine the parties’ understanding at that time.

12 **G. THE INITIATING BUY-OUT OFFER AND GOLSHANI’S ATTEMPT TO**  
 13 **CHANGE THE TERMS OF THE TRANSACTION.**

14 Consistent with ROUGH DRAFT 2, on July 7, 2017, Bidsal made a written offer to  
 15 purchase CLAP’s Membership Interest in the Company pursuant to Section 4, at a price based  
 16 upon an estimate of the Company’s total value of \$5,000,000.00, which Bidsal thought was the  
 17 fair market value, derived without the benefit of a formal appraisal (the “Initial Offer”). See  
 18 Exhibit “1” at 331:15-20 (App. Vol. I: APP50). See also a true and correct copy of Bidsal’s  
 19 July 7, 2017 letter, attached hereto as *Exhibit “24”* and incorporated by this reference herein  
 20 (App. Vol. III: APP585-6). The \$5,000,000 value was Bidsal’s estimate of the value of Green  
 21 Valley. See Exhibit “1” at 390:1-5, and 390:21-22 and Exhibit “36” at 333:10-12 (App. Vol. I:  
 22 APP87, App. Vol. V: APP1052-57 at APP1057). Bidsal initiated the process to buy Green  
 23 Valley because he wanted to finish the deal and move on. See Exhibit “1” at 390:14-20 (App.  
 24 Vol. I: APP87). Bidsal did not obtain an appraisal before making the offer.

25 Notwithstanding Bidsal’s openness to Golshani during the entire ownership period,  
 26 behind the scenes, on July 31, 2017, Golshani obtained an appraisal from Petra Latch, MAI  
 27 indicating that the Green Valley Commerce Center was worth more than originally thought.  
 28 See Exhibit “36” at 156:7-10 (App. Vol. V: APP1052-57 at APP1054). See also a true and

1 correct copy of the appraisal attached hereto as **Exhibit “25”** and incorporated by this reference  
2 herein (App. Vol. IV: APP587-823).

3 Notwithstanding the fact that Golshani specifically changed the language of Section 4  
4 from an offer to sell to an offer to purchase when the Operating Agreement was being  
5 negotiated, Golshani attempted to take advantage of Bidsal by trying to twist Bidsal’s offer to  
6 purchase into an offer to sell. See Exhibits “13”, “15”, and “16” (App. Vol. II: APP413-6;  
7 APP446-51). See also Exhibit “1” at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Vol. I:  
8 APP76-9). Specifically, on August 3, 2017, Golshani / CLAP provided a response in which  
9 Golshani inappropriately attempted to convert Bidsal’s Initial Offer to purchase into an offer by  
10 Bidsal to sell Bidsal’s membership interests in the Company without the benefit of Bidsal  
11 obtaining an appraisal. See a true and correct copy of CLAP’s August 3, 2017 response letter,  
12 attached hereto as **Exhibit “26”** and incorporated by this reference herein (App. Vol. IV:  
13 APP824-5).

14 Because Golshani had specifically agreed that the Initial Offer would not be an offer to  
15 sell, but instead, solely an offer to purchase, on August 5, 2017, Bidsal sent a letter back to  
16 CLAP, requesting that the appraisal process contemplated from the beginning be utilized. See a  
17 true and correct copy of Bidsal’s August 5, 2017 letter attached hereto as **Exhibit “27”** and  
18 incorporated by this reference herein (App. Vol. IV: APP826-7). He informed Golshani that he  
19 needed to initiate the appraisal process because if a counteroffer is made, then they need to go  
20 to the FMV and it is defined as the medium of two appraisals in Section 4.2. See Exhibit “1” at  
21 391:4-11 (App. Vol. I: APP88).

22 On August 28, 2017, Golshani and CLAP sent another letter to Bidsal, continuing to  
23 insist on an option not contemplated by Section 4 of the OPAG. See a true and correct copy of  
24 CLAP’s August 28, 2017 letter, attached hereto as Exhibit “28” and incorporated by this  
25 reference herein (App. Vol. IV: APP828-32).

26 \ \ \

27 \ \ \

28 \ \ \

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

## 1 **H. THE ARBITRATION PROCEEDING.**

### 2 **1. Demand for Arbitration.**

3 On or about September 26, 2017, CLAP filed a Demand for Arbitration with  
4 JAMS, requesting an arbitration proceeding before a JAMS arbitrator, with a hearing to take  
5 place in Las Vegas, Nevada (the “Arbitration Demand”). A true and correct copy of the  
6 Demand is attached hereto as *Exhibit “29”* and incorporated by this reference herein (App.  
7 Vol. V: APP833-8).

8 In the Arbitration Demand, CLAP described its interpretation of the buy-sell provisions  
9 of the OPAG, recited Bidsal’s July 7, 2017 initial break-up letter, and identified the issue as  
10 Bidsal “has refused to sell his interest, but instead has demanded an appraisal to determine  
11 FMV.” *See* Exhibit “29” at 2 (end of the second paragraph) (App. Vol. V: APP833-8 at 835).  
12 Thus, CLAP brought the Arbitration Proceeding to get an Arbitrator to endorse CLAP’s  
13 interpretation of the buy-sell provisions of the OPAG, and to force Bidsal to sell his interest in  
14 Green Valley to CLAP at a price based upon Bidsal’s initial estimate as to the value of Green  
15 Valley. CLAP did not articulate any other issues to be decided by the Arbitrator. *See* Exhibit  
16 “29” (App. Vol V:APP833-8).

### 17 **2. Arbitration Merits Hearing.**

18 On or about May 8-9, 2018, the Arbitrator conducted the Merits Hearing in the  
19 Arbitration Proceeding. *See* Exhibit “1” (App. Vol. I: APP1-97). *See also* Exhibits “2”  
20 through “28”, all of which were admitted into evidence at the Merits Hearing (App. Vol. I-IV:  
21 APP98-832). The Arbitrator then took the matter under advisement, to render a decision at a  
22 later time.

### 23 **3. Merits Order and Objections to Proposed Awards.**

24 On or about October 9, 2018, five months after the Merits Hearing<sup>3</sup>, the  
25 Arbitrator entered his Merits Order No. 1. A true and correct copy of the Merits Order No. 1 is  
26 attached hereto as *Exhibit “30”* and incorporated by this reference herein.  
27

28 <sup>3</sup> The Arbitrator was supposed to issue his decision much earlier, but granted his own motion to extend the time.  
Exhibit “1” (APP 1-97), Exhibit “14” § 14 (APP 425), Exhibit “30” (APP 839-54) It is likely that the significant

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 “30” at 2 (App. Vol. V: APP839-54 at 841).

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 “31”** and incorporated by this reference herein (App. Vol. V: APP855-70). On the same date, CLAP also submitted an application for an award attorneys’ fees and costs (the “Attorneys’ Fees Application”). A true and correct copy of the Attorneys’ Fees Application is attached hereto as **Exhibit “32”** and incorporated by this reference herein (App. Vol. V: APP871-963). 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 “33”** and incorporated by this reference herein (App. Vol. V: APP964-77). 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 “34”** and incorporated by this reference herein (App. Vol. V: APP978-1028).

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.

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

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

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 “35”* and incorporated by this reference herein (App. Vol. V: APP1029-51). 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. Vol. V: APP1029-51 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 and correct copy of the Attorneys’ Fees Supplement is attached hereto as *Exhibit “38”* and incorporated by this reference herein (App. Vol. VI: APP1093-122). 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 “39”* and incorporated by this reference herein (App. Vol. VI: APP1123-5).

#### 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 “40”* and incorporated by this reference herein (App. Vol. VI: APP1126-47). 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.*

For the following reasons, the Award should be vacated.

## IV.

**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 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.

As explained below, the Award should be vacated.

**B. THE ARBITRATOR EXCEEDED HIS POWERS.**

As stated earlier, 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).

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

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.

A district court may overturn the arbitrator’s decision where “the arbitrator act[s] outside the scope of his [or her] contractually delegated authority, *issuing an award that simply reflect[s] [his or her] own notions of justice* rather than draw[ing] its essence from the contract.” Oxford Health Plans, LLC v. Sutter, 569 U.S. 564, 569, 133 S. Ct. 2064 (2013)(emphasis added). This is especially true, where the arbitrator tries to justify an award based on “past practice” and, in the process, disregards a specific contract provision to correct what he or she may perceive as an injustice. Pacific Motor Trucking Co. v. Automotive Machinists Union, 702 F.2d 176 (9th Cir. 1983). 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)).

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 were

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

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.

These 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.

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

Ignoring numerous Exhibits and witness testimony, the Arbitrator astoundingly found that Section 4 of the Operating Agreement was drafted by Bidsal. (*See* Exhibit “40” at 5 (fn. 5) and 9 (¶ 17) (App. Vol. VI: APP1126-47 at APP1131 and APP1135). 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 “1” at 318:7-319:5, 320:11-321:22, 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Vol. I: APP46-49 & 76-79), Exhibit “13” (App. Vol. II: APP413-6), Exhibit “14” (App. Vol. II: APP417-45 at APP427-8), Exhibit “15” (App. Vol. I: APP446-9), Exhibit “16” (App. Vol. II: APP450-1), Exhibit “17” (App. Vol. II: APP452-3), Exhibit “18” (App. Vol. II: APP454-6), and Exhibit “19” (App. Vol. III: APP457-8). Specifically, the Arbitrator ignored the following in determining that Bidsal was the draft 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

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

1 modifications, ultimately ended up in Section 4. *See Exhibit “13” and “14”* at pp. 10-11 (App.  
2 Vol. II: APP413-45 at 427-8);

3       2. On October 26, 2011, *Golshani emailed* Bidsal a revised version of his earlier  
4 “ROUGH DRAFT”, which Golshani identified as “ROUGH DRAFT 2”. *See Exhibit “15”*  
5 (App. Vol. II: APP446-9);

6       3. One of the changes *made by Golshani* was intentionally changing the triggering  
7 event for a buy-sell transaction from an offer by one member “*to sell his or its Member’s*  
8 *Interest* in the Company to the other Members” to an offer by that member “*to purchase the*  
9 *Remaining Member’s Interest* in the Company.” *See Exhibit “13”, “15”, “16” and Exhibit “1”*  
10 at 376:17-25, 377:6-8, 378:13-17, and 379:1-4 (App. Vol. II: APP413-6, 446-51; App. Vol. I:  
11 APP76-79).

12       4. A short time after October 26, 2011, *Golshani sent* a fax to LeGrand containing  
13 his ROUGH DRAFT 2 buy-sell language. *See Exhibit “17” and Exhibit “1”* at 318:7-9 (App.  
14 Vol. II: APP452-3, App. Vol. I: APP46).

15       5. LeGrand then made a few minor changes to Golshani’s ROUGH DRAFT 2,  
16 renamed it “DRAFT 2”, and circulated the DRAFT 2 to Bidsal and Golshani. *See Exhibit “14”*  
17 and “15” (App. Vol. II: APP417-49). *See also Exhibit “18”* (App. Vol. II: APP454-6). *See*  
18 *also Exhibit “1”* at 318:10-14 and 318:23-319:5 (App. Vol. I: APP46).

19       6. The differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. *See*  
20 *Exhibit “15”, “18”, “19”, and Exhibit “1”* at 320:11-17 and 321:19-22 (App. Vol. II: APP446-9,  
21 454-6; App. Vol. III: APP457-8; App. Vol. I: APP48-9).

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

24       8. Bidsal never drafted any of the revisions. *See Exhibit “1”* at 208:6-7, 384:18-23,  
25 and 387:13-15 (App. Vol. I: APP22, 83, 85);

26       9. Golshani brought in hard copies of different versions of the OPAG when he  
27 came to Bidsal’s office to meet with him. *See Exhibit “1”* at 385:8-12 and 19-21 (App. Vol. I:  
28 APP84);

1           **10.** To the extent any changes were not made by LeGrand, they were made by  
2 Golshani. *See* Exhibit “1” at 152:20-22 (App. Vol. I: APP12); and

3           **11.** LeGrand, himself, stated that nearly identical buy-sell language used two years  
4 later in an operating agreement for another entity, Mission Square, contained and consisted  
5 of (in LeGrand’s words): “Ben’s language.” *See* Exhibit “23” and Exhibit “1” at 389:8-14  
6 (App. Vol. III: APP526-84, App. Vol. I: APP86).<sup>4</sup>

7           Thus, the undisputed evidence showed that Golshani was the drafter of the buy-sell  
8 language at issue, yet the Arbitrator ignored the undisputed facts and made up justifications,  
9 unsupported by the facts, for declaring that Bidsal was the drafter. *See* Exhibit “30” at 3, fn. 3  
10 (App. Vol. V: APP839-54 at 842-3); *See also* Exhibits “35” at 6 and “40” at 5 (App. Vol. V:  
11 APP1029-51 at APP1035 and App. Vol. VI: APP1126-47 at APP1131). This was done in an  
12 obvious attempt at backing into a result the Arbitrator wished to find.

13                           **(b) The Undisputed Evidence Clearly Demonstrated that the “Dutch**  
14                           **Auction” Concept Was Not Used in Drafting Section 4.**

15           Again ignoring numerous Exhibits and witness testimony, the Arbitrator  
16 found that Section 4 of the Operating Agreement was drafted using the “Dutch Auction”  
17 concept. (*See* Exhibit “40” at 5 (Para. 8)) (App. Vol. VI: APP1131). However, as before, this  
18 finding is completely unsupported, even contradicted, by the evidence and demonstrates the  
19 Arbitrator’s bias against Bidsal.

20           Specifically, David LeGrand clearly and unequivocally made it clear that the “Dutch  
21 Auction” concept, which he alone proposed, was ultimately discarded and not used. *See*  
22 Exhibit “1” at 273:8-13, 274:15-17, 316:12-15 (App. Vol. I: APP 41-42 & 45), Exhibit “9”  
23 (App. Vol. II: APP298-348), Exhibit “10” (App. Vol. II: APP349-78), Exhibit “11” (App. Vol.  
24 II: APP379-380) (wherein LeGrand stated that “[a] simple ‘Dutch Auction’ where either of you  
25 can make an offer to the other and the other can elect to buy or sell at the offered price **does not**  
26 **appear sensible to me.**”), Exhibit “12” at DL 301 (App. Vol. II: APP381-412 at APP394). No

27 \_\_\_\_\_  
28 <sup>4</sup> 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 “23” (App. Vol. III: APPENDIX0526-84). *See* Exhibit “30” at 5 (Para. 8) (App. Vol. V: APPENDIX0839-54 at 844).

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) **The Undisputed Evidence Clearly Demonstrated “Rough Justice” Was Never Part Of The Consideration For Section 4.**

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<sup>5</sup>.

2. **The Arbitrator Failed to Draw his Ruling from the Essence of the Agreement.**

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 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 “30” at 2-3, fn.2. (App. Vol. V: APP841-42); *See* Exhibit “35” at 5 (fn. 5) and “40” at 5 (fn. 4) (App. Vol. V: APP1029-51 at APP1034 and App. Vol. VI: APP1126-47 at APP1131); *See* Lagstein at 642.

\\

<sup>5</sup> 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.

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

1 However, the Arbitrator failed to do so, and relying on: (i) LeGrand’s language that did  
 2 not make its way into the final Operating Agreement, (ii) what “is common among partners in  
 3 business entities” rather than the actions, words, and course of dealing of the parties, and (iii)  
 4 his own made-up notions of “rough justice” to steer his interpretation of Section 4.2, instead  
 5 found that the language had been drafted by Bidsal. *See* Exhibit “30” at 3-4 (App. Vol. V:  
 6 APP842-43); *See also* Exhibits “35” and “40” at 5 (Para. 8) (App. Vol. V: APP1029-51 at  
 7 APP1131 and App. Vol. VI: APP1126-47 at APP1034) This was a prototypical example of  
 8 “*issuing an award that simply reflect[s] [his or her] own notions of justice* rather than  
 9 draw[ing] its essence from the contract.” *See Sutter*, 569 U.S. at 569, 133 S. Ct. 2064.  
 10 (emphasis added).

11 This was also evident from the fact that the Arbitrator found that Section 4.2 was  
 12 drafted by Shawn Bidsal, as opposed to Ben Golshani, thereby allowing him to construe  
 13 Section 4.2 against Bidsal. *See supra*; *See also Anvui, LLC v. GL Dragon, LLC*, 123 Nev. 212,  
 14 163 P.3d 405 (2007); *Lewis v. Saint Mary’s Heath First D. Nev. 2005*), 402 F. Supp. 2d 1182.

15 This was also evident from the Arbitrator’s finding that Section 4.2 of the OPAG  
 16 contained a “Dutch Auction”. *See* Exhibit “30” at 3-4 (App. Vol. V: APP839-54 at 842-3); *See*  
 17 *also* Exhibits “35” and “40” at 5 (Para. 8) (App. Vol. V: APP1029-51 at APP1034 and App.  
 18 Vol. VI: APP1126-47 at 1131). The undisputed evidence showed that a “Dutch Auction” was  
 19 initially contemplated by LeGrand, but discarded by the parties long before the final version of  
 20 the buy-sell provisions of Section 4.2 was set in stone in the OPAG. *See* Exhibit “9” at DL211-  
 21 212, Exhibit “1” at 316:12-15, and Exhibit “10” (App. Vol. I: APP298-348 at 303-4; APP45;  
 22 APP349-78).

23 This was also evident from the Arbitrator’s reliance upon what “is common among  
 24 partners in business entities like partnership, joint ventures, LLC’s, close corporations...”  
 25 instead of the actions, words, and course of dealing of the parties. *See* Exhibits “35” and “40” at  
 26 5 (Para. 8) (App. Vol. V: APP1029-51 at APP1034 and App. Vol. VI: APP1126-47 at 1131).

27 These actions are in direct violation of the principles set forth in *Stolt-Nielsen*, *Suter*,  
 28 and *Pacific Motor Trucking*. The Arbitrator disregarded the specific buy-sell provisions of

1 Section 4.2, the systematic procedure for Section 4.2 which was illustrated for him at the Merits  
 2 Hearing with Exhibit “30”, and the undisputed evidence which showed that Golshani was the  
 3 drafter of the buy-sell provisions in Section 4.2. Instead, he dispensed with his own brand of  
 4 industrial justice, or, as the Arbitrator, himself, put it, the buy-sell provision was simply based  
 5 on a “form of cost-effective ‘rough justice’”. *See* Exhibit “30” at 3-4 and fn. 3 (App. Vol. V:  
 6 APP839-54 at 842-3); *See also* Exhibits “35” and “40” at 5 (Para. 8) (App. Vol. V: APP1029-  
 7 51 at APP1034 and App. Vol. VI: APP1126-47 at APP1131). Because the Arbitrator issued his  
 8 ruling based upon his own notions of justice, and not from the contract before him, the Award  
 9 should be vacated.

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

11 A manifest disregard of the law exists where “the arbitrator ‘underst[oo]d and  
 12 correctly state[d] the law, but proceed[ed] to disregard the same.” Collins v. D.R. Horton,  
 13 Inc., 505 F.3d 874, 879 (9th Cir. 2007) (*quoting* San Maritime Compania De Navegacion, S.A.  
 14 v. Saguenay Terminals Ltd., 293 F.2d 796, 801 (9th Cir. 1961)). In other words, “the  
 15 arbitrators were aware of the law and intentionally disregarded it.” Bosack v. Soward, 586 F.3d  
 16 1096, 1104 (9th Cir. 2009) (*quoting* Lincoln Nat’l Life Ins. Co. v. Payne, 374 F.3d 672, 675  
 17 (8th Cir. 2004)).

18 In this case, the Arbitrator manifestly disregarded the law. The Arbitrator recognized  
 19 the law that the purpose of contract interpretation was “to discern the intent of the contracting  
 20 parties.” *See* Exhibit “30” at 6, fn. 7 (*citing to* American First Federal Credit Union v. Soro,  
 21 359 P.3d 105, 106 (Nev. 2015) and Davis v. Beling, 128 Nev 301, 279 P.3d 501, 515 (Nev.  
 22 2011)) (App. Vol. V: APP839-54 at 845); *See also* Exhibits “35” at 8 and “40” at 7 (App. Vol.  
 23 V: APP1029-51 at APP1037 and App. Vol. IV: APP1126-47 at APP1133) *See also* Exhibit  
 24 “30” at 13 wherein the Arbitrator stated that his decision was based upon “careful consideration  
 25 . . . of applicable law . . .” (App. Vol. V: APP839-54 at 852); *See also* Exhibits “35” and “40”  
 26 at 19 (App. Vol. V: APP1029-51 at APP1048 and App. Vol. VI: APP1126-47 at APP1145).  
 27 Undoubtedly, the Arbitrator also reviewed and digested the legal argument and citations to  
 28 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 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.

*See* Exhibit “30” at 2 (App. Vol. V: APP839-54 at 841); *See also* Exhibits “35” and “40” at 4 (App. Vol. V: APP1029-51 at APP1033 and App. Vol. VI: APP1126-47 at APP1130). 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* Exhibit “31”, “35”, and “40” (App. Vol. V: APP855-70 and APP1029-51 at APP1048; App. Vol. VI: APP1126-47 at APP1145). 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 “31” at 15 (App. Vol. V: APP855-70 at 870); *See also* Exhibits “35” and “40” at 19 (App. Vol. V: APP1029-51 at APP1048 and App. Vol. VI: APP1126-47 at APP1145).

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

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

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 “40” at 3; Exhibit “14” at Article III, Section 14.1. (App. Vol. VI: APP1126-47 at APP1129; App. Vol. II: APP417-45 at 424-25). 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 “14” at Article III, Section 14.1 and Exhibit “37”. (App. Vol. II: APP417-45 at 424-25; App. Vol. VI: APP1058-92) 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.

##### 5. **The Award is Irreconcilable with Undisputed Dispositive Facts.**

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 irreconcilable with the undisputed facts, 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 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 “19” (which was demonstrative Exhibit 360 during the Merits Hearing) (App. Vol. III: APP457-8). 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

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

1 lock down a fair price. However, the Arbitrator's blatant disregard for Exhibit "19" appeared to  
2 be deliberate and his final ruling orders Bidsal to "sell" instead of "purchase." (App. Vol. III:  
3 APP457-8).

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

13 1. Exhibit "30" at 4 (Para. 6), Exhibit "35" at 6 (Para. 9), and Exhibit "40" at 5  
14 (Para. 9): "the parties' dispute appears to be a result and expression of 'seller's remorse' by Mr.  
15 Bidsal . . ." (App. Vol. V: APP839-54 at 843) (App. Vol. V: APP1029-51 at APP1035) (App.  
16 Vol. VI: APP1126-47 at APP1131);

17 2. Exhibit "30" at 4 (Para. 7B), Exhibits "35" and "40" at 6 (Para. 10B): "Mr.  
18 Bidsal's testimony, arguments and position in support of his having contractual appraisal rights  
19 appear to be 'outcome determinative' in his favor (App. Vol. V: APP839-5 at 843) (App. Vol.  
20 V: APP1029-51 at APP1035) (App. Vol. VI: APP1126-47 at APP1132);

21 3. Exhibit "30" at 7 (Para. 9), Exhibit "35" at 9 (Para. 15), and Exhibit "40" at 8  
22 (Para. 15): "It appears that in this case, Mr. Bidsal attempted to find a contractual 'out' to  
23 regain lost leverage to either buy or sell a 50% membership interest in Green Valley at a price  
24 and/or terms less favorable that he originally envisaged . . ." (App. Vol. V: APP839-54 at 846)  
25 (App. Vol. V: APP1029-51 at APP1038) (App. Vol. VI: APP1126-47 at APP1134);

26 4. Exhibit "30" at 7 (Para. 9), Exhibit "35" at 9 (Para. 16), and Exhibit "40" at 8-9  
27 (Para. 16): "What Mr. Bidsal seems to have settled on for negotiation and arbitration was  
28 ignoring, disregarding and, it appeared at the hearing, resisting strict application of the 'specific

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

1 intent' language quoted and discussed above . . ." (App. Vol. V: APP839-54 at 846) (App. Vol.  
 2 V: APP1029-51 at APP1038) (App. Vol. VI: APP1126-47 at APP1134-35);

3 5. Exhibit "30" at 7-8 (Para. 9), Exhibit "35" at 10 (Para. 17), and Exhibit "40" at 9  
 4 (Para. 17): "What Mr. Bidsal apparently found and settled on was a drafting ambiguity ins  
 5 Section 4 of the Green Valley Operating Agreement --- i.e., 'FMV' . . . while it apparently was  
 6 under Mr. Bidsal's control for final revisions . . ." (App. Vol. V: APP839-54 at 846-7) (App.  
 7 Vol. V: APP1029-51 at APP1039) (App. Vol. VI: APP1126-47 at APP1135);

8 6. Exhibit "30" at 8 (Para. 9), Exhibit "35" at 10 (Para. 17), and Exhibit "40" at 9  
 9 (Para. 17): "Mr. Bidsal used that ambiguity as his justification for refusing to perform as a  
 10 compelled seller under the Section 4.2 'buy-sell' . . ." (App. Vol. V: APP839-54 at 847) (App.  
 11 Vol. V: APP1029-51 at APP1039) (App. Vol. VI: APP1126-47 at APP1135);

12 7. Exhibit "30" at 8 (Para. 10), Exhibit "35" at 10 (Para. 18), and Exhibit "40" at 9  
 13 (Para. 18): ". . . there is an unanswered logical flaw in Bidsal's position - - which the Arbitrator  
 14 has determined to be 'outcome determinative' . . ." (App. Vol. V: APP839-54 at 847) (App.  
 15 Vol. V: APP1029-51 at APP1039) (App. Vol. VI: APP1126-47 at 1135).

16 8. Exhibit "30" at 11 (Para. 11D), Exhibits "35" at 14 (Para. 20G), and Exhibit  
 17 "40" at 12 (Para. 20G): ". . . [m]iscalculating the intentions, thinking and/or financial resources  
 18 available to the other party in an arm's length transaction, such as a Section 4.2 'buy-sell,' are  
 19 not cognizable bases for re-writing or re-interpreting the parties' contractual procedures." (App.  
 20 Vol. V: APP839-54 at 850) (App. Vol. V: APP1029-51 at APP1043) (App. Vol. VI: APP1126-  
 21 47 at 1138).

22 9. Exhibits "35" at 17 (first paragraph) and Exhibit "40" at 16-7 (Para. 28): ". . .  
 23 Mr. Bidsal, not CLA, was the principal driver of those costs . . . Mr. Bidsal's resistance to  
 24 complying with his obligations including his conducting a 'no holds barred' litigation . . ."  
 25 (App. Vol. V: APP1029-51 at APP1046)(App. Vol. VI: APP1126-47 at APP1142-43).

26 The foregoing examples of statements from the Merits Order show that they were made  
 27 by the Arbitrator simply as pretext for ruling against Bidsal. The Arbitrator exhibited an open  
 28 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. 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.

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

**1. The Arbitrator Included Matters Not Submitted to Him.**

Even if the Court does not vacate the entirety of the Award, it should still modify and correct the Award. As stated earlier, 9 U.S.C. § 11(b) 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.” Kyocera, 341 F.3d at 997-98;

1 Schoenduve Corp. v. Lucent Technologies, 442 F.3d 727, 732 (9th Cir. 2006). That is because  
 2 review by a district court is ultimately still “designed to preserve due process” without  
 3 unnecessary public intrusion into private arbitration procedures. Id.

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

9 In this case, as stated earlier, in the Interim Award, CLAP added various provisions  
 10 involving issues never made an issue in the Arbitration Proceeding by CLAP in its Demand.  
 11 *See* Exhibit “29” (App. Vol. V: APP833-8). These were set forth in Section V of the Interim  
 12 Award, and included:

- 13 1. Ordering Bidsal to transfer his membership interests in Green  
 14 Valley to CLAP “free and clear of all liens and encumbrances”;
- 15 2. Placing an arbitrary and commercially unreasonable deadline of  
 16 10 days for Bidsal to complete the transfer of his membership interests in Green  
 17 Valley;

18 *See* Exhibit “31” (App. Vol. V: APP855-70 at 869-70). Exhibits “35” and “40” at 19 (App. Vol.  
 19 V: APP1029-51 at APP1048) (App. Vol. VI: APP1126-47 at APP1145).

20 However, these issues were not raised by CLAP in its Arbitration Demand. *See* Exhibit  
 21 “29” (App. Vol. V: APP833-8). Rather, CLAP simply sought assistance from the Arbitrator to  
 22 interpret the OPAG consistent with CLAP’s interpretation of it and force Bidsal to sell his  
 23 membership interest in Green Valley to CLAP. Consequently, the parties never conducted  
 24 discovery on those issues, prepared to present evidence at the Merits Hearing related to those  
 25 issues, or formulated legal argument related to those issues in any briefs submitted to the  
 26 Arbitrator.

27 Further, these provisions were not found anywhere in the Merits Order. *See* Exhibit  
 28 “30” (App. Vol. V: APP839-54). In fact, they could not have been, because JAMS Rule 11(b)

1 did not grant the Arbitrator authority to award anything outside of “disputes over the formation,  
 2 existence, validity, interpretation or scope of the agreement under which Arbitration is sought.”  
 3 *See* a true and correct copy of the JAMS rules, attached hereto as Exhibit “37” an incorporated  
 4 by this reference herein (App. Vol. VI: APP1058-92 at APP1073).

5 Likewise, Section 14.1 of Article III of the OPAG only mandated arbitration “[i]n the  
 6 event of any dispute or disagreement between the members as to the interpretation of any  
 7 provision of this Agreement . . .” (emphasis added) *See* Exhibit “14” at Section 14.1 (App.  
 8 Vol. II: APP417-45 at 424-5). Thus, issues properly considered in the Arbitration Proceeding  
 9 all dealt with the interpretation of the OPAG. Distributions to the members had nothing to do  
 10 with the interpretation of the OPAG, and as such, were not properly part of the issues to be  
 11 decided in the Arbitration Proceeding.

12 Moreover, the Final Award would not enforceable in and of itself. Rather, both JAMS  
 13 Rule 24(J) and Article III Section 14.1 of the OPAG provided that the provisions of the Federal  
 14 Arbitration Act (9 U.S.C. § 1 *et seq.*) govern the process in this case. *See* Exhibit “14” (App.  
 15 Vol. II: APP417-45 at 424-5). Under 9 U.S.C. § 9, CLAP must apply to a court of law to  
 16 confirm any final arbitration award within one year, in order to enforce it. At the same time,  
 17 under 9 U.S.C. § 12, Bidsal was entitled to file a motion to vacate, modify, or correct any final  
 18 arbitration award within three (3) months after the award is filed or delivered. Consequently, a  
 19 ten (10) day finalization date was premature and unwarranted under the law.

20 Bidsal brought these issues to the attention of the Arbitrator. *See* Exhibit “33” (App.  
 21 Vol. V, APP964-77). Nonetheless, in blatant disregard of the law, the Arbitrator exceeded his  
 22 authority by including in the Award these provisions of matters not properly before him. *See*  
 23 Exhibit “35” and “40” at 19 (App. Vol. V: APP1029-51 at APP1048)(App. Vol. VI: APP1126-  
 24 47 at APP1145). Consequently, the Award should, at least, be modified to remove these  
 25 offending provisions.

26 **E. THE ATTORNEYS’ FEES AWARDED SHOULD BE VACATED AS WELL.**

27 As with general arbitration awards, awards of attorneys’ fees may be vacated based on a  
 28 “manifest disregard of the law.” *See* Arbitration Between Bosack v. Soward, 573 F.3d 891, 899

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

(9th Cir. 2009). Nevada law governs any award of attorneys fees. *See* Operating Agreement, Exhibit “14” (App. Vol. II: APP417-45 at 424-25 & 433).

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).

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

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, 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 agrees 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 "34" (App. Vol. V, APP978-1028). 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

1 Rule 18 Motion and CLAP's wrongful attempt to recover the travel costs of CLAP's principal,  
 2 for a total of \$298,256.00. *See* Exhibits “32” and “40” (App. Vol. V: APP871-963; App. Vol.  
 3 VI: APP1126-47). The Award should be modified and corrected to reduce the award of  
 4 attorneys’ fees and costs to the sum of \$136,970.83.

5 V.

6 **CONCLUSION**

7 For the foregoing reasons, the District Court should vacate the Award. In the very least,  
 8 the Award should be modified or corrected to ***remove*** the following provisions contained in  
 9 Sections I and V of the Interim Award and the Award, which:

- 10 1. Ordered Bidsal to transfer his membership interests in Green Valley to CLAP
- 11 “free and clear of all liens and encumbrances”;
- 12 2. Placed an arbitrary and commercially unreasonable deadline of 10 days for
- 13 Bidsal to complete the transfer of his membership interests in Green Valley;
- 14 3. Granting to the Arbitrator continuing jurisdiction over the parties concerning the
- 15 subject matter of the Arbitration.

16 Finally, if the Award is not vacated, in full, CLAP’s award of attorneys’ fees and costs  
 17 should be reduced by the sum of \$136,970.83.

18 DATED this 9<sup>th</sup> day of April, 2019.

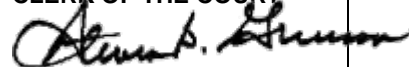
19 SMITH & SHAPIRO, PLLC

20  
 21 /s/ James E. Shapiro  
 22 James E. Shapiro, Esq.  
 23 Nevada Bar No. 7907  
 24 Sheldon A. Herbert, Esq.  
 25 Nevada Bar No. 5988  
 26 3333 E. Serene Ave., Suite 130  
 27 Henderson, Nevada 89074  
 28 *Attorneys for Plaintiff/Movant,*  
*Shawn Bidsal*

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

**EXH. B**

Electronically Filed  
1/9/2020 11:26 AM  
Steven D. Grierson  
CLERK OF THE COURT



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

# **DISTRICT COURT**

## **CLARK COUNTY, NEVADA**

CLA, PROPERTIES, LLC, a California limited liability company,

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

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

## **NOTICE OF APPEAL**

Notice is hereby given that Respondent SHAWN BIDSAL hereby appeal to the Supreme Court of Nevada from the following:

1) The District Court's Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Countermotion to Vacate the Arbitrator's Award, entered on December 16, 2019.

2) All other orders and rulings made appealable from the foregoing.

Dated this 9<sup>th</sup> 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*

SMITH & SHAPIRO, PLLC

3333 E. Serene Ave., Suite 130

Henderson, NV 89074

O:(702)318-5033 F:(702)318-5034

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 9<sup>th</sup> day of January, 2020, I served a true and correct copy of the foregoing **NOTICE OF 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.

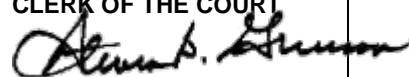
/s/ Jennifer Bidwell

An employee of Smith & Shapiro, PLLC

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

**EXH. C**

Electronically Filed  
1/9/2020 11:26 AM  
Steven D. Grierson  
CLERK OF THE COURT



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

# **DISTRICT COURT**

## **CLARK COUNTY, NEVADA**

CLA, PROPERTIES, LLC, a California limited liability company,

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

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

### **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

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 Confirmation 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 9<sup>th</sup> 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*

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 9<sup>th</sup> 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.

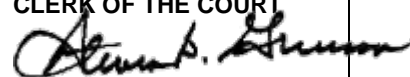
/s/ Jennifer Bidwell

An employee of Smith & Shapiro, PLLC

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

**EXH. D**

Electronically Filed  
1/17/2020 9:13 AM  
Steven D. Grierson  
CLERK OF THE COURT



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

***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 17<sup>th</sup> 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*

**SMITH & SHAPIRO, PLLC**

3333 E. Serene Ave., Suite 130

Henderson, NV 89074

O:(702)318-5033 F:(702)318-5034

**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.

\\

\\

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.

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

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

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

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

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

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<sup>1</sup>. 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

---

<sup>1</sup> 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.

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 17<sup>th</sup> 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 17<sup>th</sup> 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

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

# **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.

1 \\\

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

4 16. Under the arbitrator's award, CLAP is required to pay well over a Million Dollars  
5 (\$1,000,000) to me for my membership interest in GVC.

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

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

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

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

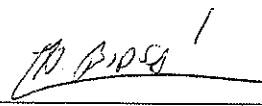
14 21. On January 9, 2020 I filed a Notice of Appeal of the District Court Order.

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

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

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

21 Dated this 16 day of January, 2020.

22   
23 \_\_\_\_\_  
24 Shawn Bidsal  
25  
26  
27  
28

**EXH. E**

Electronically Filed  
3/10/2020 2:37 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CLA, PROPERTIES, LLC, a California limited  
liability company,

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

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

**NOTICE OF ENTRY OF ORDER GRANTING RESPONDENT'S  
MOTION FOR STAY PENDING APPEAL**

PLEASE TAKE NOTICE that an ORDER GRANTING RESPONDENT'S MOTION FOR  
STAY PENDING APPEAL, was entered in the above-entitled matter on the 10<sup>th</sup> day of March,  
2020, a copy of which is attached hereto.

Dated this 10th day of March, 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*

SMITH & SHAPIRO, PLLC

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

**CERTIFICATE OF SERVICE**

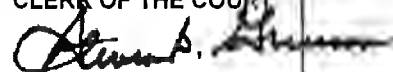
I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 10th day of March, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING RESPONDENT'S MOTION FOR STAY PENDING APPEAL** by e-serving a copy on all parties registered and listed as Service 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 A. Bidwell

An employee of Smith & Shapiro, PLLC

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

Electronically Filed  
3/10/2020 11:45 AM  
Steven D. Grierson  
CLERK OF THE COURT



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

DEPARTMENT XXXI

NOTICE OF HEARING

DATE 6/9/20 TIME 9:00am

APPROVED BY SC

Date: February 18, 2020  
Time: 9:00am

**PLEASE FILE WITH MASTER CALENDAR**

**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).

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

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

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

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

9           NOW THEREFORE:

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

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

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

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

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*

IT IS SO ORDERED this 3 day of ~~February~~ *June 9, 2020, at 9:00am*, 2020.

*Joanna S. Kishner*  
JOANNA S. KISHNER

DISTRICT COURT JUDGE

Respectfully Submitted by:

SMITH & SHAPIRO, PLLC

*James E. Shapiro*  
James E. Shapiro, Esq.  
Nevada Bar No. 7907  
*Andrew S. Blaylock*  
Andrew S. Blaylock, Esq.  
Nevada Bar No. 13666  
3333 E. Serene Ave., Suite 130  
Henderson, NV 89074  
*Attorneys for Shawn Bidsal*

Approved as to Form:

LEVINE & GARFINKEL

*Louis E. Garfinkel*  
Louis E. Garfinkel, Esq.  
Nevada Bar No. 3416  
1671 W. Horizon Ridge Pkwy., Suite 230  
Henderson, NV 89012  
*Attorneys for CLA Properties, LLC*

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

**EXH. F**

Electronically Filed  
3/20/2020 10:51 AM  
Steven D. Grierson  
CLERK OF THE COURT



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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CLA, PROPERTIES, LLC, a California limited  
liability company,

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

Petitioner,

vs.

SHAWN BIDSAL, an individual,

Respondent.

**NOTICE OF POSTING CASH IN LIEU OF BOND**

NOTICE IS HEREBY GIVEN that on March 13, 2020, Respondent, SHAWN BIDSAL, posted with the Court, cash in lieu of bond in the amount of Two Hundred Ninety-Eight Thousand Two Hundred Fifty-Six and No/100 Dollars (\$298,256.00). A true and correct copy of the Receipt thereof is attached hereto as *Exhibit "1"* and incorporated herein by this reference.

Dated this 20<sup>th</sup> day of March, 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*

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 20<sup>th</sup> day of March, 2020, I served a true and correct copy of the foregoing **NOTICE OF POSTING CASH IN LIEU OF BOND** 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 A. Bidwell

An employee of Smith & Shapiro, PLLC

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

# **EXHIBIT 1**

# **EXHIBIT 1**

**OFFICIAL RECEIPT****District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101**Payor  
Shahram BidsalReceipt No.  
**2020-15611-CCCLK**Transaction Date  
03/13/2020

Description	Amount Paid
On Behalf Of Bidsal, Shawn A-19-795188-P In the Matter of the Petition of CLA Properties LLC Supersedeas Bond	
Supersedeas Bond	298,256.00
SUBTOTAL	298,256.00
<b>PAYMENT TOTAL</b>	
	<b>298,256.00</b>
Check (Ref #1325) Tendered	298,256.00
Total Tendered	298,256.00
Change	0.00

Order filed 3/10/20

03/13/2020  
11:45 AMCashier  
Station AIKOAudit  
37401597**OFFICIAL RECEIPT**

## **EXHIBIT 244**

## ARBITRATION DAY 1 - 03/17/2021

Page 15

09:00:55 1 this is not an appropriate motion in limine. He just  
09:00:59 2 fairly argued to you that there's no evidence. Well, if  
09:01:01 3 there's no evidence, then why are we even arguing the  
09:01:04 4 point? If, as he claims, there is no evidence that  
09:01:06 5 anyone is going to introduce on the topic, then the  
09:01:09 6 entire motion in limine is moot because the point of a  
09:01:11 7 motion in limine is to address evidence, and he's saying  
09:01:14 8 there is none.

09:01:15 9 And that simply confirms that what he's trying to  
09:01:18 10 do is bootstrap a summary judgment motion into a motion  
09:01:22 11 in limine, which is inappropriate. The reality is there  
09:01:24 12 is evidence. Your Honor can consider the evidence as it  
09:01:26 13 comes in, he can make objections. You'll rule on those  
09:01:29 14 objections and we will go through the arbitration  
09:01:31 15 process. And then at the end, both sides will have an  
09:01:34 16 opportunity to make the arguments that they want to make  
09:01:35 17 and Your Honor will decide the issue.

09:01:38 18 MR. LEWIN: What I meant by there is no evidence  
09:01:38 19 on -- there's not evidence that they were -- that they  
09:01:42 20 ever tendered purportments.

09:01:42 21 THE ARBITRATOR: All right. I'm going to deny  
09:01:43 22 the motion on this basis. I think it is, as Mr. Shapiro  
09:01:46 23 states, more of a dispositive motion on a claim within  
09:01:51 24 the amended demand for arbitration as opposed to a  
09:01:56 25 motion in limine. In fairness, though, I will tell you

## ARBITRATION DAY 1 - 03/17/2021

Page 16

09:02:00 1 this, and we'll work backwards: In terms of the issue  
09:02:06 2 of a tender after the decision from Judge Haberfeld in  
09:02:15 3 April of 2019, I think it's fair for you to know that  
09:02:21 4 I'm not really persuaded that a tender at that point is  
09:02:24 5 necessary.

09:02:25 6 I know that within days, I want to say -- I don't  
09:02:32 7 know if it was a week -- within days of the final award,  
09:02:37 8 there was a motion to vacate on federal court and then  
09:02:43 9 state court following a determination. And I think it  
09:02:48 10 would have been inappropriate for a tender to take place  
09:02:52 11 while a motion to vacate is pending. When the motion to  
09:02:59 12 vacate was denied, almost immediately, if I have my  
09:03:02 13 dates correct, there was a motion to stay enforcement of  
09:03:07 14 Judge Haberfeld's award and Judge Kishner's order  
09:03:13 15 confirming that award.

09:03:14 16 At that point, with a motion to stay pending, it  
09:03:16 17 would have been inappropriate for there to be a tender.  
09:03:20 18 I'm just telling you -- I've denied the motion, but I'm  
09:03:25 19 just telling you so that you know going in, I'm not  
09:03:29 20 persuaded a tender was necessary at that point.  
09:03:30 21 Certainly once a stay was in place, a tender would be  
09:03:34 22 futile because there's an order of the Court staying the  
09:03:37 23 final award and the direction from Judge Haberfeld that  
09:03:43 24 the sale took place.

09:03:45 25 With respect to the tender back in August of

## ARBITRATION DAY 1 - 03/17/2021

Page 17

09:03:48 1 2017 -- or September of 2017, I mean, it's fair for you  
09:04:01 2 to know at this point, even while I'm denying the  
09:04:04 3 motion, that what I put in that footnote in July of 2020  
09:04:08 4 I still believe to be the case, based on the evidence  
09:04:11 5 and the law. But, I mean, that's sort of an advisory  
09:04:20 6 ruling, even though I'm denying the motion in limine.

09:04:25 7 All right.

09:04:25 8 MR. LEWIN: I have one other thing, Your Honor.

09:04:25 9 THE ARBITRATOR: Yeah.

09:04:28 10 MR. LEWIN: I'm looking at the briefs and the  
09:04:30 11 evidence -- the claimant's exhibits. And it's clear now  
09:04:36 12 that what's going to happen is that they're going to try  
09:04:40 13 to relitigate the drafting issue, who is the -- who was  
09:04:45 14 the drafter of the operating agreement. That is a --  
09:04:51 15 that drafting issue was primarily litigated in the  
09:04:54 16 arbitration, number one. A finding was made that  
09:04:57 17 Mr. Bidsal was the principal drafter. It shouldn't be  
09:05:00 18 the subject of relitigating or pre-litigation here, and  
09:05:03 19 I just want to quote --

09:05:05 20 MR. GERRARD: So are we making a new motion in  
09:05:08 21 limine?

09:05:08 22 THE ARBITRATOR: Yeah. I mean, obviously some  
09:05:08 23 notice would have been nice. I'm aware that in Judge  
09:05:12 24 Haberfeld's order, footnote 5 as well as paragraph 17, I  
09:05:20 25 think, talk about who the drafter was and ended up

## **EXHIBIT 245**

RODNEY T. LEWIN  
 NOREEN SPENCER LEWIN\*  
 CHANDLER OWEN BARTLETT  
 ALLYSON P. WITTNER

Law Offices of  
**RODNEY T. LEWIN**  
A PROFESSIONAL CORPORATION  
 8665 WILSHIRE BOULEVARD, SUITE 210  
 BEVERLY HILLS, CALIFORNIA 90211-2931  
 telephone: (310) 659-6771  
 telecopier: (310) 659-7354

RANDALL A. SPENCER\*  
 RICHARD D. AGAY  
 MICHAEL LAVAE  
 OF COUNSEL  
 \*Also licensed in Illinois

writer's email:  
 rod@rtlewin.com

March 26, 2021

***Via Jams Access***

The Honorable David Wall (Ret.):  
 JAMS  
 3800 Howard Hughes Parkway,  
 11th Floor  
 Las Vegas, Nevada 89169

Re: *Bidsal v. CLA Properties*  
 JAMS Ref: 1260005736

Re: CLA's Motion to Withdraw Exhibit 188

Dear Judge Wall,

At the end of Mr. Bidsal's testimony on March 19, 2021, right before Mr. Gerety testified, I introduced a number of exhibits, including Exhibit 188. That exhibit was Bidsal's Motion to Vacate the Arbitration Award that was filed in the Federal Court four days after the Arbitration Award was issued. That exhibit, along with exhibits 187 through 193, was intended to address Bidsal's new claim of lack of tender after the Arbitration Award. My intent was to offer Exhibit 188 only for the limited purpose to show the timing of that Motion, and that Mr. Bidsal had no intention of complying with the Arbitration Award or agreeing to sell using the \$5,000,000.00 valuation. It was not my intent to offer into evidence the Motion to Vacate with all of Mr. Bidsal's arguments or alleged evidence, including his claim that Mr. Golshani was the drafter, which has already been ruled upon, for all purposes. I failed to properly articulate this. However, we have been consistent with our position in this regard.

On Monday, March 22, 2021, I spoke with Mr. Gerrard and advised him of the issue, and that I was going to withdraw Exhibit 188. I asked him if he would agree to the withdrawal. Mr. Gerrard told me that he had not read the exhibit and that he would get back to me.

On Wednesday, March 24, 2021, not having heard back from Mr. Gerrard, I wrote to him and Mr. Shapiro asking if they would stipulate to the withdrawal. Mr. Gerrard responded advising that they would not so stipulate. A true and correct copy of the email chain between myself and Mr. Gerrard is attached hereto as Exhibit A.

Exhibit 188 was CLA's exhibit. There were no questions asked by anyone concerning that exhibit, which was introduced right before Mr. Gerety testified. There is no prejudice to Mr. Bidsal by allowing us to withdraw it. In his email, Mr. Gerrard implied the introduction of Exhibit 188 was a package deal with respect to the other post arbitration pleadings introduced. I do not remember it so.

**APPENDIX (PX)004167**

While I do not think there is any merit to Mr. Bidsal's new lack of tender claim for many reasons, for purposes of the record, I do not want Mr. Bidsal's Motion to Vacate standing alone. Accordingly, I request that either (i) Exhibit 188 be deemed to be in evidence **only** for the limited purpose of establishing the timeline of Bidsal's Motion to Vacate the Arbitration award, and not for any other purpose, or (ii) allow us to withdraw it. Conversely, if you feel that neither of these options is appropriate, CLA requests leave to introduce its opposition filed in the District Court opposing Mr. Bidsal's Motion to Vacate, which was denied by Judge Kishner.<sup>1</sup>

I raise this now so that all parties will be able to prepare for the upcoming hearings.

Respectfully Submitted,

LAW OFFICES OF RODNEY T. LEWIN, APC

RODNEY T. LEWIN  
Attorneys for CLA Properties, LLC

Attachment

cc: James Shapiro, Esq. (via Jams Access – [jshapiro@smithshapiro.com](mailto:jshapiro@smithshapiro.com))

Doug Gerrard, Esq. (via Jams Access - [dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com))

Louis Garfinkel, Esq. (via Jams Access -[lgarfinkel@lgealaw.com](mailto:lgarfinkel@lgealaw.com))

---

<sup>1</sup> Mr. Bidsal's Federal Court motion was dismissed for lack of jurisdiction; he filed essentially the same motion in the District Court proceedings, which we opposed, and which was denied by Judge Kishner

## **EXHIBIT 246**



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

March 31, 2021

*Via JAMS e-filing / e-service system only*

The Honorable David Wall (Ret.)  
JAMS  
3800 Howard Hughes Pkwy., 11<sup>th</sup> Floor  
Las Vegas, NV 89169

**RE: Bidsal, Shawn v. CLA Properties, LLC**  
**JAMS Ref No.: 1260005736**

**CLAIMANT'S OPPOSITION TO  
CLA'S MOTION TO WITHDRAW EXHIBIT 188**

Dear Judge Wall:

Claimant Shawn Bidsal ("Bidsal") objects to and opposes CLA Properties, LLC's ("CLA") Motion to Withdraw Exhibit 188 (the "Motion"). Contrary to Mr. Lewin's assertions, there were questions regarding Bidsal's Motion to Vacate the Arbitration Award, which is why Bidsal stipulated to it being introduced into evidence. Much like his client, Mr. Lewin is attempting to rewrite history and withdraw evidence that was previously admitted. However, in order to avoid any issues which will arise as a result of his request, and in order to ensure a complete record, Exhibit 188 should remain in evidence for all purposes.

Sincerely,

SMITH & SHAPIRO, PLLC

*/s/ James E. Shapiro*

James E. Shapiro, Esq.

cc: Rod Lewin (*via JAMS e-service only*)  
Louis Garfinkel (*via JAMS e-service only*)  
Shawn Bidsal (*via email only*)

## **EXHIBIT 247**

RODNEY T. LEWIN  
NOREEN SPENCER LEWIN\*  
CHANDLER OWEN BARTLETT  
ALLYSON P. WITTNER

Law Offices of  
**RODNEY T. LEWIN**  
A PROFESSIONAL CORPORATION  
8665 WILSHIRE BOULEVARD, SUITE 210  
BEVERLY HILLS, CALIFORNIA 90211-2931  
telephone: (310) 659-6771  
telecopier: (310) 659-7354

RANDALL A. SPENCER\*  
RICHARD D. AGAY  
MICHAEL LAVAE  
OF COUNSEL  
\*Also licensed in Illinois

writer's email:  
rod@rtlewin.com

March 31, 2021

***Via Jams Access***

The Honorable David Wall (Ret.):  
JAMS  
3800 Howard Hughes Parkway,  
11th Floor  
Las Vegas, Nevada 89169

Re: *Bidsal v. CLA Properties*  
JAMS Ref: 1260005736

**Re: CLA's Reply to Bidsal's Opposition to the Motion to Withdraw Exhibit 188**

Dear Judge Wall,

In Mr. Bidsal's opposition Mr. Shapiro states that "Contrary to Mr. Lewin's assertions, there were questions regarding Bidsal's Motion to Vacate the Arbitration Award, which is why Bidsal stipulated to it being introduced into evidence."

That is untrue. There was no testimony regarding the Bidsal Motion to Vacate. While it was discussed during the Motion in Limine, there was no testimony regarding that exhibit. I searched the hearing transcripts for references to either the Bidsal Motion to Vacate or Exhibit 188. Other than references to that motion during the argument on the motion i limine, the following is the sum total of references to Exhibit 188 in the record:

6 14:15:06 MR. LEWIN: Mr. Bidsal's motion to vacate. 188.  
7 14:15:14 MR. GERRARD: I don't see the reason why we have  
8 14:15:18 objected to that, Jim. Do you?  
9 14:15:20 MR. SHAPIRO: As long as it's the complete  
10 14:15:22 document.  
11 14:15:23 MR. GERRARD: Is it the complete document?  
12 14:15:23 ARBITRATOR WALL: Yep.  
13 14:15:28 MR. LEWIN: This has to do with the tender issue.  
14 14:15:34 ARBITRATOR WALL: 188.  
15 14:15:34 MR. LEWIN: And also appeal, 189.  
16 14:15:34 ARBITRATOR WALL: Wait, wait, wait, wait. So  
17 14:15:36 188, no objection. Right?  
18 14:15:38 MR. SHAPIRO: Correct.  
19 14:15:38 MR. LEWIN: Case appeal statement.  
20 14:15:45 ARBITRATOR WALL: So 189 through 193.

21 14:15:51 MR. GERRARD: 189 to 193 we stipulate to those.  
 22 14:15:57 That's fine.  
 23 14:16:14 ARBITRATOR WALL: All right.  
 24 14:16:14 (Exhibits 164, 165, 166, 184, 188, 189, 190, 191,  
 25 14:16:29 192, and 193 were admitted into evidence.)

Since the **sole ground of Mr. Bidsal's objection** to the removal of Exhibit 188 is that there were questions asked about it, which is untrue, I submit that there is not any basis for Bidsal's objection to its withdrawal.

Respectfully Submitted,

LAW OFFICES OF RODNEY T. LEWIN, APC  
*/s/ Rodney T. Lewin*  
 RODNEY T. LEWIN  
 Attorneys for CLA Properties, LLC

#### **CERTIFICATE OF SERVICE**

I hereby certify that I am the principal of the LAW OFFICES OF RODNEY T. LEWIN, APC and that on the 31st day of March, 2021, I served a true and correct copy of CLA's Reply Re Motion to Withdraw Exhibit 188, by serving a copy thereof via Jams Access to the following:

Louis Garfinkel, Esq.  
 Attorney for CLA  
 James E. Shapiro, Esq.  
 Attorney for Shawn Bidsal  
 Douglas D. Gerrard, Esq.  
 Attorney for Shawn Bidsal

*/s/RODNEY T. LEWIN*

## **EXHIBIT 248**

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

**JAMS**

BIDSAL, SHAWN,	)	Ref. No. 1260005736
	)	
Claimant,	)	
	)	<b>ORDER ON RESPONDENT'S MOTION</b>
v.	)	<b>TO WITHDRAW EXHIBIT 188</b>
	)	
CLA PROPERTIES, LLC,	)	
	)	
Respondents.	)	
	)	

---

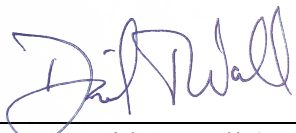
On March 17, 2021, the Arbitration Hearing commenced in this matter and continued through March 19, 2021. The Hearing is ongoing and is scheduled to be concluded on April 27, 2021.

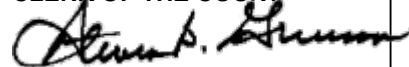
On March 19, 2021, Respondent offered Exhibit 188 into evidence, and it was admitted without objection from Claimant. The exhibit is a Motion to Vacate Arbitration Award filed in the federal court by Claimant in April of 2019, shortly after the prior Arbitration Award in this matter was filed. Immediately thereafter, the Arbitrator admitted into evidence Exhibits 189 to 193 as a group, which include Claimant's Notice of Appeal from the denial of his Motion to Vacate the Arbitration Award (subsequently filed in state court) along with the Case Appeal Statement, Claimant's Motion for Stay Pending Appeal (and Notice of Entry of Order Granting the Motion for Stay) and Claimant's Notice of Posting Cash in Lieu of Bond. These exhibits were also admitted without objection.

On March 26, 2021, Respondent filed a Motion to Withdraw Exhibit 188, claiming that it should have been offered only for the limited purpose of establishing the timeline of events following the prior Arbitration Award. On March 31, 2021, Claimants filed an Opposition to the Motion, claiming that all of the above-reference exhibits (188 to 193) were admitted as a group, without objection, and further that questions were asked regarding the Motion to Vacate. On March 31, 2021, Respondent filed a Reply with purported references to a transcript of the proceedings, indicating that Exhibit 188 was admitted without questions posed to any witness.

Respondent requests that either Exhibit 188 be withdrawn, or that it be admitted for the limited purpose of establishing the timeline for events occurring after the prior Arbitration Award. As the Hearing is ongoing, exhibits may be withdrawn, redacted or offered for limited purposes prior to the close of testimony or before the parties have rested their cases-in-chief. Exhibit 188's relevance is limited to the date of its filing and its place within the timeline of procedural events preceding this Arbitration proceeding. As such, Respondent's request to have Exhibit 188 admitted into evidence for the limited purpose of the date of its filing is hereby GRANTED, reserving to both parties the right to seek admission of the exhibit for any other purpose during the remainder of the Arbitration Hearing.

Dated: April 5, 2021

  
\_\_\_\_\_  
Hon. David T. Wall (Ret.)  
Arbitrator



1 **APEN**

2 Louis Garfinkel, Esq.

3 Nevada Bar No. 3416

4 REISMAN SOROKAC

5 8965 South Eastern Ave, Suite 382

6 Las Vegas, Nevada 89123

7 Tel: (702) 727-6258/Fax: (702) 446-6756

8 Email: [Lgarfinkel@rsnvlaw.com](mailto:Lgarfinkel@rsnvlaw.com)

9 Attorneys for Movant CLA Properties, LLC

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 CLA PROPERTIES, LLC, a California  
13 limited liability company,

Case No. A-22-854413-J

Dept. No. 23

14 Movant (Respondent in  
15 arbitration)

16 vs.

17 SHAWN BIDSAL, an individual,

18 Respondent (Claimant in  
19 arbitration).

20 **APPENDIX TO MOVANT CLA  
21 PROPERTIES, LLC'S MOTION TO VACATE  
22 ARBITRATION AWARD (NRS 38.241) AND  
23 FOR ENTRY OF JUDGMENT  
24 (VOLUME 16 OF 18)**

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

27 ///

28 ///

///

///

///

///

**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.

REISMAN.SOROKAC  
8965 SOUTH EASTERN AVENUE, SUITE 382  
LAS VEGAS, NEVADA 89123  
PHONE: (702) 727-6258 FAX: (702) 446-6756

### 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 <i>[Parenthetical number ( ) is exhibit identification at arbitration hearing]</i>	DATE ADMIT'D	OFF'D/ NOT ADMIT'D
000255	3	118	05/19/11	Agreement for Sale and Purchase of Loan [BIDSAL004004-4070] <b>(1)</b>	03/17/21	
000323	3	119	05/31/11	Assignment and Assumption of Agreements [BIDSAL003993-3995] <b>(2)</b>	03/17/21	
000327	3	120	06/03/11	Final Settlement Statement – Note Purchase [CLAARB2 000013] <b>(3)</b>	03/17/21	
000329	3	121	05/26/11	GVC Articles of Organization [DL00 361] <b>(4)</b>	03/17/21	
000331	3	122	12/2011	GVC Operating Agreement [BIDSAL000001-28] <b>(5)</b>	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] <b>(6)</b>	03/17/21	
000365	3	124	03/16/11	Declaration of CC&Rs for GVC [BIDSAL001349-1428] <b>(7)</b>	03/17/21	
000446	3	125	09/22/11	Deed in Lieu Agreement [BIDSAL001429-1446] <b>(8)</b>	03/17/21	
000465	3	126	09/22/11	Estimated Settlement Statement – Deed in Lieu Agreement [BIDSAL001451] <b>(9)</b>	03/17/21	
000467	3	127	09/22/11	Grant, Bargain, Sale Deed [BIDSAL001447-1450] <b>(10)</b>	03/17/21	
000472	3	128	12/31/11	2011 Federal Tax Return [CLA Bidsal 0002333-2349] <b>(12)</b>	03/17/21	
000490	3	129	09/10/12	Escrow Closing Statement on Sale of Building C [CLA Bidsal 0003169-3170] <b>(13)</b>	03/17/21	
000493	3	130	04/22/13	Distribution Breakdown from Sale of Building C [BIDSAL001452-1454] <b>(14)</b>	03/17/21	

REISMAN SOROKAC  
8965 SOUTH EASTERN AVENUE, SUITE 382  
LAS VEGAS, NEVADA 89123  
PHONE: (702) 727-6258 FAX: (702) 446-6756

REISMAN SOROKAC  
 8965 SOUTH EASTERN AVENUE, SUITE 382  
 LAS VEGAS, NEVADA 89123  
 PHONE: (702) 727-6258 FAX: (702) 446-6756

1	000497	3	131	09/10/13	2012 Federal Tax Return [CLA Bidsal 0002542-2557] <b>(15)</b>	03/17/21	
2	000514	3	132	08/08/13	Letter to CLA Properties with 2012 K-1 [CLA Bidsal 002558-2564] <b>(16)</b>	03/17/21	
3	000522	3	133	03/08/13	Escrow Settlement Statement for Purchase of Greenway Property [CLA Bidsal 0003168, BIDSAL001463] <b>(17)</b>	03/17/21	
4	000525	3	134	03/15/13	Cost Segregation Study [CLA Bidsal 0002414-2541] <b>(18)</b>	03/17/21	
5	000654	3	135	09/09/14	2013 Federal Tax Return [CLA Bidsal 0001637-1657] <b>(19)</b>	03/17/21	
6	000676	3	136	09/08/14	Tax Asset Detail 2013 [CLA Bidsal 0001656-1657] <b>(20)</b>	03/17/21	
7	000679	3	137	09/09/14	Letter to CLA Properties with 2014 K-1 [CLAARB2 001654-1659] <b>(21)</b>	03/17/21	
8	000686	3	138	11/13/14	Escrow Closing Statement on Sale of Building E [BIDSAL001475] <b>(22)</b>	03/17/21	
9	000688	3	139	11/13/14	Distribution Breakdown from Sale of Building E [BIDSAL001464-1466] <b>(23)</b>	03/17/21	
10	000692	3	140	02/27/15	2014 Federal Tax Return [CLA Bidsal 0001812-1830] <b>(24)</b>	03/17/21	
11	000712	3	141	08/25/15	Escrow Closing Statement on Sale of Building B [BIDSAL001485] <b>(25)</b>	03/17/21	
12	000714	3	142	08/25/15	Distribution Breakdown from Sale of Building B [BIDSAL001476 and CLA Bidsal 0002082-2085] <b>(26)</b>	03/17/21	
13	000720	3	143	04/06/16	2015 Federal Tax Return [CLA Bidsal 0002305-2325] <b>(27)</b>	03/17/21	
14	000742	3	144	03/14/17	2016 Federal Tax Return [CLA Bidsal 0001544-1564] <b>(28)</b>	03/17/21	
15	000764	3	145	03/14/17	Letter to CLA Properties with 2016 K-1 [CLA Bidsal0000217-227] <b>(29)</b>	03/17/21	
16	000776	3	146	04/15/17	2017 Federal Tax Return [CLA Bidsal 0000500-538] <b>(30)</b>	03/17/21	
17	000816	3	147	04/15/17	Letter to CLA Properties with 2017 K-1 [CLAARB2 001797-1801] <b>(31)</b>	03/17/21	
18	000822	3	148	08/02/19	2018 Federal Tax Return [BIDSAL001500-1518] <b>(32)</b>	03/17/21	
19	000842	3	149	04/10/18	Letter to CLA Properties with 2018 K-1 [BIDSAL001519-1528] <b>(33)</b>	03/17/21	
20	000853	3	150	03/20/20	2019 Federal Tax Return (Draft) CLA Bidsal 0000852-887] <b>(34)</b>	03/17/21	
21	000890	3	151	03/20/20	Letter to CLA Properties with 2019 K-1 [CLA Bidsal 0000888-896] <b>(35)</b>	03/17/21	
22							
23							
24							
25							
26							
27							
28							

REISMAN·SOROKAC  
 8965 SOUTH EASTERN AVENUE, SUITE 382  
 LAS VEGAS, NEVADA 89123  
 PHONE: (702) 727-6258 FAX: (702) 446-6756

1	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] <b>(36)</b>	03/17/21	
2							
3	000919	3	153	07/07/17	Buy-Out Correspondence – Bidsal Offer [BIDSAL000029] <b>(37)</b>	03/17/21	
4	000921	3	154	08/03/17	Buy-Out Correspondence – CLA Counter [BIDSAL000030] <b>(38)</b>	03/17/21	
5	000923	3	155	08/05/17	Buy-Out Correspondence – Bidsal Invocation [BIDSAL000031] <b>(39)</b>	04/26/21	
6	000925	3	156	08/28/17	Buy-Out Correspondence – CLA Escrow [BIDSAL000032] <b>(40)</b>	04/26/21	
7							
8	000930	3	157	06/22/20	CLA Responses to Interrogatories <b>(43)</b>	03/17/21	
9	000939	3	158	04/25/18	GVC Lease and Sales Advertising [BIDSAL620-633, 1292-1348] <b>(50)</b>	03/19/21	
10							
11	001011	3	159	08/10/20	Property Information [CLAARB2 1479, 1477] <b>(52)</b>	03/19/21	
12	001014	3	160	03/20/18	Deposition Transcript of David LeGrand [DL 616-1288] <b>(56)</b>	03/19/21	
13	001688	3	161	09/10/12	Deed – Building C [BIDSAL 1455-1460] <b>(57)</b>	03/19/21	
14	001695	3	162	11/13/14	Deed Building E [BIDSAL 1464-1475] <b>(58)</b>	03/19/21	
15	001704	3	163	09/22/11	Email from Golshani to Bidsal dated Sep 22, 2011 <b>(67)</b>	04/26/21	
16	001708	3	164	07/17/07	Deed of Trust Notice [Bidsal 001476 – 001485] (annotated) <b>(84)</b>	03/19/21	
17	001719	3	165	07/17/07	Assignment of Leases and Rents [Bidsal 004461 – 004481 & 4548-4556] <b>(85)</b>	03/19/21	
18	001750	3	166	05/29/11	CLA Payment of \$404,250.00 [CLAARB2 000820] <b>(87)</b>	03/19/21	
19	001752	3	167	06/15/11	Operating Agreement for County Club, LLC [CLAARB2 000352 – 000379] <b>(88)</b>		03/17/21
20	001781	3	168	09/16/11	Email from LeGrand to Bidsal and Golshani [CLAARB2 001054 – 001083] <b>(91)</b>	03/17/21	
21	001812	3	169	12/31/11	GVC General Ledger 2011 [CLA Bidsal 003641 – 003642] <b>(95)</b>	03/19/21	
22	001815	3	170	06/07/12	Green Valley Trial Balance Worksheet, Transaction Listing [CLA Bidsal 002372 - 002376] <b>(97)</b>	04/26/21	
23	001820	3	171	01/21/16	Correspondence from Lita to Angelo re Country Club 2012 accounting [CLAARB2 001554]		
24	001823	3	172	01/25/16	Email from Bidsal re Letter to WCICO dated 1/21/16		

REISMAN·SOROKAC  
 8965 SOUTH EASTERN AVENUE, SUITE 382  
 LAS VEGAS, NEVADA 89123  
 PHONE: (702) 727-6258 FAX: (702) 446-6756

1					[CLAARB2 002086]		
2	001828	3	173	06/30/17	GVC Equity Balances Computation [CLAARB2 001543] <b>(111)</b>	03/19/21	
3	001830	3	174	07/21/17	Email from Golshani to Main [CLAARB2 002017] <b>(112)</b>	04/26/21	
4	001832	3	175	07/25/17	Email Comm. Between Golshani and Main [BIDSAL 002033 – 002035] <b>(114)</b>	04/26/21	
5	001836	3	176	08/16/17	Email Comm. From Shapiro [CLAARB2 001221 – 001225] <b>(117)</b>	04/26/21	
6	001842	3	177	08/16/17	Email Comm. Between Golshani and Bidsal [CLAARB2 001244 – 001245] <b>(118)</b>	03/19/21	
7	001844	3	178	11/14/17	Email Comm. Between RTL and Shapiro [CLAARB2 001249] <b>(123)</b>	04/26/21	
8	001846	3	179	12/26/17	Letter from Golshani to Bidsal [CLAARB2 000112] <b>(125)</b>	04/26/21	
9	001848	3	180	12/28/17	Letter from Bidsal to Golshani [CLAARB2 002028] <b>(126)</b>		
10	001850	3	181	04/05/19	Arbitration Award [CLAARB2 002041 - 002061] <b>(136)</b>	03/19/21	
11	001872	3	182	06/30/19	Email from Golshani to Bidsal [CLAARB2 000247] <b>(137)</b>	03/19/21	
12	001874	3	183	08/20/19	Email from Golshani to Bidsal [CLAARB2 000249] <b>(139)</b>	03/19/21	
13	001876	3	184	06/14/20	Email Communication between CLA and [CLAARB2 001426] <b>(153)</b>	03/19/21	
14	001878	3	185	10/02/20	Claimant's First Supplemental Responses to Respondent's First Set of Interrogatories to Shawn Bidsal [N/A] <b>(164)</b>	03/19/21	
15	001887	3	186	02/19/21	Claimant's Responses to Respondent's Fifth Set of RFPD's Upon Shawn Bidsal [N/A] <b>(165)</b>	03/19/21	
16	001892	3	187	02/22/21	Claimant's Responses to Respondent's Sixth Set of RFPD's Upon Shawn Bidsal [N/A] <b>(166)</b>	03/19/21	
17	001895	3	188	07/11/05	2019 Notes re Distributable Cash Building C [CLAARB2 002109] <b>(180)</b>	04/26/21	
18	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] <b>(184)</b>	03/19/21	
19	001908	3	190	04/09/19	Plaintiff Shawn Bidsal's Motion to Vacate Arbitration Award [N/A] <b>(188)</b>	03/19/21	
20	001950	3	191	01/09/20	Notice of Appeal [N/A] <b>(189)</b>	03/19/21	
21	001953	3	192	01/09/20	Case Appeal Statement [N/A] <b>(190)</b>	03/19/21	
22	001958	3	193	01/17/20	Respondent's Motion for Stay Pending Appeal [N/A] <b>(191)</b>	03/19/21	
23							
24							
25							
26							
27							
28							

REISMAN·SOROKAC  
8965 SOUTH EASTERN AVENUE, SUITE 382  
LAS VEGAS, NEVADA 89123  
PHONE: (702) 727-6258 FAX: (702) 446-6756

002123	3	194	03/10/20	Notice of Entry of Order Granting Respondent's Motion for Stay Pending Appeal [N/A] <b>(192)</b>	03/19/21	
002129	3	195	03/20/20	Notice of Posting Cash In Lieu of Bond [N/A] <b>(193)</b>	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) <b>(198)</b>	44/26/21	
002197	3	197	07/11/05	Rebuttal Report Exhibit 1 Annotated (Gerety Schedule) <b>(200)</b>	03/19/21	
002201	3	198	08/13/20	Chris Wilcox Schedules <b>(201)</b>	03/18/21	
002214	3	199	12/31/17	Rebuttal Report Exhibit 3 (Gerety Formula) <b>(202)</b>	03/19/21	
002216	3	200	11/13/14 & 08/28/15	Distribution Breakdown <b>(206)</b>	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

REISMAN·SOROKAC  
 8965 SOUTH EASTERN AVENUE, SUITE 382  
 LAS VEGAS, NEVADA 89123  
 PHONE: (702) 727-6258 FAX: (702) 446-6756

003091	5	210	07/24/20	Claimant's Opp. to MTC ANS to 1 <sup>st</sup> 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
------	------	---------	------	-------------

1	003403	7	223	11/05/20	Respondent's MTC Proceedings
2	003409	7	224	11/17/20	Order on Respondent's Motion to Continue Proceedings and 2nd Amended SO

3

4 **"Motion for Leave to Amend"**

5	<b>App.</b>	<b>PART</b>	<b>EX. No.</b>	<b>DATE</b>	<b>DESCRIPTION</b>
6	003415	8	225	01/19/21	Letter to Wall requesting Leave to Amend
7	003422	8	226	01/19/21	Respondent's Motion for Leave to File Fourth Amended Answer and Counterclaim
8					Claimant's Opposition to Respondent's Motion for Leave to file Fourth Amended Answer and Counterclaim
9	003433	8	227	01/29/21	
10	003478	8	228	02/02/21	Respondent's Reply ISO Motion for Leave to File Fourth Amended Answer and Counterclaim
11	003482	8	229	02/04/21	Order on Respondent's Pending Motions

12

13 **"Main Motion to Compel"**

14	<b>App.</b>	<b>PART</b>	<b>EX. No.</b>	<b>DATE</b>	<b>DESCRIPTION</b>
15	003489	9	230	01/26/21	Respondent's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA
16	003539	9	231	01/29/21	Claimant's Opposition to Main deposition
17					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
18	003775	9	232	02/01/21	
19					Respondent's Reply In Support of Emergency Motion For Order Compelling The Completion of The Deposition of Jim Main, CPA
20	003778	9	233	02/03/21	
21					Order on Respondent's Pending Motions
22	003784	9	234	02/04/21	

23

24 **"Motion for Orders"**

25	<b>App.</b>	<b>PART</b>	<b>EX. No.</b>	<b>DATE</b>	<b>DESCRIPTION</b>
26	003791	10	235	02/05/21	CLA Motion For Orders Regarding Bank Accounts, Keys And Distribution
27	003834	10	236	02/19/21	Claimant's Opposition To Respondent/Counterclaimant's Motion For Orders (1)

				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
------	------	---------	------	-------------

REISMAN·SOROKAC  
 8965 SOUTH EASTERN AVENUE, SUITE 382  
 LAS VEGAS, NEVADA 89123  
 PHONE: (702) 727-6258 FAX: (702) 446-6756

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.	PAR T	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.	PAR T	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.

REISMAN SOROKAC  
8965 SOUTH EASTERN AVENUE, SUITE 382  
LAS VEGAS, NEVADA 89123  
PHONE: (702) 727-6258 FAX: (702) 446-6756

				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.	PAR T	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 – ( <i>Case No. A-19-795188-P, District Court, Clark County, NV</i> )
007628	17	275	11/24/20	Appellant Shawn Bidsal's Opening Brief ( <i>Supreme Court of Nevada, Appeal from Case No. A-19-795188-P, District Court, Clark County, NV</i> )
007669	17	276	03/17/22	IN RE: PETITION OF CLA PROPS. LLC C/W 80831 Nos. 80427; 80831, March 17, 2022, <i>Order of Affirmance</i> , unpublished disposition
007675	17	277	2011 - 2019	2011 – 2019 Green Valley Commerce Distribution CLAARB2 002127 - 002128

DATED this 22<sup>nd</sup> day of June, 2022.

REISMAN SOROKAC

By: /s/ Louis E. Garfinkel  
Louis E. Garfinkel, Esq.  
Nevada Bar No. 3416  
8965 S. Eastern Avenue, Suite 382  
Las Vegas, NV 89123  
Tel: (702) 727-6258/Fax: (702) 446-6756  
Email: [lgarfinkel@rsnvlaw.com](mailto:lgarfinkel@rsnvlaw.com)  
*Attorneys for Movant CLA Properties LLC*

## **EXHIBIT 249**

1 ROB BARE, ESQ.  
 Nevada Bar No. 4914  
 2 LAW OFFICE OF ROB BARE  
 150 Las Vegas Blvd N, #1812  
 3 Las Vegas, NV 89101  
 Tel: (702) 909-7732  
 4 Email: [RobBare32@gmail.com](mailto:RobBare32@gmail.com)

5 *Special Appearance for Respondent/Counterclaimant*  
 6 *CLA Properties, LLC*

7 LOUIS E. GARFINKEL, ESQ.  
 Nevada Bar No. 3416  
 8 GLENN M. MACHADO, ESQ.  
 Nevada Bar No. 7802  
 9 REISMAN SOROKAC  
 8965 S. Eastern Ave, Suite 382  
 10 Las Vegas, Nevada 89123  
 Tel: (702) 727-6258/Fax: (702) 446-6756  
 11 Email: [lgarfinkel@rsnvlaw.com](mailto:lgarfinkel@rsnvlaw.com)

12 RODNEY T. LEWIN, ESQ.  
 California Bar No. 71664  
 13 Law Offices of Rodney T. Lewin, APC  
 8665 Wilshire Boulevard, Suite 210  
 14 Beverly Hills, CA 90211  
 Tel: (310) 659-6771/Fax: (310) 659-7354  
 15 Email: [rod@rtlewin.com](mailto:rod@rtlewin.com)

16 *Attorneys for Respondent/Counterclaimant*  
 17 *CLA Properties, LLC*

## 18 JAMS

19  
 20 SHAWN BIDSAL, an individual,

JAMS Ref. No. 1260005736

21 Claimant/Counterdefendant,

22 v.

23 CLA PROPERTIES, LLC, a California  
 24 limited liability company,

25 Respondent /Counterclaimant  
 26  
 27  
 28

**CLA PROPERTIES, LLC'S BRIEF RE: (1)  
 WAIVER OF THE ATTORNEY-CLIENT  
 PRIVILEGE; AND (2) COMPELLING THE  
 TESTIMONY OF DAVID LeGRAND, ESQ.**

1 Pursuant to the Arbitrator's Order, Respondent/Counterclaimant CLA Properties, LLC  
2 ("CLA") hereby submits its Brief regarding the following issues: (1) whether the attorney-client  
3 privilege has been waived with respect to the testimony of David LeGrand, Esq. and (2) whether  
4 the Arbitrator can compel the testimony of David LeGrand, Esq.

5 For the reasons set forth below, the answer to both questions is "yes."

6  
7 **A. The Subpoena Duces Tecum, Deposition Testimony, And Arbitration Testimony**  
8 **Involving David LeGrand, Esq.**

9 On February 28, 2018, Benjamin Golshani ("Mr. Golshani") noticed the deposition of David  
10 LeGrand, Esq. ("Mr. LeGrand"), in the action entitled "Bidsal v. Golshani," filed in the District  
11 Court, Clark County, Nevada, Case No. A-17-759982-B, Department No. XIII (the "Mission  
12 Square Litigation"). A copy of the Notice of Deposition is attached as Exhibit "A". Attached to  
13 the Notice of Deposition was a Subpoena Duces Tecum directed to Mr. LeGrand requiring him to  
14 appear for deposition on March 15, 2018, and produce certain documents. Mr. LeGrand was  
15 ordered to produce all documents that reflect, relate, or pertain to the preparation, drafting, and/or  
16 interpretation of the Operating Agreements for Green Valley Commerce, LLC ("GVC") and  
17 Mission Square, LLC ("Mission Square"). The Claimant/Counterdefendant Shawn Bidsal ("Mr.  
18 Bidsal") did not object to the Notice of Deposition or the Subpoena Duces Tecum. It was agreed  
19 that the deposition and documents could be used in both the Mission Square Litigation and the  
20 Green Valley Arbitration, which, as the Arbitrator is aware, was initiated on September 26, 2017,  
21 when CLA filed a Demand For Arbitration with JAMS, Arbitration No. 1260004569, seeking a  
22 declaration regarding the Buy-Sell provision contained in the GVC Operating Agreement. The  
23 Honorable Stephen E. Haberfeld was appointed Arbitrator ("First GVC Arbitration").

24 In responding to the Subpoena Duces Tecum in the Mission Square Litigation, Mr. LeGrand  
25 spent several hours searching his electronic files, had multiple communications with Mr. Golshani's  
26  
27  
28

1 counsel Louis Garfinkel, Esq., and had communications with Mr. Bidsal's counsel. Mr. LeGrand  
2 produced in excess of 600 pages of documents responsive to the Subpoena Duces Tecum. The  
3 documents produced by Mr. LeGrand were bated and produced in the Mission Square  
4 Litigation as part of Mr. Golshani and CLA Properties, LLC's Second Supplemental NRCP 16.1  
5 Disclosures. A copy of the Second Supplemental NRCP 16.1 Disclosures is attached as Exhibit  
6 "B". Mr. Bidsal did not object to the documents produced by Mr. LeGrand in response to the  
7 Subpoena Duces Tecum.  
8

9 On March 20, 2018, Mr. LeGrand's deposition was taken in the Mission Square Litigation.  
10 A copy of the transcript of Mr. LeGrand's deposition is attached as Exhibit "C". Mr. LeGrand was  
11 extensively questioned by Mr. Golshani's counsel and Mr. Bidsal's counsel regarding the  
12 preparation, drafting and interpretation of the Green Valley Operating Agreement and the Mission  
13 Square Operating Agreement, including Mr. LeGrand's document production, meetings and/or  
14 telephone communications with Mr. Golshani and Mr. Bidsal, communications with Mr. Golshani,  
15 and communications with Mr. Bidsal. Mr. Bidsal did not object to the testimony of Mr. LeGrand  
16 and, in fact, participated in questioning Mr. LeGrand.  
17

18 On May 8-9, 2018, Judge Haberfeld heard evidence in connection with the First GVC  
19 Arbitration. Mr. LeGrand testified at the First GVC Arbitration on May 9, 2018. Mr. LeGrand's  
20 deposition testimony taken in the Mission Square Litigation was also read into the record at the  
21 First GVC Arbitration, and documents that he produced were entered into evidence. Attached as  
22 Exhibits "D" and "E" are copies of the transcripts from the May 8-9, 2018 Arbitration. Mr. Bidsal  
23 did not object to Mr. LeGrand's testimony or the documents entered in evidence at the First GVC  
24 Arbitration; in fact, Mr. Bidsal's counsel also questioned Mr. LeGrand.  
25

26 On April 5, 2019, Judge Haberfeld entered a Final Award in the First GVC Arbitration. A  
27 copy of the Final Award is attached as Exhibit "F". Judge Haberfeld's Final Award references  
28

1 documents prepared by Mr. LeGrand that were produced in the Mission Square Litigation and  
2 entered into evidence in the First GVC Arbitration, Mr. LeGrand's testimony in the Mission Square  
3 Litigation, and Mr. LeGrand's testimony at the First GVC Arbitration.

4       On May 21, 2019, CLA filed a Petition For Confirmation Of Arbitration Award and Entry  
5 Of Judgment (the "Petition") in the District Court, Clark County, Nevada, Case No. A-19-795188-  
6 B, Department XXVII, seeking an Order confirming the Final Award entered on April 5, 2019. Mr.  
7 Bidsal filed an opposition to the Petition and a Counter-Petition to Vacate the Arbitration Award.  
8 The briefs filed by CLA and Mr. Bidsal extensively referenced documents produced by Mr.  
9 LeGrand in the Mission Square Litigation and entered into evidence in the First GVC Arbitration,  
10 the communications between Mr. LeGrand, Mr. Golshani and Mr. Bidsal, the communications  
11 between Mr. LeGrand and Mr. Golshani, and the communications between Mr. LeGrand and Mr.  
12 Bidsal. CLA's Petition, Mr. Bidsal's Opposition to the Petition and Counter-Petition to Vacate  
13 Arbitration Award, CLA's Reply in Support of the Petition and in Opposition to the Counter-  
14 Petition and Mr. Bidsal's Reply in Support of the Counter-Petition are attached as Exhibits "G",  
15 "H" "I" and "J".

16       On December 6, 2019, the Honorable Judge Kishner entered an Order Granting CLA's  
17 Petition and Denying Mr. Bidsal's Counter-Petition to Vacate the Arbitrator's Award. A copy of  
18 the Judge Kishner's Order is attached as Exhibit "K". Jude Kishner's Order also references the  
19 testimony of Mr. LeGrand.

20       Mr. Bidsal thereafter appealed Judge Kishner's Order to the Nevada Supreme Court, Case  
21 Nos. 80427 and 80831. On November 24, 2020, Mr. Bidsal filed his Opening Brief in the Appeal.  
22 The Opening Brief is attached as Exhibit "L". The Opening Brief extensively references Mr.  
23 LeGrand's preparation of the GVC Operating Agreement.

24       On February 2, 2021, CLA filed its Answering Brief in the Appeal, a copy of which is  
25  
26  
27  
28

attached as Exhibit "M". CLA's Answering Brief contains extensive discussion of Mr. LeGrand's drafting of the Green Valley Operating Agreement, along with his testimony.

The current Arbitration was filed on or about February 7, 2020. On May 19, 2020, Claimant/Counterdefendant Mr. Bidsal served his list of witnesses and production of documents pursuant to JAMS Rule 17(a), a copy of which is attached as Exhibit "N". Mr. Bidsal's disclosure identified Mr. LeGrand as a witness, and further identified Mr. LeGrand's document production and deposition transcript in the Mission Square Litigation. Mr. Bidsal's initial document disclosure identified Mr. LeGrand's entire file, as well as his deposition, and numerous communications between Mr. LeGrand, Mr. Bidsal, and Mr. Golshani regarding the GVC Operating Agreement. On May 20, 2020, CLA served its initial disclosures, a copy of which is attached as Exhibit "O". CLA also identified Mr. LeGrand as a witness.

**B. Mr. Bidsal Waived Any Applicable Attorney-Client Privilege By: (1) Failing To Object To The Introduction Of GVC's Purportedly Privileged Documents And Testimony; And (2) Subsequently Utilizing The Same In Two Separate Litigation Matters.**

The first issue posed by the Arbitrator is whether Mr. LeGrand's prior disclosures and testimony regarding the Mission Square and GVC Operating Agreements (collectively, the "Operating Agreements")—whose terms are (with minor changes) identical—constituted a waiver of the (any applicable) attorney-client privilege.<sup>1</sup> As explained below, Mr. Bidsal waived any applicable

---

<sup>1</sup> "The attorney-client privilege is a rule of evidence; it has not been held a constitutional right." Elan Microelectronics Corp. v. Pixcir Microelectronics Co., No. 2:10-cv-00014-GMN-PAL, 2013 U.S. Dist. LEXIS 114788, at \*13 (D. Nev. Aug. 13, 2013), citing Clutchette v. Rushen, 770 F.2d 1469, 1471 (9th Cir. 1985). "Because it impedes full and free discovery of the truth, the attorney-client privilege is strictly construed." Weil v. Investment/Indicators, Research and Management, Inc., 647 F.2d 18, 24 (9th Cir. 1980). The party asserting the attorney-client privilege has the burden of proving the attorney-client privilege applies. See *id.* at 25. "One of the elements that the asserting party must prove is that it has not waived the privilege." Elan Microelectronics Corp., 2013 U.S. Dist. LEXIS 114788, at \*13.

1 attorney-client privilege regarding the Operating Agreements through both acts of commission as  
2 well as omission.

3 As a preliminary matter, Mr. Golshani and Mr. Bidsal are GVC's two current (and only) co-  
4 managers.<sup>2</sup> Accordingly, they have the authority to direct Mr. LeGrand to produce GVC's  
5 documents and testify regarding his actions on behalf of GVC. See Las Vegas Sands Corp. v.  
6 Eighth Judicial Dist. Court of Nev., 130 Nev. 643, 656, 331 P.3d 905, 914 (2014) (holding that "a  
7 corporation's current management controls the [attorney-client] privilege").<sup>3</sup> As the Arbitrator is  
8 aware, CLA (which is owned by Mr. Golshani) and Mr. Bidsal are the parties to this action. Mr.  
9 Golshani and Mr. Bidsal are also the parties in the Mission Square Litigation—with the same  
10 counsel—where information regarding the negotiation of the Operating Agreements was sought,  
11 and obtained, from Mr. LeGrand and then used in the cases.<sup>4</sup> Mr. Golshani and Mr. Bidsal further  
12 stipulated to using Mr. LeGrand's testimony, as well as the documents he produced, in the First  
13 GVC Arbitration that was heard by Judge Haberfeld. Therefore, no actions occurred in the Mission  
14 Square Litigation or the First GVC Arbitration without the knowledge—and approval, whether tacit  
15 or explicit—of both of GVC's (and Mission Square's) co-managers. In other words, this present  
16 litigation again concerns the interpretation of GVC's Operating Agreement, specifically issues  
17 relating to CLA's buyout of Mr. Bidsal,<sup>5</sup> and both Mr. Golshani and Mr. Bidsal previously allowed  
18  
19  
20  
21

---

22 <sup>2</sup> Mr. Golshani and Mr. Bidsal are also the two managers of Mission Square. Again, the Operating  
23 Agreements and their respective terms are virtually identical to one another.

24 <sup>3</sup> This is consistent with RPC 1.13 (Organization as Client), which holds that "[a] lawyer  
25 employed or retained by an organization represents the organization acting through its duly  
26 authorized constituents."

27 <sup>4</sup> As noted above, the Mission Square Litigation remains pending.

28 <sup>5</sup> In the First GVC Arbitration, Judge Haberfeld found that GVC's Operating Agreement's buyout  
provision under Article V—which references Exhibit B—allowed CLA to buyout Mr. Bidsal's  
interest.

1 Mr. LeGrand to produce documents and testify regarding the same in both the Mission Square  
2 Litigation and the First GVC Arbitration.

3 The result is that—to the extent that the communications at issue could have been considered  
4 privileged—the privilege has been waived. First, the privilege was waived, at a minimum, by Mr.  
5 Bidsal's failure to object to the February 2018 Notice of Deposition of Mr. LeGrand and the  
6 Subpoena Duces Tecum issued to Mr. LeGrand (regarding his representation of GVC and Mission  
7 Square concerning the Operating Agreements) in the Mission Square Litigation.<sup>6</sup> Mr. LeGrand  
8 subsequently produced over 600 pages of documents relating to the Operating Agreements,  
9 including emails received from Mr. Golshani and Mr. Bidsal, as well as his internal notes. Mr.  
10 LeGrand was subsequently deposed regarding the same. During this deposition, Mr. LeGrand  
11 specifically testified, in part, as to the specific intent of the parties in drafting the Operating  
12 Agreements. Again, the terms of the Mission Square and GVC Operating Agreements are virtually  
13 identical.  
14  
15

16 Further, the meeting between Mr. LeGrand, Mr. Bidsal and Mr. Golshani regarding what was  
17 supposed to be included in the GVC Operating Agreement, including the distribution provisions,  
18 was testified to by Mr. Golshani without objections during the present Arbitration. (See April 26,  
19 2021 Transcript; Page 1049 Line 18 to Page 1052 Line 5.)  
20

21 “[T]he failure to assert the [attorney-client] privilege when the evidence was first presented  
22 constitute[s] a voluntary waiver of the right. Once the subject matter is disclosed by a knowing  
23 failure to object there is nothing left to protect from disclosure.” United States v. Gurtner, 474 F.2d

24 Subpoena Duces Tecum  
25 <sup>6</sup> The SDT specifically requested “[a]ll documents that reflect, relate or pertain to the preparation,  
26 drafting and/or interpretation of the Operating Agreement for Green Valley Commerce, LLC. Said  
27 documents include, but are not limited to, drafts, communications (written or verbal), emails,  
28 letters, memoranda, documents sent, documents received, etc.” The SDT made an identical request  
regarding the operating agreement for Mission Square.

Subpoena Duces Tecum

297, 299 (9th Cir. 1973) (internal citations omitted)<sup>7</sup>; see also Liang v. AWG Remarketing, Inc., No. 14 CV 99, 2015 U.S. Dist. LEXIS 168139, at \*17 (S.D. Ohio Dec. 16, 2015) ("[F]ailure to object to deposition questions or testimony on grounds of attorney-client privilege operates to waive a claim of privilege as to this testimony."). Therefore, any attorney-client privileged communications regarding the Operating Agreements—which encompasses the GVC Operating Agreement—was waived by Mr. Bidsal's failure to object to the introduction of the same in the Mission Square Litigation.

Second, even assuming, *arguendo*, that the Arbitrator does not find a waiver due to Mr. Bidsal's failure to object, Mr. Bidsal still waived the privilege by actively participating in the questioning of Mr. LeGrand regarding the purportedly privileged information during his deposition.<sup>8</sup> Moreover, Mr. Bidsal stipulated to allowing the use of Mr. LeGrand's testimony—as well as the documents that he produced—in the First GVC Arbitration. Indeed, Mr. Bidsal—GVC's co-manager—used the documents that Mr. LeGrand provided, as well as Mr. LeGrand's testimony, in arguing both the First GVC Arbitration and the Mission Square Litigation. Ultimately, CLA prevailed in the First GVC Arbitration, the judgment of which relied heavily upon Mr. LeGrand's testimony. This appears to be the impetus for Mr. Bidsal now seeking to keep Mr. LeGrand's testimony out of the present arbitration.<sup>9</sup>

<sup>7</sup> Black's Law Dictionary (10<sup>th</sup> Ed.) defines "subject matter" as "[t]he issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute."

<sup>8</sup> "The attorney-client privilege is waived when communications are made in the presence of third parties." Elan Microelectronics, 2013 U.S. Dist. LEXIS 114788, at \*4, citing United States v. Gann, 732 F.2d 714, 723 (9th Cir.), cert. denied, 469 U.S.1034 (1984).

<sup>9</sup> Although Mr. Bidsal threatened Mr. LeGrand with a bar complaint if he chose to testify in the matter, the Rules of Professional Conduct would permit Mr. LeGrand to testify regarding his drafting of the Operating Agreements regardless of whether it is deemed privilege. Generally, RPC 1.6 (Confidentiality) prohibits an attorney from "reveal[ing] information relating to representation of a client unless the client gives informed consent." However, under RPC 1.6(b)(5), "[a] lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably

1 Mr. Bidsal, however, cannot now complain about Mr. LeGrand's testifying about the Operating  
 2 Agreements because Mr. Bidsal utilized the purportedly privileged information in both the First  
 3 GVC Arbitration and the Mission Square Litigation. See Lisle v. State, 113 Nev. 679, 701, 941  
 4 P.2d 459, 473 (1997) ("when [a] client voluntarily reveals a significant portion of communication  
 5 with [its] attorney, those revelations amount to a waiver of the attorney-client privilege as to the  
 6 remainder of the conversation or communication about the same subject matter") (emphasis added;  
 7 internal citations and quotations omitted); Wardleigh v. Second Judicial Dist. Court, 111 Nev. 345,  
 8 354-55, 891 P.2d 1180, 1186 (1995) ("the attorney-client privilege was intended as a shield, not a  
 9 sword. In other words, where a party seeks an advantage in litigation by revealing part of a  
 10 privileged communication, the party shall be deemed to have waived the entire attorney-client  
 11 privilege as it relates to the subject matter of that which was partially disclosed."); see also Elan  
 12 Microelectronics, 2013 U.S. Dist. LEXIS 114788, at \*4 ("It is well established that voluntary  
 13 disclosure of a privileged communication constitutes a waiver of the privilege as to all other such  
 14 communications on the same subject." (Emphasis added.)).

17 In other words, Mr. Bidsal, by disclosing Mr. LeGrand's purported privileged documents and  
 18 testimony regarding the Operating Agreements in the First GVC Arbitration and the Mission  
 19 Square Litigation, waived any applicable privilege, and such waiver applies to all communications  
 20 on the same subject. Given the breadth of Mr. LeGrand's prior disclosures regarding the Operating  
 21 Agreements and testimony—which encompassed distributions—the questions that CLA seeks to  
 22

23  
 24  
 25  
 26 believes necessary . . . to respond to allegations in any proceeding concerning the lawyer's  
 27 representation of the client[.]" (Emphasis added.) The allegations in this matter regarding the  
 28 meaning of the GVC Operating Agreement (e.g., Exhibit B) directly relates to Mr. LeGrand's  
 representation of GVC in preparing the agreement (as noted in Article XIII of the GVC Operating  
 Agreement). As such, Mr. LeGrand has the discretion under RPC 1.6 to testify regarding the same.

ask Mr. LeGrand in this present action regarding Exhibit B's distributions concern, at a minimum, the same subject matter.<sup>10</sup>

In summary, Mr. Bidsal has waived any applicable attorney-client privilege regarding the Operating Agreements, including their distributions, through acts of omission and separately through acts of commission.

**C. Mr. Bidsal Has Additionally Waived Any Privilege Regarding The GVC Operating Agreement By Placing The Interpretation Of The Same At Issue In This Litigation.**

Even if any applicable privilege regarding the questions that CLA seeks to ask Mr. LeGrand has not already been waived, Mr. Bidsal's objections are subject to (and superseded) by the doctrine of waiver by implication, also known as the "at issue" doctrine. Here, the issues concern the meaning of the exhibits to the GVC Operating Agreement (Exhibits A and B) and the intent of the parties regarding the waterfall and the distribution provisions. Mr. Bidsal's defense is that intent of the parties and the GVC Operating Agreement is that the distribution waterfall set forth in Exhort B is not triggered until there is a sale of all or substantially all of the assets of Green Valley (or cash out financing) and that all distributions were to be on a 50-50 basis until then.<sup>11</sup> As such, communications regarding the intent in drafting the Exhibits A and B—which were prepared by Mr. LeGrand—are at issue in this litigation. In Wardleigh, the Nevada Supreme Court held that the petitioners, by claiming a lack of knowledge of the construction defects at issue in their lawsuit, placed, at issue, privileged communications related to their knowledge of the same at issue in the

---

<sup>10</sup> Again, to the extent that Mr. Bidsal believes otherwise, the burden is on him to establish that any privilege remains. See Fontainebleau Las Vegas Holdings, LLC v. Term Lender Steering Grp., No. 2:11-cv-00402-RLH-PAL, 2011 U.S. Dist. LEXIS 36802, at \*7-8 (D. Nev. Mar. 18, 2011) ("The party asserting a privilege has the burden of making a *prima facie* showing that the information being withheld is indeed privileged."). Respectfully, Mr. Bidsal cannot establish this burden as Mr. LeGrand provided 600-plus pages of documents and extensive testimony regarding the Operating Agreements (which encompassed the GVC Operating Agreement and distributions) during the Mission Square Litigation.

<sup>11</sup> The GVC Operating was found to be vague in the First GVC Arbitration.

1 litigation.<sup>12</sup> The Nevada Supreme Court, in holding that such communications were waived, stated  
2 that “it has become a well-accepted component of waiver doctrine that a party waives his privilege  
3 if he affirmatively pleads a claim or defense that places at-issue the subject matter of privileged  
4 material over which he has control.” Wardleigh, 111 Nev. at 354, 891 P.2d at 1186, quoting  
5 Developments in the Law-Privileged Communications, 98 Harv. L. Rev. 1450, 1637 (1985)  
6 (emphasis added).  
7

8 The Supreme Court further stated that “[t]he doctrine of waiver by implication reflects the  
9 position that the attorney-client privilege was intended as a shield, not a sword. In other words,  
10 where a party seeks an advantage in litigation by revealing part of a privileged communication, the  
11 party shall be deemed to have waived the entire attorney-client privilege as it relates to the subject  
12 matter of that which was partially disclosed. Wardleigh, 111 Nev. at 354, 891 P.2d at 1186, quoting  
13 United States v. Jones, 696 F.2d 1069, 1072 (4th Cir. 1982).  
14

15 “The great weight of authority holds that the attorney-client privilege is waived when a litigant  
16 places information protected by it in issue through some affirmative act for his own benefit, and to  
17 allow the privilege to protect against the disclosure of such information would be manifestly unfair  
18 to the opposing party.” Wardleigh, 111 Nev. at 354-55, 891 P.2d at 1186 (emphasis in original).  
19

20 Mr. Bidsal, by offering a contrary interpretation to Exhibit B’s waterfall distribution, has put  
21 communications with GVC (through Mr. LeGrand) at issue. To state the obvious, the GVC  
22 Operating Agreement is at the center of this litigation. As noted earlier, CLA and Mr. Bidsal are  
23 members (and, together, 100 percent owners) of GVC. CLA’s rights in this litigation directly stem  
24 from its rights under the GVC Operating Agreement. Similarly, Mr. Bidsal’s alleged rights herein  
25 are directly based upon what he believes are his rights under GVC’s Operating Agreement.  
26

27 \_\_\_\_\_  
28 <sup>12</sup> 111 Nev. at 356, 891 P.2d at 1187.

1 Moreover, Mr. Golshani and Mr. Bidsal are (the only two) co-managers of GVC and have the  
2 authority to direct Mr. LeGrand to testify.

3 In other words, this dispute is all about GVC and concerns GVC's members and managers.  
4 Although Mr. Bidsal is asserting that his interpretation of the waterfall distribution under Article V  
5 and Exhibit B is the correct one—thus putting his interpretation at issue—he is refusing to permit  
6 Mr. LeGrand to testify regarding this issue.<sup>13</sup> Nevada law, however, finds a waiver under such  
7 circumstances because it is manifestly unfair to CLA for Mr. Bidsal to assert a contrary  
8 interpretation of the GVC Operating Agreement and then use his authority, as GVC's co-manager,  
9 to block Mr. LeGrand from testifying regarding the same.  
10

11 Accordingly, even if CLA's proposed areas of inquiry to Mr. LeGrand regarding Exhibit B's  
12 waterfall distribution were not previously waived in the Mission Square Litigation, Mr. Bidsal's  
13 interpretation of the same (i.e., defense in this Arbitration) puts it at issue in this litigation,  
14 subjecting any privileged communications regarding the same waived pursuant to Wardleigh.  
15

16 **D. The Arbitrator Has The Ability To Compel Mr. LeGrand's Testimony.**

17 The second issue that the Arbitrator seeks addressed is whether Mr. LeGrand can be compelled  
18 to testify in this matter. In short, the answer is yes. The Arbitrator's ability to compel an attorney's  
19 testimony stems from state and federal law. It should be noted, however, that the Rules of  
20 Professional Conduct do not specifically address when a tribunal may compel an attorney's  
21 testimony. In fact, Comment 12 to Model Rule 1.6 (upon which RPC 1.6 is based) notes that  
22 whether a "law supersedes Rule 1.6 is beyond the scope of these rules." Rather, RPC 1.6 maintains  
23 that all client information is deemed confidential.<sup>14</sup>  
24

25  
26 <sup>13</sup> Again, the likely reason is that Mr. LeGrand's previous—unobjected to—document production  
27 and testimony was found to favor CLA's interpretation of the Operating Agreements.

28 <sup>14</sup> The only instance where disclosure is mandatory is under RPC 1.6(d), which mandates that "[a]

1 The Arbitrator has already ruled on the ability to compel testimony at an arbitration hearing  
 2 under the Federal Arbitration Act. On July 20, 2020, the Arbitrator entered his Order On Pending  
 3 Motions. The Order addressed CLA's Motion to Resolve Member Dispute re Which Manager  
 4 Should Be Day-to-Day Manager and Mr. Bidsal's Motion To Quash Subpoenas And For Protective  
 5 Order. Mr. Bidsal challenged the issuance of subpoenas to representatives of Clifton Larson Allen  
 6 and a deposition of Mr. Bidsal. In ruling on the Motion To Quash Subpoenas And For Protective  
 7 Order, the Arbitrator stated:

9 "The Operating Agreement for GV, in Article III, Section 14.1, states that  
 10 this Arbitration shall be governed by the United States Arbitration Act, 9  
 11 USC §1, *et seq.* Section 7 of the Federal Arbitration Act allows the  
 12 arbitrator to compel the attendance of witnesses (and to bring requested  
 13 documents) at the Arbitration Hearing but not for pre-hearing depositions.  
 14 See, CVS Health Corp. v. VIVIDUS, LLC, 878 F.3d 703 (9<sup>th</sup> Cir 2017).  
 15 Even though the Operating Agreement also provides that the Arbitration  
 16 shall be "administrated by JAMS in accordance with its then prevailing  
 17 expedited rules," (which allow for the Arbitrator to compel attendance of  
 18 witnesses and documents during the pre-hearing discovery), federal law  
 19 in this jurisdiction does not vest the Arbitrator with the authority to  
 20 enforce such subpoenas in this matter."

21 See Order On Pending Motions, pp. 4-5.

22 Thus, the Arbitrator has ruled that pursuant to the CVS Health Corp. case, the Federal Arbitration  
 23 Act permits an arbitrator to compel attendance of witnesses at the arbitration hearing but not for pre-  
 24 hearing depositions. Mr. LeGrand can be compelled to testify at the arbitration hearing.

#### 25 **E. Conclusion**

26 For the above foregoing reasons, the Arbitrator should rule that Mr. Bidsal has waived any  
 27 applicable attorney-client privilege and Mr. LeGrand can be compelled to testify at the Arbitration.  
 28 In addition, CLA should be awarded its fees and costs in having to respond to this issue. Mr.

---

lawyer shall reveal information relating to the representation of a client to the extent the lawyer  
 reasonably believes necessary to prevent a criminal act that the lawyer believes is likely to result in  
 reasonably certain death or substantial bodily harm." This exception to confidentiality is not  
 applicable here.

1 LeGrand as a witness has been identified by both sides from the very outset of this Arbitration. If  
2 there was a legitimate claim of privilege (which we submit based on the foregoing there is not) this  
3 should have been raised then, not on the last day of testimony when the order of witnesses and  
4 evidence had long been planned and disclosed. Accordingly, CLA requests that it be granted its  
5 fees and costs relating to this issue to be awarded in an amount to be subsequently determined.  
6

7 Dated this 21st of May 2021.

8 LAW OFFICE OF ROB BARE

9 /s/ Rob Bare  
10 ROB BARE, ESQ.  
11 Nevada Bar No. 4914  
12 150 Las Vegas Blvd N, #1812  
13 Las Vegas, NV 89101  
14 Tel: (702) 909-7732  
15 Email: [RobBare32@gmail.com](mailto:RobBare32@gmail.com)

16 *Special Appearance for*  
17 *Respondent/Counterclaimant*  
18 *CLA Properties, LLC*

19 LOUIS E. GARFINKEL, ESQ.  
20 Nevada Bar No. 3416  
21 GLENN M. MACHADO, ESQ.  
22 Nevada Bar No. 7802  
23 REISMAN SOROKAC  
24 8965 S. Eastern Ave, Suite 382  
25 Las Vegas, Nevada 89123  
26 Tel: (702) 727-6258/Fax: (702) 446-6756  
27 Email: [lgarfinkel@rsnvlaw.com](mailto:lgarfinkel@rsnvlaw.com)

28 and

29 RODNEY T. LEWIN, ESQ.  
30 California Bar No. 71664  
31 Law Offices of Rodney T. Lewin, APC  
32 8665 Wilshire Boulevard, Suite 210  
33 Beverly Hills, CA 90211  
34 Tel: (310) 659-6771/Fax: (310) 659-7354  
35 Email: [rod@rtlewin.com](mailto:rod@rtlewin.com)

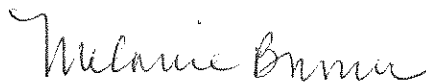
36 *Attorneys for Respondent/Counterclaimant CLA*  
37 *Properties, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of REISMAN SOROKAC, and that on the 21<sup>st</sup> day of May, 2021, I caused the foregoing **CLA PROPERTIES, LLC'S BRIEF RE: (1) WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE; AND (2) COMPELLING THE TESTIMONY OF DAVID LeGRAND, ESQ.** to be served on the following via JAMS Access.

James E. Shapiro, Esq.  
Aimee M. Cannon, Esq.  
Smith & Shapiro, PLLC  
3333 E. Serene Ave., Suite 130  
Henderson, NV 89074  
*Attorneys for Claimant/Counter-Defendant*  
*Shawn Bidsal*

Douglas D. Gerrard, Esq.  
Gerrard Cox Larsen  
2450 St. Rose Parkway, Suite 200  
Henderson, NV 89074  
*Attorneys for Claimant /Counter-Defendant*  
*Shawn Bidsal*

  
\_\_\_\_\_  
Melanie Bruner, an Employee of  
REISMAN SOROKAC