IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S APPENDIX

VOLUME 35

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Case Nos. 80427 & 80831

In the Supreme Court of Nevada

In the Matter of the Petition of CLA PROPERTIES LLC.
SHAWN BIDSAL, Appellant, *vs.* CLA PROPERTIES LLC, Respondent.
CLA PROPERTIES LLC, Appellant, *vs.* SHAWN BIDSAL, Respondent.

APPEAL

from the Eight Judicial District Court, Clark County, Nevada
The Honorable JOANNA S. KISHNER, District Judge
District Court Case No. A-19-795188-P

APPELLANT SHAWN BIDSAL'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Shahram Bidsal aka Shawn Bidsal is an individual. James E. Shapiro and Aimee M. Cannon of Smith & Shapiro, PLLC represent him here and in the district court. Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith at Lewis Roca Rothgerber Christie, LLP represent Bidsal before this Court.

Dated this 24th day of November, 2020.

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JURISDICTION

Shawn Bidsal appeals from the December 6, 2019 order granting a petition for the confirmation of an arbitration award and denying Bidsal's opposition and counterpetition to vacate the arbitrator's award. The award constitutes a final, appealable judgment under NRAP 3A(b)(1) and NRS 38.247(c).

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court because it involves the extent to which an arbitrator's award is insulated from judicial review when it imposes a specific-performance remedy that the parties expressly rejected and when the parties' arbitration agreement prohibits the arbitrator from entering such an award. The assumption among some of the district courts that such an award merits little or no review is an issue of statewide public importance (NRAP 17(a)(12)) that requires guidance from this Court.

ISSUES PRESENTED

1. Does an arbitrator manifestly disregard the law when he substitutes for the parties' written agreement a rough concept of "Dutch

auction," divorced both from the language of the contract and in disregard of the parties' express rejection of such a provision?

2. Considering the overwhelming evidence that Bidsal did not draft Section 4.2, was the arbitrator's determination that ambiguity must be construed against Bidsal as the drafter arbitrary and capricious?

3. Is an arbitrator's award insulated from review even when the parties' arbitration agreement expressly limits the kinds of damages awards the arbitrator can make, and the specific-performance award here exceeds the arbitrator's powers?

STATEMENT OF THE CASE

Bidsal appeals from a district court order confirming an arbitration award and entering judgment, the Honorable Joanna S. Kishner, District Judge of the Eighth Judicial District Court, Clark County, presiding. That judgment confirmed the Final Award entered by the Honorable Stephen E. Haberfeld, in arbitration proceedings.

This dispute arises from Bidsal's desire to buy out CLA, the other member of GVC, a real estate investment LLC that has two members: Bidsal and CLA. GVC's operating agreement contains a provision, Article V, Section 4, governing this scenario, where one member wishes to buy out the other. Negotiations over this provision lasted several months. During these negotiations, GVC's counsel drafted "Dutch Auction" language on numerous occasions, and each time Bidsal and CLA rejected that language. CLA then took control from GVC's counsel and drafted the buy-sell language that appears in GVC's final operating agreement. Bidsal reviewed CLA's draft language, but never revised it. In the final GVC operating agreement, Article V, Section 4 sets forth a procedure ensuring that an initial offer from one member to buy out the other results in **someone** buying the interest of the other, subject to an

appraisal procedure that protects members from having to sell their interests for an unfair price.

In 2017, after leveraging his experience and expertise to realize profits for the LLC over the course of several years, Bidsal offered to purchase CLA's interest in GVC for a price based on a $5 million valuation. Having offered to buy CLA's interest, Bidsal understood that, pursuant to the operating agreement, CLA could either accept the offer, agree to sell at an appraisal-determined valuation, or counteroffer to purchase Bidsal's interest. Bidsal hoped to purchase CLA's interest and become sole owner of GVC, but took comfort from the operating agreement's appraisal procedure. This procedure ensured that, even if CLA counteroffered to buy Bidsal's interest, he could not be compelled to sell his interest without the benefit of the appraisal procedure.

CLA had other plans. After receiving the offer from Bidsal, CLA commissioned an appraisal in secret, without invoking the operating agreement's appraisal procedure. Upon learning GVC's property was worth more than originally thought, CLA demanded that Bidsal sell his interest to CLA at a price based on a $5 million valuation. CLA insisted

the operating agreement required Bidsal to sell at that price, then demanded arbitration when Bidsal invoked the appraisal procedure.

The arbitrator concluded the disputed operating agreement provision was ambiguous and, finding that Bidsal was the principal drafter, construed the disputed provision against him. Relying on that finding and an extrinsic "rough justice" standard derived from typical Dutch Auction provisions, the arbitrator ordered specific performance of the purportedly ambiguous agreement—ordering Bidsal to sell his GVC interest to CLA at a price based on a $5 million valuation. The district court confirmed the award and entered judgment.

Bidsal appeals.

STATEMENT OF FACTS

Benjamin Golshani and Appellant Shawn Bidsal are cousins. (8 App. 1930:18-23.) Golshani is the sole manager and member of Respondent CLA Properties, LLC. (1 App. 9, ¶ 3.) CLA and Bidsal are the members of Green Valley Commerce, LLC ("GVC"). (*Id.*)

A. The Joint Venture

By 2010, Bidsal had established himself in the real estate investment and management business and developed an infrastructure for

purchasing, selling, and managing commercial real estate. (9 App. 2243:15-2244:16.) In 2010, Golshani, a real estate novice, approached Bidsal to discuss real estate business opportunities. (9 App. 2246:14-2247:8.)

Bidsal later agreed to partner with Golshani—through Golshani's LLC, CLA—to purchase real estate properties and mortgaged back deeds of trust and notes (the "Joint Venture"). (9 App. 2248:18-2249:11; 1 App. 9, ¶ 3.) CLA would invest seventy percent (70%) of the funds for the Joint Venture, but agreed that the profit from the venture would be split equally. (8 App. 1942:21-1944:12.) Bidsal would invest the remaining 30%, but also contribute valuable sweat equity by finding deals, subdividing properties to maximize value, and managing the properties. (9 App. 2006:13-2008:6.)

After agreeing to the Joint Venture, Bidsal located a commercial property at 3 Sunset Way, Henderson, Nevada 89014 (the "Green Valley Commerce Center"). (10 App. 2256:9-2257:3.) The loan against the Green Valley Commerce Center was in default, which presented an opportunity to obtain the loan and the underlying collateral at an exceptional value. (9 App. 2250:3-10 App. 2251:2.) However, these types of

deals require a great deal of work and experience to convert the note to fee simple title—experience that Bidsal had. (*Id.*)

On May 26, 2011, Bidsal formed Green Valley Commerce Center, LLC ("GVC"). (1 App. 219; 10 App. 2253, 356:13-357:15.) Shortly thereafter, GVC purchased the note secured by a deed of trust against the Green Valley Commerce Center. (10 App. 2253, 357:21-358:6.) Bidsal was ultimately successful in converting the note into a deed-in-lieu of foreclosure for the underlying property (10 App. 2255, 358:4-6, 10 App. 2260, 363:20-25) and, on September 22, 2011, GVC obtained title to the Green Valley Commerce Center. (1 App. 221-224.)

B. The Draft GVC Operating Agreement

In June 2011, Bidsal and CLA contacted David LeGrand, an attorney, for assistance preparing a GVC operating agreement. (10 App. 2257, 360:9-361:8.) After discarding a template operating agreement originally provided by Jeff Chain, a business associate of Bidsal, LeGrand created his own proposed operating agreement for Bidsal and CLA to consider. (*Compare* 1 App. 226-250 *with* 2 App. 252-271.) The template operating agreement thereafter went numerous revisions.

On June 17 and June 27, 2011, LeGrand prepared revisions to the membership interest transfer provision reflecting his discussions with Bidsal. (2 App. 252-271; 2 App. 273-326). On July 22, 2011, LeGrand emailed another revision to Bidsal and CLA. (2 App. 382-411.) LeGrand advised that the revision added right of first refusal language, but that he was "unclear as to the discussion at the end of the meeting about buy sell." (2 App. 382.)

But LeGrand's initial drafts were rejected. On August 18, 2011, LeGrand emailed Bidsal and CLA a revision to the draft operating agreement "based on my conversation with Ben [Golshani] this morning." (2 App. 413.) LeGrand advised that, in this revision, he "added a 'Dutch Auction' provision." (*Id.*) Section 7.1 of the August 18, 2011, draft operating agreement provides:

> **Section 7.1 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 sell his or its Member Interests for fair market value based upon the net fair market value of the Company's assets divided by the offering Member's proportionate interest in profits and losses of the Company. The Offering Member shall obtain an appraisal in writing from a qualified real estate appraiser and provide a copy of such appraisal to the other Member(s) attached to a notice setting forth the proposed offer to

> sell. The other Member(s) shall have ten (10) business days within which to respond in writing to the Offering Member by either (i) accepting the Offering Member's offer to sell; or, (ii) rejecting the offer to sell and counteroffering to sell his or its Member Interest to the Offering Member based upon the same appraisal and fair market value formula as set forth above. The specific intent of this provision is that the Offering Member shall be obligated to either sell his or its Member Interests to the remaining Member(s) or purchase the Member Interest of the remaining Member(s) based upon the fair market value of the Company's assets.

(2 App. 425.)

But LeGrand's August 2011 "'Dutch Auction' provision" was rejected. On September 16, 2011, LeGrand emailed Bidsal and CLA another revision to the draft operating agreement that removed the "Dutch Auction" provision. (2 App. 472.) In the email, LeGrand wrote, "I do not know how to address the concept of the 'Dutch Auction' after much thought. We discussed that you want to be able to name a price and either get bought or buy at the offer price. I can write that provision, but I am not sure it makes sense because Ben [Golshani] has put in more than double the capital of Shawn [Bidsal]." (*Id.*)

LeGrand added, "Another approach would be to have an appraiser value your respective interests and capital and establish a price for both

of you. Then Ben could say to Shawn, 'Buy my units for XX$ or I can buy your units for Y$', all based on an independent appraisal?" (*Id.*)

On September 19, 2011, LeGrand emailed Bidsal and CLA, writing, "I got Ben's [Golshani] voice mail Saturday regarding Buy-sell and I talked with Shawn [Bidsal] about the issue that because your capital contributions are so different, you should consider a formula or other approach to valuing your interests. 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." (3 App. 501.)

LeGrand added, "But you are the clients and I will write it up as you jointly instruct. I know Ben wants to get this finished." (*Id.*)

On the afternoon of September 20, 2011, LeGrand emailed Bidsal and CLA a revised draft operating agreement, writing, "Ben and Shawn- attached please find the revised OPAG with the new Article 5 Section 5 which sets forth the 'dutch Auction'." (3 App. 503.) Article 5, Section 5 of the September 20, 2011, draft operating agreement provides:

> **Section 5. Sales Between Members.**
>
> In the event that a Member desires to sell his Membership Interests to the other Members or purchase the Membership Interests of the other Members, the Offering Member shall give notice (for purposes of this Section 5.1, the "Notice") in writing to each of the other Members, stating his or its bona fide intention to transfer such Interest and the purchase price for which such Offering Member's Interest is proposed to be transferred. The purchase price expressed as a percentage of capital in the Company shall also be an offer to purchase the other Member's Interests on the same terms proportionate to the other Member's capital ownership.

(3 App. 515.)

> **5.2**
>
> Upon receipt of the Notice, each of the other Members shall have the first right and option to agree to purchase all (subject to Article 5 hereof) of the Offering Member's Interest proposed to be transferred, at the price set forth in the Notice, exercisable for a period of fifteen (15) days form the date of receipt of the Notice. In the alternative, each of the other Member's shall have the right to sell their interests to the Offering Member on the terms set forth in the Notice and at the same price as set forth in the Notice proportionate to the other Member's capital ownership.

(*Id.*)

But LeGrand's September 2011 "dutch Auction" provision was also rejected. (3 App. 535.) On the morning of September 22, 2011, CLA emailed Bidsal a two-page draft of Section 7 ("Purchase or Sell Right

among Members."), with "ROUGH DRAFT" in large letters at the top of the page. (3 App. 535-37.) Golshani wrote, "Enclosed please find a rough draft ***of what I came up with***. I tried to make it reciprocal. See if you like it. Comments are appreciated." (3 App. 535.) (Emphasis added.)

CLA's September 22, 2011, "ROUGH DRAFT" first modeled the structure and language of Section 4.2, completely departing from both the language and structure of LeGrand's drafts. For comparison, the table below shows CLA's "ROUGH DRAFT" (3 App. 536-37) side-by-side with Section 4.2 (3 App. 548-49).

"ROUGH DRAFT" (Sept. 22, 2011):	**Final Operating Agreement:** 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 sell his or its Member Interests for a price the Offering member thinks is the fair market value.	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 member can request to establish a fair market value based on the following procedure.	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. [*space added*]
The Remaining member must provide the offering Member the complete information of 3 MIA appraisers within 30 days of receiving the offer. 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 Other Members with the complete	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

information of 3 MIA approved appraisers. The Other 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 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 party may offer to sell his share Remaining Members based on the following formula.	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- cost of purchase stated in the escrow closing statement) x interest percentage of Remaining member(s) + the amount of capital account of the Remaining Member(s).	(FMV - COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.
The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either:	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 offer to sell; or,	(i) Accepting the Offering Member's purchase offer, or,
(ii) rejecting the offer to sell and counter offering to sell his or its Member Interest to the Offering Member based upon the same fair market value (FMV) according to the following formula.	(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- cost of purchase stated in the escrow closing statement) x interest percentage of offering Member + capital account of the Offering Member.	(FMV - COP) x 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 the Offering Member shall be obligated to either sell his or its Member Interests to the remaining Member(s) or purchase the Member Interest of the remaining Member(s) based upon the fair market value established above.	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).

On October 26, 2011, CLA emailed Bidsal a revised draft Section 7 ("Purchase or Sell Right among Members."), with "ROUGH DRAFT 2" in large letters in the header. (3 App. 568-70.) Golshani wrote, "Shawn, here is the agreement we discussed. Please take a look to see if you like it." (3 App. 568.)

CLA's October 26, 2011, "ROUGH DRAFT 2" is nearly identical to Section 4.2. For comparison, CLA's "ROUGH DRAFT 2" (3 App. 569-70) appears below side-by-side with Section 4.2 (3 App. 548-49).

"ROUGH DRAFT 2" (Oct. 26, 2011) Section 7.2 ("Purchase or Sell Procedure")	**Final Operating Agreement:** 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.	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 member can request to establish a fair market value (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	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). [*space added*] The offering party has the option to offer to purchase the Remaining Member's share at FMV specified above, based on the following formula. (FMV- COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities. The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either (i) accepting the Offering Member's purchase offer, or, (ii) rejecting the purchase offer and counter offering to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula. (FMV- COP) x 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 the Remaining Members have the right to either sell or buy at the same offered price and according to the above manner. In the case that the remaining member(s) decide to purchase, the Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s).	all Members. The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV). The Offering Member has the option to offer to purchase the Remaining Member's share at FMV as determined by Section 4.2, based on the following formula. (FMV - COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities. The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either (i) Accepting the Offering Member's purchase offer, or, (ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula. (FMV - COP) x 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).

CLA thereafter sent "ROUGH DRAFT 2" to LeGrand. (6 App. 1333.) On November 10, 2011, LeGrand emailed Bidsal and CLA, writing, "Shawn, I received fax from Ben [Golshani] and am rewriting it to be more detailed and complete. I will send it out to both of you shortly." (3 App. 574.) On November 10, 2011, LeGrand sent Bidsal and CLA his "DRAFT 2," in which LeGrand made only non-substantive revisions to CLA's "ROUGH DRAFT 2." (6 App. 1333.)

On November 11, 2011, CLA responded to LeGrand by email, writing, "Hi, it looks good, please complete and send it to us." (6 App. 1333.)

On November 29, 2011, LeGrand emailed Bidsal and CLA, writing, "Ben [Golshani] and Shawn [Bidsal]. ***This version has Ben's 'dutch auction' language*** and a buy-sell at FMV on the death or dissolution of a member." (6 App. 1338.) (Emphasis added.) LeGrand enclosed a draft that was identical to the final version of Section 4.2. (*Compare* 6 App. 1349-50 *with* 5 App. 548-49.)

C. Management and Operation of GVC

After GVC acquired the Green Valley Commerce Center, Bidsal and CLA decided to sell some of the buildings. (10 App. 2262:3-2266:5.)

As part of this process, Bidsal subdivided the Green Valley Commerce Center into separate buildings, creating a building association, and commissioning survey work. (*Id.*) Bidsal did most of the work in handling the subdivision process and working with the surveyors. (9 App. 2007:4-15.) Bidsal, alone, also handled the management and leasing of the Green Valley Commerce Center. (9 App. 2007:19-21.)

Bidsal was able to sell buildings B, C, and E of the Green Valley Commerce Center for a profit, and used proceedings from the sale to purchase a new parcel in Arizona. (10 App. 2266:3-2267:22.) Proceeds from the sale that were not used to purchase the Arizona parcel were paid to CLA and Bidsal. (*Id.*) Following this, GVC owned five buildings in the Green Valley Commerce Center, and the in Arizona, Greenway Plaza. (*Id.*)

D. GVC Purchase Negotiations

On July 7, 2017, Bidsal, through his attorney, made a written offer to purchase CLA's membership interest in GVC based on a $5,000,000 valuation of the company. (3 App. 711.) Without disclosure

to Bidsal, CLA engaged Petra Latch, MAI[1], to appraise the Green Valley Commerce Center. (9 App. 2049:7-2052:13; 3 App. 713-24.) On July 31, 2017, Ms. Latch provided her appraisal to CLA, showing the property was worth more than originally thought. (3 App. 726-750; 4 App. 751-947.)

On August 3, 2017, CLA sent Bidsal a letter, "electing and exercising" his option, "in accordance with section 4, Article v of the agreement," to purchase Bidsal's 50% membership interest "based on your $5,000,000 valuation of the Company." (4 App. 952.)

On August 5, 2017, Bidsal responded, invoking, "in accordance with Article V, Section 4 of the Company's Operating Agreement," his "right to establish the FMV by appraisal." (4 App. 954.) On August 28, 2017, CLA replied through counsel, insisting that Bidsal sell his membership interest. (4 App. 956-59.)

[1] MAI is a membership designation from a professional appraisal organization. Section 4.2 refers to "MIA appraisers," but presumably intended to refer to "MAI appraisers."

E. The Arbitration

On September 26, 2017, CLA submitted to JAMS a demand for arbitration. (4 App. 961-65.) CLA's demand for arbitration was made pursuant to operating agreement Section 14.1 ("Dispute Resolution"). (4 App. 963.) The arbitration demand quoted language from Section 4.2 and stated Bidsal has "refused to sell his interest, but instead has demanded an appraisal to determine FMV." (4 App. 962.)

On May 8-9, 2018, the arbitrator conducted the merits hearing, at which Golshani, Bidsal, and LeGrand testified in person. (*See* 8 App. 1894-2000; 9 App. 2001-2250; 10 App. 2251-2320.)

On October 9, 2018—**five months** after the merits hearing—the arbitrator issued Merits Order No. 1. (4 App. 967-81.) In Merits Order No. 1, the arbitrator determined that Section 4.2 was ambiguous and that Bidsal, as the "principal drafter of Section 4.2," must "bear[] the burden of risk of ambiguity or inconsistency within the disputed provision." (4 App. 969 ¶ 4 n.3.) In determining that Bidsal drafted Section 4.2, the arbitrator found that Bidsal was responsible for the "addition of what became the 'FMV' ambiguity." (*Id.*)

In Merits Order No. 1, the arbitrator resolved the dispute in CLA's favor. (4 app. 979.) Specifically, he concluded that Bidsal "contractually agreed and can be legally compelled to sell his 50% Membership Interest in [GVC] to" CLA at a price computed "via the contractual formula set forth in Section 4.2" and "based on Mr. Bidsal's undisputed $5 million 'best estimate' of Green Valley's fair market valuation . . . without regard to a formal appraisal." (*Id.*)

On October 30, 2018, CLA submitted a Proposed Interim Award. (4 App. 983-997.) CLA's Proposed Interim Award revised the analysis and findings set forth in Merits Order No. 1, (*See id.*) The same day, CLA and sought an award of $255,403.75 for attorneys' fees and $29,200.07 in costs. (4 App. 999-1000; 5 App. 1001-90.) The Proposed Interim Award modified Merits Order No. 1 by, among other things, deleting the findings that supported the determination that Bidsal was the "principal drafter" of Section 4.2. (*Compare* 4 App. 969, ¶ 4 n.3 *with* 4 App. 986, ¶ 7 n.5.)

On January 21, 2019, the arbitrator issued the Interim Award, appearing to adopt the modified analysis and findings set forth in CLA's Proposed Interim Award and awarding CLA $249,078.75 for attorneys'

fees. (5 App. 1159-79.) The Interim Award, like CLA's Proposed Interim Award, omits the findings that were set forth in Merits Order No. 1 that support the draftsmanship determination. (*See* 5 App. 1164, ¶ 9, n.6.)

On April 5, 2019, the arbitrator entered the Final Award. (5 App. 1215-35.) The Final Award ordered Bidsal to transfer his 50% membership interest to CLA within ten days of the award, at a price computed in accordance with the Section 4.2 formula, with FMV having a value of $5,000,000. (5 App. 1233.)

F. District Court Proceedings

On May 21, 2019, CLA filed a petition in the district court requesting confirmation of the Final Award and entry of judgment. (1 App. 1-56.) Bidsal opposed. (1 App. 76-115.) After briefing was complete, a hearing was held on November 12, 2019. On December 6, 2019, the district court confirmed the Final Award and entered judgment. (11 App. 2610-19.)

STANDARD OF REVIEW

This court reviews a district court's decision to vacate or confirm an arbitration award de novo. *Thomas v. City of N. Las Vegas,* 122 Nev. 82, 97, 127 P.3d 1057, 1067 (2006).

Arbitration awards are not immune from judicial review. *See Wichinsky v. Mosa*, 109 Nev. 84, 89, 847 P.2d 727, 731 (1993). Although a court's review of an award is limited, *id*., an arbitrator is not afforded roving authority to exact his or her own "brand of industrial justice." *Coast Trading Co. v. Pac. Molasses Co.*, 681 F.3d 1195, 1198 (9th Cir. 1982) (internal quotation marks omitted) (quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 1361 (1960)).

A. Statutory Grounds for Vacating an Arbitration Award

For awards governed by the Federal Arbitration Act[2], the Act enumerates certain statutory grounds for vacatur. *See* 9 U.S.C.A. § 10(a). As relevant here, an award may be vacated "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." 9 U.S.C.A. § 10(a)(4).

[2] Article III, Section 14.1 of GVC's operating agreement provides that the arbitration "shall be governed by United States Arbitration Act, 9 U.S.C. § 1 et seq." (3 App. 545-46.)

Nevada's Uniform Arbitration Act, NRS 38.241(1)(d), also provides for vacatur of an arbitration award where "[a]n arbitrator exceeded his or her powers." Interpreting the standard under NRS 38.241(1)(d), this Court has explained that "[a]rbitrators exceed their powers when they address issues or make awards outside the scope of the governing contract." *Health Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 697, 100 P.3d 172, 178 (2004). The question a reviewing court must answer then is whether the arbitrator's decision is "rationally grounded in the agreement"—namely, was the arbitrator construing or applying the contract. *Id*. at 698, 100 P.3d at 178.

B. Judicial Grounds for Vacating an Arbitration Award

Review is not limited to the statutory grounds in NRS 38.241(1). *Graber v. Comstock Bank*, 111 Nev. 1421, 1426, 905 P.2d 1112, 1115 (1995). There are also two common-law grounds: "(1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2) whether the arbitrator manifestly disregarded the law."[3] *Clark*

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

Cnty. Educ. Ass'n v. Clark Cnty. Sch. Dist., 122 Nev. 337, 341, 131 P.3d 5, 8 (2006).

"The party seeking to attack the validity of an arbitration award has the burden of proving, by clear and convincing evidence, the statutory or common-law ground relied upon for challenging the award." *Health Plan of Nev., Inc. v. Rainbow Med., LLC,* 120 Nev. 689, 695, 100 P.3d 172, 176 (2004).

1. Manifest Disregard of the Law

An arbitrator's *legal conclusions* are reviewed under the "manifest disregard" standard. *City of N. Las Vegas v. Ruiz*, No. 63320, 2015 WL 3916058, at *1 (Nev. Jun. 23, 2015) (citing *Clark Cnty. Educ. Ass'n*, 122 Nev. at 341, 131 P.3d at 8). The manifest disregard standard requires that an arbitrator know the law and consciously disregard it. *Clark Cnty. Educ. Ass'n*, 122 Nev. at 342, 131 P.3d at 8; *see also Graber*, 111 Nev. at 1426, 905 P.2d at 1115 (citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933 (2d Cir. 1986)) ("[F]or a manifest disregard for the law, a court should attempt to locate arbitrators who appreciate the significance of clearly governing legal principles but decide to ignore or pay no attention to those principles.").

2. Arbitrary, Capricious, or Unsupported Findings

Comparatively, *factual decisions* by an arbitrator are reviewed under the "arbitrary, capricious, or unsupported" standard. *Ruiz*, 2015 WL 3916058, at *1 (citing *Clark Cnty. Educ. Ass'n*, 122 Nev. at 341, 131 P.3d at 8). An arbitrator's decision is arbitrary, capricious, or unsupported when it lacks "support[] by substantial evidence in the record." *Clark Cnty. Educ. Ass'n*, 122 Nev. at 344, 131 P.3d at 9–10. "Substantial evidence is defined as evidence that a reasonable mind might accept as adequate to support a conclusion." *Franchise Tax Bd. of Cal. v. Hyatt,* 130 Nev. Adv. Op. 71, 335 P.3d 125, 144 (2014) (internal quotation marks omitted).

SUMMARY OF THE ARGUMENT

The Final Award must be vacated. The reasons are three-fold and compounded. First, the arbitrator manifestly disregarded the law. Despite ostensibly interpreting a contractual provision that underwent no fewer than **eight** revisions and which the parties themselves never described as a "Dutch Auction," the arbitrator premised the Final Award on an **unsourced** discussion of **typical** "Dutch Auction" provisions, and

in doing so incorporated into the Final Award an **extrinsic** "rough justice" standard. Second, the arbitrator relied on arbitrary and capricious findings in the Final Award. After finding ambiguity in Section 4.2 where none exists, the arbitrator concluded, without **any** supporting evidence and notwithstanding overwhelming evidence to the contrary, that **Bidsal** drafted Section 4.2, and so construed Section 4.2 against him. Third, the arbitrator's awarded relief exceeds his powers under the arbitration agreement. After relying on the purported ambiguity of Section 4.2 to rule against Bidsal, the arbitrator ordered specific performance, which the parties' arbitration agreement prohibited. For these reasons—independently and because of their compounding effect—this Court should vacate the Final Award.

ARGUMENT

The arbitrator lacked the energy and/or desire to interpret Section 4.2 of the GVC operating agreement, so he construed Section 4.2 to reach a result based on his understanding of a **typical** "Dutch Auction" provision. From this end result, he worked backward to find support. For instance, despite conclusive evidence that CLA drafted Section 4.2, the arbitrator determined **Bidsal** was the "principal drafter" of Section

4.2, and therefore construed Section 4.2 against him. This finding defies rational explanation, but conveniently supported the outcome the arbitrator felt embodied the "rough justice" Bidsal should expect from a Dutch Auction provision. That standard—"rough justice"—was introduced by the arbitrator at a hearing and appears in the Final Award. However, the standard does not derive from GVC's operating agreement or the evidence; it is altogether extrinsic. The arbitrator then ordered specific performance of a provision he determined to be ambiguous, in breach of the arbitration agreement's prohibition on such relief. For each and all of these reasons, the award must be vacated.

I.

THE ARBITRATOR MANIFESTLY DISREGARDED THE GOVERNING PROVISIONS OF THE OPERATING AGREEMENT BY ORDERING A FORCED SALE WITHOUT APPRAISAL

The arbitrator manifestly disregarded Section 4.2 of the operating agreement. Relying on his understanding of "Dutch Auction" provisions, and incorporating into the Final Award a "rough justice" standard that derives from his personal understanding of Dutch Auction provisions but which has no basis in the agreement or evidence, the arbitrator

"stray[ed] from interpretation and application of the agreement and effectively dispense[d] his own brand of industrial justice." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671, 130 S.Ct. 1758, 176 L.Ed.2d 605 (2010); *see Xpress Nat. Gas, LLC v. Cate St. Capital, Inc.*, 2016 ME 111, ¶ 11, 144 A.3d 583, 587–88 ("Arbitrators may not travel outside the agreement and base the award on their own individual concept of justice in the particular area involved.").

A. The Arbitrator was Required to Follow the Operating Agreement as the Law Governing the Sale of Membership Interests

In Nevada, an LLC's operating agreement has the force and effect of law. *See* NRS 68.286. An arbitrator must follow the agreement; to ignore it is to manifestly disregard applicable law. *Cf. Jordan v. Dep't of Motor Vehicles*, 100 Cal. App. 4th 431, 443 (2002) ("[A]n arbitrator exceeds his powers when he acts in a manner not authorized by the contract or by law.").

B. Operating Agreement Section 4 Governs the Sale of Membership Interests

1. Section 4 ("Purchase or Sell Right among Members")

The GVC operating agreement constitutes the controlling law. Within the operating agreement, Article V, Section 4 controls the sale of membership interests between GVC's members—CLA and Bidsal.

Section 4 provides that, "[i]n 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."

Sections 4.1 and 4.2 provide:

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

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

(i) Accepting the Offering Member's purchase offer, or

> (ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula.
>
> > (FMV - COP) x 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).

2. Section 4.2 Provides Bidsal the Right to Demand Appraisal Before Selling His Interest

The arbitrator manifestly disregarded the plain language of Article V, Section 4.2 ("Section 4.2"). Though he purported to interpret Section 4.2, it is apparent that he leapt to the final paragraph (the "Specific Intent Paragraph") and disregarded the remainder of Section 4.2. Reasoning that the Specific Intent Paragraph "could not be more clear," the arbitrator concluded it "prevails over any earlier ambiguities about the contracting parties' Section 4.2 rights and obligations." (4 App. 1220, 1221-22 ¶¶ 10(A), 13.) But this cannot be. The Specific Intent Paragraph does not stand on its own—it incorporates "the procedure set

forth in Section 4." By elevating the Specific Intent Paragraph above the remainder of Section 4.2 ("earlier ambiguities"), the arbitrator disregarded the controlling operating agreement language.

Section 4.2 provides Bidsal—and any member in his shoes—the right to have the fair market value of his membership interest determined through the third-party appraisal procedure set forth therein before he may be compelled to sell his interest to another member. This is apparent from the plain language of Section 4.2, and is the only interpretation that harmonizes all of its terms.

Section 4.2 does not sit in a vacuum, however. Section 4.1 defines the terms appearing in Section 4.2. These definitions are instructive. To begin with, Section 4.1 defines "FMV" as the "'fair market value' obtained as specified in section 4.2." Additionally, Section 4.1 defines "Offering Member" and "Remaining Member" based on whether the member offers to buy (Offering Member) or instead receives an offer to sell (Remaining Member). Whether a member is an Offering Member or Remaining Member is controlled by whether he/it offers to buy or instead receives an offer to sell. Pursuant to Section 4.1, nothing else is relevant.

Read with these definitions in mind, the import of Section 4.2 becomes clear. "FMV" is defined as the result of an appraisal procedure. Section 4.2 contemplates that the initial offering member may be required to sell his interest to the other member—but in both instances where Section 4.2 contemplates such a sale, it is defined in terms of "FMV." For instance, in the paragraph that begins, "The Remaining Member(s) shall have 30 days . . .," option "(ii)" contemplates that a counteroffer to purchase the interest of the initial offering member may be made "based upon the same fair market value (**FMV**)." (Emphasis added.) And the Specific Intent Paragraph provides that "once the Offering Member presented his or its offer . . . then the Remaining Members shall either sell or buy at the same offered price (**or FMV if appraisal is invoked**)." (Emphasis added.)

Thus, Section 4.2 contemplates no scenario in which the initial offer to purchase can be converted to forced sale at the offered price. While a typical Dutch Auction provision may provide for such a result, Section 4.2 is not a typical Dutch Auction provision.

The definitions for "Offering Member" and "Remaining Member" are also instructive. Reading the Specific Intent Paragraph with these

definitions in mind, it becomes clear that, when a counteroffer is made, the Offering Member and Remaining Member exchange hats—the Offering Member becomes the Remaining Member, and vice versa. This is apparent from the Specific Intent Paragraph, which contemplates that "the Remaining Members shall either sell **or buy** . . ." (Emphasis added.) When Section 4.1 defines the Offering Member as the member who offers to buy, and defines the Remaining Member as the member who receives an offer to sell, how can a Remaining Member offer to buy? He can't. When he does, he becomes an Offering Member ("the member who offers to purchase . . ."). And the recipient of his offer becomes a Remaining Member ("the Members who received an offer . . .").

This interpretation, which merely applies Section 4.1's definitions in a literal manner to Section 4.2, harmonizes Article V, Section 4. Consider that, when Bidsal offered to purchase CLA's interest based on a $5,000,000 valuation, CLA did not seek to secure a higher amount from Bidsal—he **counteroffered** to purchase Bidsal's interest. It is well-established that a counteroffer operates as a rejection. *See* Restatement (Second) of Contracts § 39, cmt. a (1981) (a counteroffer and a rejection "have the same effect in terminating the offeree's power of acceptance").

By making a counteroffer, CLA forfeited its power to accept Bidsal's offer. When that happened, CLA ceased to be a Remaining Member and effectively became an Offering Member. And when Bidsal received CLA's offer to buy his interest, he became a Remaining Member. As a Remaining Member, Bidsal was entitled to invoke Section 4.2's appraisal procedure—which, on August 5, 2017, he did.

This interpretation of Article V, Section 4, is fully grounded in the plain language and conforms to Section 4. The arbitrator found that Section 4.2 is ambiguous ("not a model of clarity"). Not so. Section 4.1 unambiguously defines the terms that appear in Section 4.2, and applying those definitions inescapably leads to the conclusion set forth herein: Any member who receives an offer from another member to buy his interest is entitled to invoke Section 4.2's appraisal procedure, if desired.

This last point (". . . entitled to invoke Section 4.2's appraisal procedure, **if desired**.") was lost on the arbitrator when he determined Bidsal's position had "an unanswered logical flaw." (5 App. 1223-24 ¶ 18.) That unanswered logical flaw was that Bidsal's interpretation—specifically, his interpretation of "FMV"—cannot account for scenarios

in which CLA "accepted or deliberately or inadvertently failed to respond" to Bidsal's initial offer. (*Id*.)

Not so. Pursuant to Section 4.2, the Remaining Member is in the uniquely advantageous position where he can either accept the initial offer or request an appraisal to determine FMV. If the Remaining Member accepts the initial offer, he waives his right to determine "FMV" through the appraisal procedure and accepts the "price the Offering Member thinks is the fair market value" as "FMV." Indeed, the arbitrator described this interpretation of "FMV" as "logical[]" and "fair[]" under Section 4.2. (5 App. 1224 ¶ 19.)

Bidsal's interpretation—a plain language reading of Section 4.2, informed by the definitions set forth in Section 4.1—is in no way belied by a Remaining Member's failure to respond to the initial offer. Pursuant to Section 4.3, if a Remaining Member fails to respond "within the thirty (30 day) period," that failure to respond "shall be deemed to constitute an acceptance of the Offering Member['s]" offer. The only reason the arbitrator believed these scenarios were inconsistent with Bidsal's interpretation is that the arbitrator failed to apply Section 4.1's defini-

tions to Section 4.2. The "unanswered logical flaw[s]" with Bidsal's position are, therefore, answered by the plain language of Article V, Section 4.

Even an unambiguous membership transfer provision, such as Article V, Section 4, may become confused the longer it is discussed. For clarity and reference, each potential outcome under Section 4.2 after an initial offer to purchase is made is described below.

a. SCENARIO ONE: NO RESPONSE

If, after the Offering Member makes an initial offer, the Remaining Member fails to respond for 30 days, the Remaining Member's failure to respond operates as an acceptance of the initial offer pursuant to Section 4.3. When the sale is consummated, the Offering Member's estimate of fair market value becomes "FMV."

b. SCENARIO TWO: INITIAL OFFER ACCEPTED

If the Offering Member makes an initial offer and the Remaining Member accepts the initial offer within 30 days, the sale is consummated and the Offering Member's estimate of fair market value becomes "FMV."

c. SCENARIO THREE: APPRAISAL PROCEDURE INVOKED

After the Offering Member makes an initial offer, the Remaining Member may elect to sell but request to establish "FMV" through the Section 4.2 appraisal procedure. If the Remaining Member does so, "FMV" is determined pursuant to the appraisal procedure. The Remaining Member then sells his interest to the Offering Member based on the established "FMV."

d. SCENARIO FOUR: COUNTEROFFER

After the Offering Member makes an initial offer, the Remaining Member may counteroffer to buy the Offering Member's interest at the same offered price. Having rejected the initial offer and elected to buy, the Remaining Member ceases to be a Remaining Member. Pursuant to the definitions in Section 4.1, he becomes the Offering Member and the recipient of his counteroffer becomes the Remaining Member. The Remaining Member may then accept the counteroffer or else invoke the Section 4.2 appraisal procedure. The Remaining Member then sells his interest to the Offering Member, either based on the initial offer price, if the appraisal procedure is not invoked, or based on the "FMV" determined through the appraisal procedure.

A version of "Scenario Four" gave rise to this dispute. On August 3, 2017, CLA counteroffered to buy Bidsal's interest. (4 App. 952.) As of August 3, 2017, therefore, CLA became an Offering Member, and Bidsal a Remaining Member. On August 5, 2017, Bidsal invoked the Section 4.2 appraisal procedure. (4 App. 954.) CLA insisted, however, that Bidsal sell his interest at a price based on the initial offer, and refused to recognize Bidsal's invocation of the appraisal procedure. (4 App. 956.) CLA's interpretation of Section 4.2 is self-serving and contrary to the plain language of Section 4.2—language that CLA drafted.

The plain language of Article V, Section 4 contemplates the four scenarios described herein, but no others. But rather than interpret Section 4, the arbitrator found a shortcut: he found it ambiguous.[4] Finding ambiguity where none existed enabled the result—"rough justice"—the arbitrator believed Bidsal should expect from a typical

[4] The arbitrator describes Section 4.2 as "not a model of clarity," and characterizes the provision as ambiguous on numerous occasions. But the only ambiguity he identifies relates to whether or not "FMV" is limited to "third-party expert-appraised fair market value." (5 App. 1223 ¶ 17.) However, for the straightforward reasons the arbitrator describes in the Final Award and which are described herein, the operation of the term "FMV" is not ambiguous. (*See* 5 App. 1224 ¶ 19.)

"Dutch Auction" provision. But this manifestly disregards the plain language of Section 4, which is **not** a typical Dutch Auction provision and instead contains an appraisal procedure as protection for members. And Section 4.2 affords that protection to any member who "received an offer (from Offering Member) to sell their shares"—including Bidsal.

C. The Arbitrator Displaced Operating Agreement Section 4.2 with His Expectations for Dutch Auction Provisions

The arbitrator manifestly disregarded the plain language of Section 4.2, displacing its terms with his personal understanding of a typical Dutch Auction provision. This is apparent from the Final Award which prominently features an **unsourced** discussion of "[t]he 'forced buy-sell' agreement, or so-called 'Dutch auction'" and a notion of "rough justice" that derives from typical Dutch Auction provisions. (*See* 5 App. 1219 at ¶ 8.) The context for this unsourced discussion is instructive. Right after the arbitrator finds that Section 4.2 is "not a model of clarity," he moves into the following discussion of what Dutch Auction provisions do, and how they work:

> 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.

(*Id.* at ¶ 8.)

This description of Dutch Auction provisions is **unsourced**. The quoted phrases do not appear in hearing testimony or record evidence—much less in the operating agreement itself.[5] These are the arbitrator's **personal ideas** about how a Dutch Auction provision operates; there is no other reasonable inference. And the arbitrator sets forth, among

[5] The arbitrator's discussion of "Dutch Auction" provisions is not only unsourced, but altogether irrelevant. As described herein, LeGrand drafted multiple buy-sell provisions that he characterized as "Dutch Auction" provisions. Each was rejected by CLA and Bidsal. While LeGrand wrote described the draft he circulated on November 29, 2011, as including "Ben's 'dutch auction' language," there is no evidence that LeGrand's description reflected CLA or Bidsal's understanding or intent with respect to the draft language that became Section 4.2.

other things, a concept of "rough justice" that permits—or even relishes—an inequitable result for the partner making the initial offer if he "overplays [his] hand." From this analysis, which does not belong in the Final Award, it is unsurprising that the arbitrator pejoratively mischaracterized Bidsal's position as "seller's remorse."[6][7] (5 App. 1219 ¶ 9.)

The arbitrator purports to connect this discussion to Section 4.2 in the final sentence of paragraph eight of the Final Award, but the "rough justice" Dutch Auction provisions he discusses therein are untethered from and unrelated to Section 4.2. Problematically, a "Dutch Auction provision" is completely undefined.[8] Nor does the arbitrator discuss

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[6] The arbitrator's mischaracterization of Bidsal's position as "seller's remorse" is also squarely at odds with the fact that Bidsal had offered to **buy** CLA's interest, not sell his interest to CLA, and suggests the arbitrator's reliance on typical "Dutch Auction" provisions may have also engendered a bias against Bidsal.

[7] The Final Award includes several findings which demonstrate that the arbitrator viewed Bidsal's arguments and testimony through the lens of a typical "Dutch Auction" provision. For instance, the arbitrator charged Bidsal with "ignoring, disregarding and . . . resisting strict application" of Section 4.2's Specific Intent Paragraph. (5 App. 1222-23 ¶ 16.) This characterization of Bidsal's position is plainly incompatible with the arbitrator's own conclusion that Section 4.2 is ambiguous, or "not a model of clarity." (*Id.* at 5 App. 1219 ¶ 7.)

[8] The arbitrator purports to describe a generic form of Dutch Auction provision ("The . . . 'Dutch Auction' provision is common among partners in business entities . . ."), but does not contemplate that Dutch Auction

whether, or why, the interpretation of Section 4.2 should be informed by a typical Dutch Auction provision.

Because a leap of faith is required to conclude the "rough justice" Dutch Auction provisions are relevant (similar/identical) to Section 4.2, the Final Award explicitly runs afoul of the rule that "an arbitrator is confined to interpretation and application of the . . . agreement; he does not sit to dispense his own brand of industrial justice." *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 1361, 4 L. Ed. 2d 1424 (1960); *see id.* (an arbitrator may "look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the [] agreement.").

LeGrand, who introduced the term "Dutch Auction" to describe an August 2011 draft, testified to his definition of "Dutch Auction" at the hearing. He recognized that "Dutch Auction" is susceptible to several interpretations, explaining that his usage of the term differed from "the way Google defines it." (9 App. 2212:6-15.) By "Dutch Auction," however, LeGrand meant to refer to a provision whereby, "if a member

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provisions can take several forms. Black's Law Dictionary sets forth five separate definitions for "Dutch Auction," none of which read squarely onto this case. *See* AUCTION, Black's Law Dictionary (11th ed. 2019).

makes an offer, that is an offer to buy or sell at that price. And the other member could either buy or sell at that price." (9 App. 2183:1-7.)

But LeGrand did not agree that Section 4.2 was a Dutch Auction provision within that definition. Instead, he testified the Dutch Auction language he drafted in August 2011 "is not exactly the language that appears in the final executed document," and had "changed over time." (9 App. 2212:23-2213:15.) LeGrand testified that he believes Section 4.2 "contained some elements" of a Dutch Auction, but qualified that testimony by emphasizing, again, that the language had "definitely [] changed over time."[9] (*Id.* at 2213:18-20.) Indeed, after LeGrand drafted the initial "'Dutch Auction' provision" in August 2011, the buy-sell language was revised no fewer than five times, including by CLA, which drafted new language on a blank sheet of paper.

Thus, nothing in the record suggests that a typical Dutch Auction provision, as described in the Final Award, should relate to or inform the arbitrator's interpretation of Section 4.2. The reasonable inference

[9] In any event, LeGrand's definition of Dutch Auction is immaterial. The evidence shows CLA drafted Section 4.2 anew after rejecting the language and structure of the drafts that LeGrand characterized as "Dutch Auction" provisions.

is that the arbitrator nevertheless felt they were "close enough." This is misguided. For instance, Section 4.2 provides a right for members to demand a third-party appraisal. That appraisal procedure was inserted into Section 4.2 as a "protection for the remaining member." (8 App. 1921:8-1922:18.) Do typical or "rough justice" Dutch Auction provisions also include protections to safeguard against inequitable results? On their face, such protections appear antithetical to the notion of **rough** justice.

Without a definition of a Dutch Auction provision or evidence that Section 4.2 is such a Dutch Auction provision, the arbitrator's discussion of "rough justice" Dutch Auctions taints the Final Award. *See United Steelworkers*, 363 U.S. at 597, 80 S. Ct. at 1361 ("When the arbitrator's words manifest an infidelity to this obligation [to draw the essence of the award from the contract], courts have no choice but to refuse enforcement of the award."). While this **unsourced** discussion of typical Dutch Auction provisions and "rough justice" in paragraph eight of the Final Award clearly supports the arbitrator's decision, it has no basis in evidence.

II.

THE ARBITRATOR'S DRAFTSMANSHIP DETERMINATION WAS ARBITRARY AND CAPRICIOUS AND TWISTED THE EVIDENCE TO REACH A PREORDAINED RESULT

Having resolved that a "rough justice" Dutch Auction allowed CLA to force Bidsal to sell at the price Bidsal had offered to buy, the arbitrator twisted the evidence to support that result. To that end, he determined, **without any supporting evidence**, that Bidsal was "**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." (5 App. 1223 ¶ 17, emphasis added.) This determination was arbitrary and capricious, and a transparent means to an end result the arbitrator already had in mind.

A. Contractual Ambiguities are Construed Against the Drafter ("Contra Proferentem")

As a rule of contract interpretation, ambiguity is construed against the drafter ("contra proferentem"). *See Easton Bus. Opp. v. Town Exec. Suites*, 126 Nev. 119, 131, 230 P.3d 827, 835 (2010); *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 216, 163 P.3d 405, 407 (2007). This is because

> [w]here one party chooses the terms of a contract, he is likely to provide more carefully for the protection of his own interests than for those of the other party. He is also more likely than the other party to have reason to know of uncertainties of meaning. Indeed, he may leave meaning deliberately obscure, intending to decide at a later date what meaning to assert.

RESTATEMENT (SECOND) OF CONTRACTS § 206, cmt. a (1981).

The rule that ambiguity is construed against the drafter is "a rule of last resort," applicable only when a contract is genuinely ambiguous or unconscionable. *Easton*, 126 Nev. at 131 n.5 (quoting *Thompson v. Amoco Oil Co.,* 903 F.2d 1118, 1121 n.3 (7th Cir. 1990)). For this reason,

> the rule does not justify a court in adopting an interpretation contrary to that asserted by the drafter simply because of its status as the drafter. Rather, it is only when, consistent with the general rules of contract interpretation, the meaning proposed by the non-drafter (or an altogether different meaning determined by the court) is reasonable—when there is a true ambiguity and the court must choose between two or more reasonable meanings—that the rule of *contra proferentem* is properly invoked.

11 WILLISTON ON CONTRACTS § 32:12 (4th ed.).

B. The Arbitrator's Draftsmanship Determination Was Key to the Outcome

The arbitrator's determination that Bidsal was the "principal drafter" of Section 4.2 was material to the outcome of the arbitration, if

not dispositive. The arbitrator recognized the materiality at the outset of the hearing and in the Final Award. Before evidence or testimony was presented at the hearing, he predicted that draftsmanship would be dispositive. He explained that, "sometimes, if something isn't perfect equipoints, who the drafter is or isn't may tip the balance. And so that's what I'm – I'm sort of hearing might be the case in our case." (8 App. 1908:13-17.)

And it was the case—but in a way that completely surprised both parties. The evidence, including emails and testimony from Golshani, LeGrand, and Bidsal, overwhelmingly shows **CLA** and/or **LeGrand** drafted Section 4.2. No evidence shows Bidsal drafted or proposed Section 4.2 language. Recognizing that the evidence of draftsmanship tilted heavily against it, CLA urged the arbitrator to presume that **LeGrand** drafted Section 4.2 and remove the draftsmanship issue from consideration at the hearing altogether. (8 App. 1905:15-1906:6.) Nor did CLA ever allege in post-hearing briefing that Bidsal had drafted or proposed any Section 4.2 language. (*See* 10 App. 2345-50.) Rather, CLA argued that, because CLA and Bidsal discussed the language that CLA and/or

LeGrand drafted or revised, "[w]ho actually typed the document is not relevant." (10 App. 2350.)

Despite this, the arbitrator inexplicably determined that **Bidsal** was the principal drafter of Section 4.2. In so determining, he noted that the draftsmanship determination was "material[]" to the result, though he cautioned it was not "not dispositive, per se."[10] (5 App. 1164 at ¶ 9 n.6; *see also id.,* ¶ 17.)

C. The Arbitrator's Draftsmanship Determination Was Unsupported by Any Evidence, Much Less Substantial Evidence

The arbitrator's determination that Bidsal was the "principal drafter" of Section 4.2 was an arbitrary and capricious distortion of the evidence. The determination was not only unsupported by any evidence, it was contrary to a mountain of evidence and testimony showing that **CLA** drafted Section 4.2.

[10] The qualifier "per se" can only be read as an acknowledgement that the draftsmanship determination was especially important to the outcome.

1. The Evolution of the Final Award from Merits Order No. 1 Reveals a Complete Lack of Evidentiary Support for the Arbitrator's Draftsmanship Determination

The evolution of the Final Award from the Interim Award and Merits Order No. 1 shows the complete erosion of evidentiary support for the arbitrator's draftsmanship determination. Merits Order No. 1 contained numerous findings purportedly supporting the determination that Bidsal drafted Section 4.2. These findings, however, were deleted from the Interim and Final Awards. As that happened, the arbitrator's determination that Bidsal drafted Section 4.2 became fully untethered from the evidence and testimony in the record.[11]

Merits Order No. 1 contains two sets of findings relating to the draftsmanship determination. The first set supports the draftsmanship determination, though the arbitrator did not expressly rely upon them. The second set largely fail to support the draftsmanship determination,

[11] While Golshani alleged that Bidsal revised the operating agreement before the agreement became final, Golshani conceded he was "drawing an assumption." (9 App. 2062.) Indeed, no evidence shows Bidsal revised any part of Section 4.2 or any other material language. The overwhelming evidence shows CLA drafted the entirety of Section 4.2.

but the arbitrator relied upon them for that purpose. Both sets were abandoned by the arbitrator, however, as Merits Order No. 1 evolved into the Interim and Final Awards.

First, in Merits Order No. 1, the arbitrator found that Bidsal had inserted the term "FMV" (a term the arbitrator regarded as ambiguous) into Section 4.2. The arbitrator found that the term "FMV" had "found its way into Section 4.2 late in the process, **while it was apparently under Mr. Bidsal's control for final revisions**." (4 App. 973-74 ¶ 9, emphasis added.) Additionally, in Merits Order No. 1, the arbitrator found "there was no discussion between Messrs. Bidsal and Golshani about 'FMV' or any other material aspect of what became the 'buy-sell' provision which is Section 4.2 of the Green Valley Operating Agreement." (4 App. 974 ¶ 9 n.9.) But neither finding appears in the Interim or Final Award. (*See generally* 4 App. 967, 982.) The reasonable inference is that the arbitrator recognized they were unsupported and so removed them.

Second, in Merits Order No. 1, the arbitrator identified four categories of evidence, concluding that "the preponderance of" this evidence established that Bidsal drafted Section 4.2:

> 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, **as shown by the following, based on a preponderance of the evidence:** (A) the operating agreement was drafted by an attorney selected and initially engaged by Mr. Bidsal, albeit on behalf of both Messrs. Bidsal and Golshani, (B) the lawyer, David LeGrand (who testified at hearing) did not even know Mr. Golshani's name until near the end of his role in drafting the operating agreement, (C) the "buy-sell" provisions of what became Section 4.2 of the operating agreement, was added to a form operating agreement provided to Mr. Bidsal by a real estate broker known to him and, in Mr. LeGrand's view, initially was form-book "vanilla", (D) Mr. Bidsal, without apparent justification, overly held or withheld his final revisions to what became the final version of the Green Valley Operating Agreement --- including his addition of what became the "FMV" ambiguity, despite Mr. Golshani's requests for and Mr. LeGrand's written inquiry to Mr. Bidsal concerning the same. See Exhibit 27 [Mr. LeGrand to Mr. Bidsal: "Shawn, Did you ever finish the revisions?"].

(4 App. 969 ¶ 4 n.3 (emphasis added).)

The evidence in categories (A), (B), and (C) is plainly irrelevant to the draftsmanship determination. To the extent categories (A) and (B) carry an implication that LeGrand favored Bidsal, that implication is unsupported and directly belied by the arbitrator's finding that "Mr. LeGrand was not shown to be biased for or against either side in this

matter." (4 App. 971 ¶ 8 n.6.) The relevance of the evidence in category (C) is unclear. Whatever "vanilla" buy-sell language existed in the original template was completely displaced when CLA drafted an entirely new buy-sell provision on a blank sheet of paper—if not before then. (*See* 3 App. 536-37.) The category (D) evidence that Bidsal inserted the "FMV" language into Section 4.2 would be relevant, if that evidence existed. However, that evidence does not exist.

None of these findings or analysis appear in the Interim or Final Award.[12] The reasonable inference is that the arbitrator removed categories (A), (B), and (C) as irrelevant, and that he removed the finding that Bidsal inserted the "FMV" term in Section 4.2 because it was unsupported.[13]

In the Final Award, the arbitrator abandoned any reliance on the evidence identified in Merits Order No. 1. The Final Award contains no

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[12] Everything after the sixth line of the block quote above was deleted. (*Compare* 4 App. 969 ¶ 4 n.3 *with* 5 App. 1219 at ¶ 9 n.5.)

[13] The arbitrator also appeared to adopt the Proposed Interim Order submitted by CLA, wherein CLA adopted Merits Order No. 1, but deleted the inaccurate findings relating to draftsmanship. (*Compare* 4 App. 969, ¶ 4 n.3 *with* 4 App. 986, ¶ 7 n.5.)

finding that Bidsal caused the "addition of what became the 'FMV' ambiguity." Instead, the draftsmanship determination is grounded in evidence that Bidsal received and reviewed the draft operating agreement before it was finalized:

> 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.

(5 App. 1223 at ¶ 17.)

This is not substantial evidence that Bidsal drafted Section 4.2. The Final Award conflates the **opportunity** to propose revisions with the **authority** to unilaterally implement revisions. No evidence shows Bidsal "had the last **and final** say" on the Second 4.2 language. Even if Bidsal reviewed the final draft after CLA, Bidsal could not sign the operating agreement on CLA's behalf. Furthermore, any revisions Bidsal proposed would have been implemented through LeGrand, who jointly represented CLA and Bidsal. LeGrand could not have accepted unilateral revisions from Bidsal without breaching his duty to CLA.

The Final Award also conflates **review** with **drafting**. Reviewing and commenting on a draft is not equivalent to drafting.[14] Ambiguity is construed against the **drafter** because the drafter selects the terms for reducing the parties' intent to writing. When making these selections, the drafter "is likely to provide more carefully for protection of his own interests." *See* Restatement (Second) of Contracts § 206, cmt. a (1981). The drafter "is also more likely than the other party to have reason to know of uncertainties of meaning," and "may leave meaning deliberately obscure, intending to decide at a later date what meaning to assert." *Id.* Thus, the rationale for construing terms against the drafter has no application to Bidsal, because he never selected or proposed terms for Section 4.2.

[14] Whether there were bilateral negotiations regarding the disputed contract terms is relevant to whether one party should be deemed the drafter of the instrument. But the question here is whether a party can be deemed the drafter of a contract of which he drafted no part.

2. The Arbitrator's Draftsmanship Determination Was Contrary to the Overwhelming Evidence

Not only is the arbitrator's determination that Bidsal was "the principal drafter of Section 4.2" (5 App. 1219, 1223 at ¶¶ 9, 17) unsupported by substantial evidence, it is belied by overwhelming evidence showing **CLA** and/or **LeGrand** drafted Section 4.2.

From the undisputed evidence, it is clear **CLA** drafted the buy-sell language that became Section 4.2. Specifically, CLA prepared two drafts—"ROUGH DRAFT" and "ROUGH DRAFT 2." Both drafts include buy-sell language materially identical to Section 4.2. For comparison, CLA's drafts are reproduced side-by-side with Section 4.2, above.

Aside from capitalization and other typographical edits made by LeGrand, CLA's "ROUGH DRAFT 2" is distinguishable from the final Section 4.2 language only because "ROUGH DRAFT 2" does not contain the phrase "(or FMV if appraisal is invoked)"—which appears in the final paragraph of Section 4.2.

This phrase—"(or FMV if appraisal is invoked)"—was drafted by LeGrand at CLA's direction. On November 29, 2011, LeGrand emailed CLA and Bidsal a revised draft operating agreement. (6 App. 1338.) In the email, LeGrand wrote, "Ben and Shawn. This version has Ben's

[Golshani's] 'dutch auction' language and a buy-sell at FMV on the death or dissolution of a Member." (*Id.*)

The Section 4.2 draft LeGrand circulated on November 29, 2011, that includes "Ben's 'dutch auction' language" is materially identical to the final Section 4.2. For comparison, the final paragraph of Section 4.2 from the November 29, 2011, draft is reproduced below alongside the final paragraph of Section 4.2. Note that the language is identical—including typos ("Section 4..").

November 29, 2011 draft (Section 4.2 final paragraph):	**Final Operating Agreement (Section 4.2 final paragraph):**
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). **(6 App. 1350)**	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).

The undisputed evidence, therefore, establishes beyond a doubt that **CLA** drafted Section 4.2, with LeGrand contributing non-substantive revisions at CLA's direction and/or implementing revisions CLA provided.

The hearing produced a wealth of additional evidence and testimony confirming that CLA drafted Section 4.2. The arbitrator's determination that **Bidsal** was the principal drafter of Section 4.2 is not only unsupported, by is directly belied by a mountain of evidence and testimony in the record showing **CLA** selected the words that became the disputed portion of Section 4.2.[15]

D. The Arbitrator Manifestly Disregarded the Law and Exceeded His Powers Under the Arbitration Agreement by Ordering Specific Performance

1. The Arbitrator Manifestly Disregarded the Law By Ordering Specific Performance

After arbitrarily and capriciously determining that **Bidsal** was the principal drafter of Section 4.2 in order to construe the provision's

[15] At the merits hearing, Golshani testified, among other things, that he added the "FMV" term (9 App. 2039-40); testified he changed "offer to sell" draft language to "offer to buy" in order "to make sure that the person who is initiating the forced buy/sell really has thought about it and has the money ready for it" (8 App. 1987); testified he revised the language regarding identification and definition of offering member and remaining member (8 App. 1985-86); testified he discussed "the idea" of the formula with Bidsal but "Not the specifics." (9 App. 2032.) LeGrand also testified Golshani "was pushing for th[e] approach" reflected in the final operating agreement, which was an approach LeGrand testified he "had never done . . . before, so this was -- you know, took some thought" (9 App. 2193).

purported ambiguity against him, the arbitrator then compounded his misconduct by ordering specific performance, in manifest disregard of the law. The lynchpin of the Final Award is the conclusion that Section 4.2 is ambiguous, or "not a model of clarity."[16] (5 App. 1219 ¶ 7; *see also id.* at 1219, 1220, 1223 ¶¶ 7 n.4, 10(A), 13, 17 (referencing ambiguity of Section 4.2).) Yet, "[t]here is **no better established principle of equity jurisprudence** than that specific performance will not be decreed when the contract is incomplete, uncertain, or indefinite." *Dodge Bros. v. Williams Estate Co.*, 52 Nev. 364, 287 P. 282, 283–84 (1930) (emphasis added). Indeed, "[s]pecific performance is available **only** when: (1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the appellant has tendered performance; and (4) the

[16] The arbitrator, upon concluding that Bidsal "bears the burden of risk of ambiguity or inconsistency within the disputed provision," went out of his way to note that "the determination of draftsmanship is not dispositive," and "the determinations and award would be made even if Mr. Bidsal's contention that Mr. Golshani was the draftsman of Section 4 were correct." (5 App. 1223 at ¶ 17.) However, even if the **draftsmanship determination** was only "material" (*id.* at 1219 ¶ 9 n.5) and not dispositive, the Final Award was underpinned by the arbitrator's conclusion that Section 4.2 was ambiguous. *See* 5 App. 1219 at ¶ 7 n.4 (explaining that the merits hearing was necessary because the ambiguity of the disputed terms precluded the arbitrator from resolving the dispute as a matter of law).

court is willing to order it." *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991) (emphasis added). By ordering Bidsal to transfer his GVC membership interest to CLA within ten days of the Final Award—a specific performance remedy—the arbitrator manifestly disregarded the law.

2. The Arbitrator's Specific Performance Order Exceeded His Powers Under the Arbitration Agreement, Which Prohibits Permanent Injunctive Relief, Including a Forced Sale

By ordering specific performance, the arbitrator also exceeded his powers under the arbitration agreement. *See* 9 U.S.C.A. § 10(a) (authorizing vacatur "where the arbitrators exceeded their powers"); NRS 38.241(1)(d). The arbitration agreement prohibits an arbitrator from awarding relief other than that which is contemplated by the agreement—and the agreement contemplates only that **temporary** injunctive relief may be ordered. Vacatur is warranted, therefore, because the arbitrator exceeded this authority.

The parties' arbitration agreement is set forth by Article III, Section 14.1 of the operating agreement. Section 14.1 provides, in pertinent part:

> **14.1 Dispute Resolution.**
>
> [. . . .]
>
> **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.

(3 App. 545-46 (emphasis added).)

Section 14.1 prohibits the arbitrator from "award[ing] to any party any damages of the type not permitted to be recovered under this Agreement," and the parties expressly agreed to waive any right to such relief. This restriction on the relief available to the parties through arbitration must be given effect. *See Musser v. Bank of Am.*, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998) ("A basic rule of contract interpretation is that every word must be given effect if at all possible."); *see id.* ("A court

should not interpret a contract so as to make meaningless its provisions.").

There is only one provision where the GVC operating agreement contemplates injunctive relief—and that provision is Section 14.1. And the only injunctive relief Section 14.1 contemplates is **temporary**. This is not accidental. Consider the reference in Section 14.1 to "such time as the arbitrator . . . is available . . . to hear such party's request for temporary relief." There is no reason to modify "relief" in this instance with the word "temporary" unless intended to restrict the relief an arbitrator is authorized to award. If Section 14.1 is to be given effect, therefore, **permanent** injunctive relief—the forced and irrevocable sale of Bidsal's GVC membership interests to CLA—is not a type of relief "permitted to be recovered under this Agreement." For this reason, this Court should vacate the Final Award.

E. This Court Cannot "Remand" the Case to the Arbitrator; It Must Vacate the Award

The arbitrator's award must be vacated. Where the arbitrator has manifestly disregarded the law or exceeded its authority, this Court is not authorized to modify or correct the award. *Film Technicians of the Motion Picture Industry, Local 683 v. Color Corp. of Am.*, 297 P.2d 86,

88 (Cal. Ct. App. 1956). Instead "there has, in reality, been no award, and the attempted award must be vacated as a whole, and the matter left standing as if it had not been heard by the arbitrator." *Id.* Letting the arbitrator correct a decision that has manifestly disregarded the law would inevitably let him reexamine the merits, which is "not permitted under the statute or at common law." *Health Plan of Nev., Inc., v. Rainbow Med., LLC*, 120 Nev. 689, 696, 100 P.3d 172, 177 (2004).

The arbitrator could have resolved this dispute in a principled way, but he instead manifestly disregarded the law, made arbitrary and capricious determinations on material issues to support a convenient result, and ultimately ordered a remedy that exceeded his authority. The arbitrator cannot undo this by merely fixing specific errors in his award. This Court must vacate the award so the parties, if they wish, can conduct a new arbitration. *See Wichinsky v. Mosa*, 109 Nev. 84, 90, 847 P.2d 727, 731 (1993) (deficient arbitration award must be "arbitrated anew").

CONCLUSION

The Final Award comprehensively disregards the law and evidence to reach a preordained result—and does so explicitly. There is no benign explanation for the extrinsic, "rough justice" standard, or the draftsmanship determination that defies rational explanation, and all evidence. Because Article V, Section 4 plainly requires a different result, the Final Award must be vacated.

Dated this 24th day of November, 2020.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 13,278 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 24th day of November, 2020.

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CERTIFICATE OF SERVICE

I certify that on November 24, 2020, I submitted the foregoing "Appellant Shawn Bidsal's Opening Brief" for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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EXHIBIT 275

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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Case Number: A-19-795188-P

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

Dated this 15th day of July, 2019

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

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

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

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

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

II.

STATEMENT OF FACTS

A. BIDSAL'S PAST INVESTMENT EXPERIENCE.

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

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

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

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

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

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

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

C. THE FORMATION OF GREEN VALLEY COMMERCE.

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

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

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

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

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

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

1. The Initial Draft OPAG.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. THE MANAGEMENT AND OPERATION OF GREEN VALLEY.

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

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

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

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F. MISSION SQUARE.

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

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

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

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

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

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

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

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

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

H. THE ARBITRATION PROCEEDING.

1. Demand for Arbitration.

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

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

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

2. Arbitration Merits Hearing.

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

3. Merits Order and Objections to Proposed Awards.

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

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

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

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

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

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

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

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

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

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

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

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

4. Final Award.

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

III.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD FOR VACATUR OF ARBITRATION AWARDS.

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

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

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> vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

9 U.S.C. § 10.

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

B. THE ARBITRATOR EXCEEDED HIS POWERS.

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

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

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

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

The Nevada Supreme Court in Clark County Education Association v. Clark County School District, 122 Nev. 337, 131 P.3d 5 (2006), recognized two common-law grounds to be applied by a court reviewing an award resulting from private binding arbitration. The two common-law grounds under which a court may review private binding arbitration awards are "...(1) whether the award is arbitrary, capricious, or unsupported by the agreement; and (2)

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whether the arbitrator manifestly disregarded the law." Id. (*Citing* Wichinsky v. Mosa, 109 Nev. 84, 89-90, 847 P.2d at 731 (1993)). Thus an arbitrator can't simply issue an award that metes out his own idea of justice. This is especially true, where the arbitrator disregards a specific contract provision to correct what he or she may perceive as an injustice. In Pacific Motor Trucking Co. v. Automotive Machinists Union, 702 F.2d 176 (9th Cir. 1983), citing Federated Employers of Nevada, Inc. v. Teamsters Local No. 631, 600 F.2d 1263, 1265 (9th Cir. 1979) the court found that, "[a]n award that conflicts directly with the contract cannot be a "plausible interpretation." Although an arbitrator has great freedom in determining an award, he or she may not "dispense his [or her] own brand of industrial justice." Id. (*quoting* United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 80 S. Ct. 1358, 1361 (1960)).

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

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

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

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

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

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

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

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

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

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(a) 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 "MM" at 5 (fn. 5) and 9 (¶ 17) (App. Part 5: APP1092). However, the voluminous evidence presented to the Arbitrator demonstrated exactly the opposite.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) 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[5].

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

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

"If an award is determined to be arbitrary capricious ***or unsupported by the agreement***, it may not be enforced." Wichinsky v. Mosa, 109 Nev. 84, 847 P.2d 727. (emphasis added). An award is "completely irrational" where "the arbitration decision fails to draw its essence from the agreement." Lagstein v. Certain Underwriters at Lloyd's, London, 607 F.3d 634, 642 (9th Cir. 2010); Biller v. Toyota Motor Corp., 668 F.3d 655, 665 (9th Cir. 2012). An arbitration award draws its essence from the agreement if "the award is derived from the agreement, viewed in light of the agreement's language and context, as well as other indications of the parties' intentions." Id.

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

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

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

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

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

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

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

A manifest disregard for the law exists where the "…arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law." *See* Clark County Education Association, 122 Nev. 337, 131 P.3d 5 (2006) (*citing* Bohlmann v. Printz, 120

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Nev. 543, 96 P.3d 1155 (2004). Collins v. D.R. Horton, Inc., 505 F.3d 874, 879 (9th Cir. 2007) (*quoting* San Maritime Compania De Navegacion, S.A. v. Saguenay Terminals Ltd., 293 F.2d 796, 801 (9th Cir. 1961)) holds that manifest disregard of the law exists where "the arbitrator 'underst[oo]d and correctly state[d] the law, but proceed[ed] to disregard the same.'". In other words, "the arbitrators were aware of the law and intentionally disregarded it." Bosack v. Soward, 586 F.3d 1096, 1104 (9th Cir. 2009) (*quoting* Lincoln Nat'l Life Ins. Co. v. Payne, 374 F.3d 672, 675 (8th Cir. 2004)).

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

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

4. The Arbitrator Exceeded his Authority.

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

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

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

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

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

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

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

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

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

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5. The Award is Irreconcilable with Undisputed Dispositive Facts.

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

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

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

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

Similarly, 9 U.S.C. § 10(a)(2) and (3) provide that an arbitration award shall be vacated "where there was evident ***partiality*** or corruption in the arbitrators, or either of them;" or "where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or ***of any other misbehavior by which the rights of any party have been prejudiced***." 9 U.S.C. § 10(a)(3)(emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. LEGAL STANDARD ON MODIFYING AND CORRECTING ARBITRATION AWARDS.

As the forgoing demonstrates, the appropriate remedy is to vacate the entire Arbitration Award. However, even if an award is not completely vacated, under 9 U.S.C. § 11, an arbitration award may be modified or corrected as follows:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—
>
> **(a)** Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> **(b)** Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> **(c)** Where the award is imperfect in matter of form not affecting the merits of the controversy.
>
> The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

9 U.S.C. § 11.

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

///

///

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

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

1. 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. Nevada clearly contemplates erroneous arbitration awards needing correction and/or modification, however, as this particular Award was determined under the Federal Arbitration Act, modification should be considered under 9 U.S.C. § 11(b). As stated earlier, 9 U.S.C. § 11(b) is controlling and provides that an arbitration award may be modified and corrected if "the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted." 9 U.S.C. § 11(b)(in pertinent part).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III.

CONCLUSION

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

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

B. THE ARBITRATOR ARBITRARILY ASSIGNED AUTHORSHIP OF THE OPAG.

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

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

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

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

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

Dated this 15th day of July, 2019

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 15th day of June, 2019, I served a true and correct copy of the foregoing **RESPONDENT'S OPPOSITION TO CLA'S PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGMENT AND COUNTERPETITION TO VACATE ARBITRATION AWARD**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey File & Serve, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered on May 9, 2014.

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

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EXHIBIT 276

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE PETITION OF CLA PROPERTIES LLC.	No. 80427
SHAWN BIDSAL, AN INDIVIDUAL, Appellant, vs. CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Respondent.	
CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	No. 80831

FILED

MAR 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

In these consolidated appeals, appellant/respondent Shawn Bidsal appeals a district court's order confirming an arbitration award and respondent/appellant CLA Properties, LLC, appeals a post-judgment order denying attorney fees. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Bidsal and CLA, the sole owners of a company, executed an operating agreement (the Agreement) which contained a buy-sell provision. When Bidsal offered to buy CLA's membership interest, a dispute arose

about the meaning of the buy-sell provision and the parties submitted the matter to arbitration as required by the Agreement. The arbitrator entered a final award in CLA's favor. CLA filed a petition with the district court to confirm the arbitration award and enter judgment, which Bidsal opposed, seeking to vacate the arbitration award. The district court granted CLA's petition and confirmed the award. CLA then moved for post-arbitration attorney fees and costs, which the district court denied. We affirm.[1]

The district court did not err in confirming the arbitration award

"The [United States] Supreme Court has made clear that courts have only a limited role to play when the parties have agreed to arbitration." *In re Sussex*, 781 F.3d 1065, 1072 (9th Cir. 2015). "[T]he Federal Arbitration Act (FAA . . .) establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution." *Preston v. Ferrer*, 552 U.S. 346, 349 (2008) (internal citation omitted). Sections 9 through 11 of the FAA provide a narrow scope of judicial review of private arbitration awards and decisions. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008). Accordingly, an arbitration award may not be vacated on other common-law grounds outside the statutory scheme enacted by Congress. *See Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 640 (9th Cir. 2010). One such ground occurs when the arbitrator exceeded his or her powers. 9 U.S.C. § 10(a)(4) (2002). An arbitrator exceeds his powers if he "strays from interpretation and application of the agreement and

[1]The parties' agreement incorporates the Federal Arbitration Act (FAA) standards for vacatur but does not specify whether the FAA standards also apply to judicial review of the arbitration award. However, Bidsal and CLA both agree that if judicial review is permitted, the FAA should govern. Thus, we review the district court's confirmation of the arbitration award under the FAA.

effectively dispense[s] his own brand of industrial justice." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010) (alteration in original) (internal quotation marks omitted). The vacatur standard under the FAA is extremely high. *Sanchez v. Elizondo*, 878 F.3d 1216, 1221 (9th Cir. 2018).

Bidsal's contentions are solely based on his dispute with the arbitrator's interpretation of the Agreement. It is insufficient to merely convince a court that an arbitrator erred because, "[s]o long as the arbitrator was arguably construing the contract[,] . . . a court may not correct his mistakes under [9 U.S.C.] § 10(a)(4)." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572 (2013). "The arbitrator's construction holds, however good, bad, or ugly," *id.* at 573, provided the arbitrator does not manifestly disregard the law, *Sanchez*, 878 F.3d at 1223 (stating that an arbitrator manifestly disregards the law when it is "clear from the record that the arbitrator[ ] recognized the applicable law and then ignored it" (quoting *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 665 (9th Cir. 2012)).

Here, the arbitrator determined that, while certain portions of the Agreement were "not a model of clarity," the language of the specific intent paragraph overcame any earlier ambiguities regarding the parties' contractual rights and obligations. The arbitrator recognized that, under normal circumstances and commonly accepted principles of contract law, a counteroffer constitutes a rejection of an offer. Applying that principle of law to the Agreement, the arbitrator determined that the specific intent paragraph operated differently and conferred CLA a corollary right to purchase Bidsal's membership interest after Bidsal offered to buy CLA's interest. We cannot say that the arbitrator's construction of the contract was a manifest disregard of the law. Because both Bidsal and CLA

bargained for "the arbitrator's construction [of the contract]" by agreeing to arbitration, this court cannot overrule the arbitrator merely because we might interpret the contract differently. *Oxford Health Plans*, 569 U.S. at 573 (alteration in original); *see also News+Media Capital Grp. LLC v. Las Vegas Sun, Inc.*, 137 Nev., Adv. Op. 45, 495 P.3d 108, 116 (2021) (stating that an arbitrator exceeds authority when "there is not even a minimally plausible argument to support the arbitrator's decision"). Therefore, we affirm the district court's confirmation of the arbitration award.

The district court did not err in denying CLA's motion for attorney fees and costs

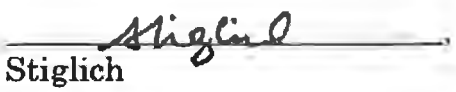
"This court generally reviews a district court's decision awarding or denying costs or attorney fees for an abuse of discretion." *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). "[T]he district court may not award attorney fees absent authority under a statute, rule, or contract." *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006).

CLA argues that the district court abused its discretion by not applying NRS 38.243 as the basis for awarding attorney fees and costs. We disagree. As the district court found, CLA cited to and relied solely on federal law when it filed its petition for confirmation of the arbitration award. Moreover, the parties agree that the FAA governs judicial review of this arbitration award. Because neither the FAA nor the Agreement authorizes an award of post-arbitration attorney fees or costs, we conclude that the district court did not abuse its discretion in denying CLA's motion.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty J.



Stiglich J.

Herndon J.

cc: Hon. Joanna Kishner, District Judge
Israel Kunin, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Smith & Shapiro, PLLC
Reisman Sorokac
Lemons, Grundy & Eisenberg
Eighth District Court Clerk

EXHIBIT 277

Exhibit 6

GREEN VALLEY COMMERCE

DISTRIBUTION

2011-2019

CLA PROPERTIES (BENJAMIN GOLSHANI)			SHAWN BIDSAL			ACTUAL RECEIVED		PER TAX RETURN	
	CHECK #	AMOUNT		CHECK #	AMOUNT	Regular Inc.	Capital Dist.		
10/13/2011	WT	175,000.00	10/6/2011	1009	175,000.00				
12/13/2011	10010	90,000.00	12/7/2011	10009	90,000.00				
	2011 Total Distribution	265,000.00	2011 Total Distribution		265,000.00	530,000.00			
4/30/2012	10038	100,000.00	4/30/2012	10039	100,000.00				
7/20/2012	10051	50,000.00	7/6/2012	10050	50,000.00				
10/17/2012	10081	66,000.00	10/17/2012	10080	66,000.00				
	2012 Total Distribution	216,000.00	2012 Total Distribution		216,000.00	432,000.00		468,430	K1 is overstated by 18,215 each Total of 36,430. See Tax return.
1/9/2013	10095	45,000.00	1/18/2013	10094	45,000.00				
5/23/2013	10138	66,690.86	5/16/2013	10139	28,581.79		95,272 65		Cap Dis. Sale Bdg C
5/23/2013	10140	37,363.68	5/16/2013	10141	37,363.68				
8/8/2013	10170	50,000.00	8/13/2013	10171	50,000.00				
12/16/2013	10214	38,000.00	12/9/2013	10215	38,000.00				
12/9/2013	1056 gv_gw	4,500.00	12/9/2013	1057 gv_gw	4,500.00				
	2013 Total Distribution	241,554.54	2013 Total Distribution		203,445.47	445,000.01			
4/15/2014	10259	50,000.00	4/15/2014	10260	50,000.00				
6/18/2014	10285	40,000.00	6/18/2014	10284	40,000.00				
11/17/2014	10324	335,894.09	11/17/2014	10321	143,954.61		479,848.70		Cap Dis. Sale Bdg E
11/17/2014	10322	158,972.67	11/17/2014	10323	158,972.66				
12/26/2014	10336	40,000.00	12/26/2014	10337	40,000.00				
12/26/2014	1156-gv_gw	10,000.00	12/26/2014	1156-gv_gw	10,000.00				
6/18/2014	1112-gv_gw	12,000.00	6/18/2014	1111-gv_gw	12,000.00				
	2014 Total Distribution	646,866.76	2014 Total Distribution		454,927.27	1,101,794.03			
4/10/2015	10357	50,000.00	4/10/2015	10358	50,000.00				
8/17/2015	10380	35,000.00	8/17/2015	10381	35,000.00				
9/4/2015	10385	198,888.57	9/4/2015	10386	85,237.96		284,126 53		Cap Dis. Sale Bdg B
9/4/2015	10387	166,816.74	9/4/2015	10388	166,816.74				
12/102015	10403	25,000.00	12/10/2015	10402	25,000.00				
4/15/2015	1186-gv_gw	15,000.00		gv_gw	15,000.00				
8/31/2015	1228-gv_gw	7,500.00		gv_gw	7,500.00				
12/16/2015	1253-gv_gw	12,500.00		gv_gw	12,500.00				
	2015 Total Distribution	510,705.31	2015 Total Distribution		397,054.70	907,760.01			
2/12/2016	10416_gvc	40,000.00	2/12/2016	10415	40,000.00				
2/12/2016	1275gv_gw	10,000.00	2/12/2016	1274	10,000.00				
9/8/2016	10472_gvc	65,000.00	9/8/2016	10473	65,000.00				
9/8/2016	1320gv-gw	30,000.00	9/8/2016	1321	30,000.00				
12/9/2016	10500_gvc	50,000.00	12/9/2016	10501	50,000.00				
12/9/2016	1340gv_gw	15,000.00	12/9/2016	1341	15,000.00				
	2016 Total Distribution	210,000.00	2016 Total Distribution		210,000.00	420,000.00			

02/29/17	10512_gvc	42,000.00	02/29/17	10513	42,000.00			
11/22/2017	10589_gvc	100,000.00	11/22/2017	10597	100,000.00			
2/27/2017	1359gv_gw	14,000.00	2/27/2017	1360	14,000.00			
11/22/2017	1390gv_gw	45,000.00	11/22/2017	1391	45,000.00			
	2017 Total Distribution	201,000.00	2017 Total Distribution		201,000.00	402,000.00		
4/26/2018	10624_gvc	75,000.00	4/26/2018	10625	75,000.00			
8/23/2018	10642_gvc	55,000.00	8/23/2018	10643	55,000.00			
4/26/2018	1410_gw	25,000.00	4/26/2018	1411	25,000.00			
8/23/2018	1419_gw	20,000.00	8/23/2018	1420	20,000.00			
	2018 Total Distribution	175,000.00	2018 Total Distribution		175,000.00	350,000.00		
3/8/2019	10716_gvc	59,000.00	3/8/2019	10717	59,000.00			
8/14/2019	10758_gvc	55,000.00	8/14/2019	10759	55,000.00			
3/8/2019	1440_gw	24,000.00	3/8/2019	1441	24,000.00			
8/14/2019	1462_gw	20,000.00	8/14/2019	1463	20,000.00			
10/7/2019	10769_gvc	20,000.00	10/7/2019	10770	20,000.00			
10/7/2019	1471_gw	2,500.00	10/7/2019	1472	2,500.00			
	2019 Total Distribution	180,500.00	2019 Total Distribution		180,500.00	361,000.00		
					Total	4,949,554.05	859,247.88	
Total Capital Distribution per member		601,473.52	Total Capital Distribution		257,774.36			
Total Regular Income per member		2,045,153.09	Total Regular Income:		2,045,153.08	Per BIDSAL003810		
Total Income & Capital Distribution per member		2,646,626.61	Total Distibution Receive		2,302,927.44			

Note:

Please note that in 2012 the K1 is wrong

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

AND

BIDSALS' COUNTERMOTION TO CONFIRM ARBITRATION AWARD

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

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

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Case Number: A-22-854413-B

Dated this 1st day of September, 2022

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PREFATORY STATEMENT

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

II.

STATEMENT FACTS

A. BACKGROUND.

1. Overview Of The Dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Sale of Building E.

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

5. Sale of Building B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. PROCEDURAL HISTORY.

1. Arbitration No. _1260004569 – the Original Arbitration.

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

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

2. Ambiguity Number Four.

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

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

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

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

3. Ambiguity Number Five.

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

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

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

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

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

4. Appeal of Confirmation of the Original Arbitration.

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

5. Arbitration No. 1260005736 – the Second Arbitration.

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

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

See **Exhibit "19"**.

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

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

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

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

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

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

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

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

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

6. Resolution of the Original Arbitration.

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

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

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

III.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD FOR JURISDICTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. LEGAL STANDARD FOR VACATUR OF ARBITRATION AWARDS.

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

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

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

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

G. LEGAL STANDARD ON MODIFYING AND CORRECTING ARBITRATION AWARDS.

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

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

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

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

H. THE SECOND ARBITRATION FINAL AWARD IS NOT IRRATIONAL.

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

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

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

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

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

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

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

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

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

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

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

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

1. Bidsal Never Breached the GVC OA

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

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

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

2. There was Never a Breach to Address.

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

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

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

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

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

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

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

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

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

IV.

CONCLUSION

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

Dated this 1st day of September, 2022.

SMITH & SHAPIRO, PLLC
/s/ James E. Shapiro
James E. Shapiro, Esq. (NV Bar #7097)
Aimee M. Cannon, Esq. (NV Bar #11780)
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Attorneys for Shawn Bidsal

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CERTIFICATE OF SERVICE

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

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

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EXHIBIT 1

EXHIBIT 1

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

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 claimant in JAMS Arbitration No. 1260005736 captioned Shawn Bidsal v. CLA Properties, LLC.

4. My counsels are Smith & Shapiro, PLLC and Gerrard Cox & Larsen ("***Bidsal's Counsel***").

5. I have been involved in commercial property management for over 24 years. I have managed over 50 commercial properties, valued at over $300,000,000.00. These properties are spread throughout eight states.

6. Benjamin Golshani ("***Golshani***"), the sole manager and member for CLA Properties, LLC ("***CLA***"), is my first cousin.

7. Golshani is the president of Noveltex, a company involved in the textile industry. The textile industry is Golshani's profession.

8. Upon learning of my successful ventures in commercial real estate, Golshani approached me at a family gathering and sought my guidance on real estate business opportunities. This discussion occurred in 2009/2010 when I had approximately 15 years of commercial real estate investment and management experience. At this time, I also had infrastructure in place for buying, selling, and managing commercial real estate.

9. I agreed to partner with Golshani, who was a real estate novice, and we formed the terms of a joint investment. The joint investment was to involve the purchasing of real estate, as well as, mortgaged back deeds of trust and notes. The terms of this joint investment were that Golshani would invest seventy (70%) of the funds and I would invest thirty (30%) of the funds. The reason for the disparate split was that I was going to be using my knowledge and expertise in the areas of finding

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deals on property, purchasing property, converting the notes into fee simple properties (if needed), subdividing the properties to maximize value and managing the properties for the joint investment. Golshani was hopefully going to be able to learn from my expertise. Because of this division of money and labor, the profits from the joint investment would be split equally.

10. I was able to locate commercial real property that was up at auction. The address for this property was 3 Sunset Way, Henderson, NV 89014 (the "***Green Valley Commerce Center***"). The Green Valley Commerce Center was subject to a defaulted note, so it was exceptional value, as there is greater risk associated with the potential defenses before the property is foreclosed. It took a great deal of work and experience to convert the note into a fee simple title, however, I was able to do so.

11. On May 26, 2011, I formed Green Valley Commerce, LLC ("***GVC***") in order to purchase the Green Valley Commerce Center. A true and correct copy of the Green Valley Commerce Center Final Settlement Statement, dated June 3, 2011, is attached hereto as ***Exhibit "4"*** and is incorporated herein by this reference. On June 3, 2011, GVC, through me, purchased the note secured by a deed of trust against the Green Valley Commerce Center. GVC paid $4,048,959.00 to secure the sale (the "***Purchase Price***"). At GVC's inception CLA was provided all of the records of the sales, as was I.

12. On September 22, 2011, GVC 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 "5"*** and incorporated by this reference herein. As part of the deal, I was able to obtain $295,258.93 worth of net rents that the previous owner had collected from tenants. *See* the Estimated Settlement Statement dated September 22, 2011, a true and correct copy which is attached hereto as ***Exhibit "6"*** and incorporated herein by this reference. Such an immediate and large windfall was quite an achievement, even by my standards.

13. After the purchase of the Green Valley Commerce Center, I was able to subdivide the property into nine (9) individual parcels, designated by alphabetical designators. *See* Exhibit "B" to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, a true and correct copy of which is attached hereto as ***Exhibit "7"*** and incorporated herein by this reference. Neither CLA nor Golshani assisted in the subdivision process. The nine parcels included one parcel for all of Green Valley Commerce Center's common areas and parking lots (the "***Common Areas***"). *Id.* The

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other eight parcels corresponded with the eight buildings in the Green Valley Commerce Center and were designated Buildings "A" through "H" respectively. *Id.*

14. Once the subdivision was completed, the original Purchase Price was allocated to the individual parcels based on the square footage of the parcels' structural improvements. To manage the Common Areas, I created a declaration of covenant, conditions and restrictions and formed the green valley owner's association (the "***GVC HOA***"). *See* Exhibit "7".

15. On September 10, 2012, I sold Building C, one of the subdivided properties, for $1,025,000.00, with net proceeds of $898,629.23 (the "***Building C Proceeds***"). A true and correct copy of the Building C Final Settlement Statement is attached hereto as ***Exhibit "8"*** and is incorporated herein by this reference. The sales price was about two hundred fifty percent (250%) of what GVC originally paid for Building C approximately one year earlier.

16. The Building C Proceeds were initially deposited with a 1031 Exchange Accommodator. Ultimately, all but $95,272.65 of the Building C Proceeds were used to purchase property in Arizona located at 3342 East Greenway Road, Phoenix, AZ (the "***AZ Greenway Property***"). The remaining $95,272.65 was distributed to the members as a return of capital, with seventy (70%) being distributed to CLA and thirty (30%) being distributed to me, pursuant to the terms of the Green Valley Commerce, LLC Operating Agreement (the "***GVC OPAG***"). A true and correct copy the GVC OPAG is attached hereto as ***Exhibit "9"*** and incorporated herein by this reference. A true and correct copy of the Building C equity balance computation is attached hereto as ***Exhibit "10"*** and incorporated herein by this reference.

17. On November 14, 2014 I sold the second of the subdivided properties, Building E, for $850,000.00, with net proceeds of $797,794.03. A true and correct copy of the Building E Final Settlement Statement is attached hereto as ***Exhibit "11"*** incorporated herein by this reference. The sales price was approximately two hundred percent (200%) of what GVC originally paid. *See* Exhibit "11". The proceeds from the sale of Building E were divided in accordance with GVC OPAG, thirty percent (30%) of the capital portion of the proceeds went to repay my capital account and seventy

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percent (70%) of the capital portion of the proceeds went to repay CLA's capital account[1]. A true and correct copy of the Building E equity balance computation is attached hereto as ***Exhibit "12"*** and incorporated herein by this reference.

18. On September 4, 2015, I sold the third of the subdivided properties, Building B, for $617,760.00 and netting $584,019.39. A true and correct copy of the Building B Final Settlement Statement is attached hereto as ***Exhibit "13"*** and is incorporated herein by this reference. The proceeds from the sale of Building B were divided in accordance with GVC OPAG, thirty percent (30%) of the capital portion of the proceeds went to repay my capital account and seventy percent (70%) of the capital portion of the proceeds went to repay CLA's capital account. A true and correct copy of the Building B equity balance computation is attached hereto as ***Exhibit "14"*** and incorporated herein by this reference.

19. From GVC's inception through last year, I managed the company with CLA's concurrence that I should do so. *See* Exhibit "9". Under my management GVC was profitable and has not only been able to return a substantial amount of the members' initial capital, but has also made distributions to its members in the following amounts:

DISTRIBUTIONS

YEAR	BIDSAL	CLA
2011	$265,000.00	$265,000.00
2012	$234,215.00	$234,215.00
2013	$203,445.00	$241,555.00
2014	$454,927.00	$646,867.00
2015	$397,055.00	$510,705.00
2016	$210,000.00	$210,000.00
2017	$201,000.00	$201,000.00
2018	$175,314.00	$175,000.00
TOTALS	$2,140,956.00	$2,484,342.00

See the GVC K-1 IRS forms attached hereto as ***Exhibit "16"*** and incorporated herein by this reference.

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[1] Once all of the member's capital associated with Building E had been returned, the remaining proceeds were split 50/50 between the members.

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20. At approximately the same time that GVC was purchasing the AZ Greenway Property, Golshani and I determined that we would purchase an additional property in Phoenix, Arizona. In April 2013, Golshani and I formed Mission Square LLC ("***Mission Square***") and purchased a commercial property with this newly formed LLC. *See* a true and correct copy of the Mission Square formation documents attached hereto as ***Exhibit "16"*** and incorporated herein by this reference. *See also* the Mission Square Settlement Statement that is attached hereto as ***Exhibit "17"*** and incorporated herein by this reference. I had hoped that Golshani had been learning from my mentorship in the field of commercial property management, and therefore agreed that Golshani should try his hand at managing the property owned by Mission Square (the "***Mission Square Property***").

21. In or around 2017, I began to experience dissatisfaction with the business ventures I was participating in with Golshani. Part of my dissatisfaction was the poor manner in which Mission Square was being managed by Golshani. This poor management was evidenced by the way that Golshani had filed Mission Square's taxes. Golshani and I were, and are, the only two members of Mission Square. *See* a true and correct copy of the Mission Square Operating Agreement attached hereto as ***Exhibit "18"*** and incorporated herein by this reference. However, in 2017 I learned that between 2013 and 2016 Golshani had directed an accountant to file improper tax returns indicating that CLA was a member of Mission Square when in fact, Golshani and I were the only two members. *See* true and correct copies of the Mission Square Schedule K-1 forms for 2013 through 2018 that are attached hereto as ***Exhibit "19"*** and are incorporated herein by this reference.

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22. In contrast to GVC, Mission Square has been continuously struggling under the novice management of Golshani. Mission Square has had to make capital calls on its members and has distributed only meager proceeds in the following amounts[2]:

DISTRIBUTIONS

YEAR	BIDSAL	GOLSHANI
2013	$0.00	$0.00
2014	$0.00 ($61,500.00) Capital Call	$0.00 ($61,500.00) Capital Call
2015	$9,000.00	$9,000.00
2016	$0.00	$0.00
2017	$40,000.00	$45,981.00
2018	$18,000.00	$18,000.00
TOTALS	$5,500.00	$11,481.00

See Exhibit "19".

23. Due in part to the issues outlined above dealing with Mission Square, I decided I no longer wanted to engage in business ventures for either GVC or Mission Square with Golshani. As such, I offered to purchase CLA's interest in GVC in correspondence dated July 7, 2017 at a price that I thought would be a fair estimate of the Green Valley Commerce Center properties were worth $5,000,000.00 ("***Bidsal's Offer***"). A true and correct copy of Bidsal's Offer is attached hereto as ***Exhibit "21"*** and is incorporated herein by this reference.

24. Golshani responded to my offer by sending, what I assumed was a counteroffer on August 3, 2017 and stated, "…in accordance with section 4, Article v of the agreement, [CLA] elects and exercises its option to purchase [Bidsal's] 50% membership in [GVC] on the terms set forth in the July 7, 2017 letter based on [Bidsal's] $5,000,000.00 valuation of [GVC]." ("***CLA's Counteroffer***"). A true and correct copy of CLA's Counteroffer is attached hereto as ***Exhibit "22"*** and is incorporated herein by this reference.

25. On August 1, 2017, I responded to CLA's Counteroffer.

[2] The capital call is in parenthesis.

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26. In correspondence dated, August 28, 2017, CLA demanded that I transfer my membership interest in GVC to CLA. A true and correct copy of the August 28, 2017 correspondence is attached hereto as ***Exhibit "24"*** and is incorporated herein by this reference.

27. CLA asserts that it is the sole owner of Green Valley, and as such is entitled to control Green Valley's activities. However, in order to be the sole owner of GVC, CLA would have had to purchase my share of GVC from me. CLA has never tendered payment for my membership interest in GVC and therefore cannot be the sole owner of GVC. In fact, I initiated the present arbitration to determine what CLA owes me to purchase the right to become the sole owner of GVC.

28. During the period of May 2011 through November 2018 neither Golshani nor CLA ever complained about my management of GVC.

29. Golshani is a novice commercial property manager, whose focus and attention are on his textile company, Noveltex. The fact that Golshani is a novice property manager is also evidenced by the misdirection he provided to the accountant in filing Mission Square's taxes, the lack of profitably of Mission Square, the need for cash calls to keep Mission Square afloat and the high vacancy rate of Mission Square. *See* Exhibits "21" and "23".

30. During the period of 2011 to 2018, a period of ***seven*** years, Golshani was so disinterested in the management of GVC that he never asked for access to GVC's banking records. Likewise, his interest in GVC was so sparse that in 2020, he did not even know who to contact at the Green Valley Commerce Center to set up an inspection of the property. However, in 2017, I provided Golshani with the name and phone number of the Green Valley Commerce Center foreman and the foreman remains the same to date.

31. I have managed 50 commercial properties in eight states. With so many commercial properties to manage, I have, on occasion, had to hire third-party property management companies to alleviate some of my personal workload. In my experience the professional property management of the properties owned by GVC would be particularly expensive due to the following factors: (1) GVC properties are spread out over two states (NV and AZ), likely necessitating the need for two professional property management companies or one large national property manager that will inevitably be more

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

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expensive due to its small size and (2) the properties owned by GVC are in different industries requiring a more experienced property manager that has experience in both industrial building management and retail building management. Given the forgoing factors, the fee for one property manager for the Nevada properties would likely be six percent (6%) of the total property income collected, with a minimum of $2,500.00 per month and the fee for a second property manager for the Arizona properties would likely six percent (6%) of the total property income collected, with a minimum of $1,500.00 per month. These are costs that have not been incurred due to the fact that I have managed these properties. Whomever is property manager will incur day-to-day costs which are regularly passed on to the property owner, but to date, have been borne by me.

32. There is an additional cost in changing to a third-party property manager at this particular time. In the era of COVID-19, many businesses/tenants were required to be shuttered, per orders of their respective governors. I have worked diligently to establish personal and individual relationships with the tenants whose businesses have been affected by COVID-19. I have worked to encourage them not to shutter their businesses permanently, but to continue to work with me so that GVC would have viable tenants at the end of the COVID-19 quarantine period. These businesses have been suffering due to the circumstances of COVID-19 and we have developed a rapport and trust between us. A change in property management would cause unnecessary stress and trauma for these tenants and may cause tenants to believe that GVC is unstable and provide them one more reason to shutter their already struggling businesses.

33. There is no provision in the GVC OPAG to appoint a third-party property manager. *See* Exhibit "9".

34. In 2019, one tenant in Building G of the Green Valley Commerce Center ended its lease, resulting in a vacant Building G. As tenants come and go, interior maintenance and repair are necessary in order to maintain rentable inventory. In an effort to maximize GVC's rentable inventory, interior repairs to the vacant AZ Greenway Property buildings, as well as Green Valley Commerce Center Buildings A, G and H were undertaken in 2020 at a cost of $22,881.16. True and correct copies of the interior repairs of the GVC properties are attached hereto as ***Exhibit "30"*** and are incorporated herein by this reference.

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35A.App.8025

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35. The non-controllable costs of taxes, electricity and water increased during the period of July 2017 to the present. *See also* a true and correct copy of the tax records for the GVC properties tax district attached hereto as ***Exhibit "31"*** and incorporated herein by this reference. These necessary, planned for and identified capital improvement costs, taken together with the non-controllable costs, certainly caused the reduction in amount of profits seen by GVC.

36. I have provided CLA with the documents evidencing changes to the GVC properties and provided evidence of the financials records on an ongoing and regular basis.

37. When the GVC properties broker unilaterally cancelled the listing of the GVC properties in 2019, I informed CLA that I would be willing to list the GVC properties with a different broker. At that same time, I informed CLA that I was not ignoring their request for repairs to the GVC properties and that repairs to the Green Valley Commerce Center roof had taken place and that landscaping had taken place. I asked CLA if they had any other specific concerns regarding proposed repairs.

38. Throughout the years that I have managed GVC properties, and continuing through until today, I was undertaking the advertisement of the GVC properties. Availability signs have been posted on windows of vacant suites, brochures advertising the vacant properties have been printed and distributed, email blasts of vacancies were and are occurring, lockboxes are on the properties to facilitate showings and the vacant properties are listed on no less than three commercial property leasing platforms.

39. On March 19, 2020, the governor of the State of California, which is the state I reside in and where I work from, issued a mandatory stay-at-home order in response to the COVID-19 pandemic. A true and correct copy of the March 19, 2020 stay-at-home order is attached hereto as ***Exhibit "53"*** and is incorporated herein by this reference. The stay-at-home order has prevented my staff from accessing the books and records for GVC. Had CLA accepted my offer to inspect the GVC records on March 17, 2020 or March 18, 2020 this order would not have impacted their request for inspection of books and records. Yet, CLA elected not to inspect the GVC books and records on those dates. In response to the Stay-at-Home Order I am required to comply, and my offices were closed in compliance with said order.

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40. I have refused to give CLA the banking passcode because a single passcode accesses numerous accounts that I manage, several of which have no ties to Golshani, GVC, Mission Square and/or CLA. Allowing CLA to have this passcode would place my other accounts in jeopardy of having Golshani being able to access and transfer funds from and to accounts for which he is not authorized.

41. On May 8-9, 2018 Arbitration No. 1260004569 was heard. Approximately one year later, on April 5, 2019, the arbitrator in Arbitration No. 1260004569 rendered a final arbitration order.

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

Dated this 10th day of June, 2020.

Shawn Bidsal

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

EXHIBIT 2

EXHIBIT 2

Electronically Filed
1/31/2020 1:10 PM
Steven D. Grierson
CLERK OF THE COURT

AFFT
Louis E. Garfinkel, NBN No. 3416
Levine & Garfinkel
1671 W. Horizon Ridge Parkway, Suite 230
Henderson, NV 89012
Tel: (702) 673-1612
Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company,

Petitioner,

v.

SHAWN BIDSAL, an individual,

Respondent.

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

AFFIDAVIT OF BENJAMIN GOLSHANI IN OPPOSITION TO RESPONDENT'S MOTION FOR STAY PENDING APPEAL

Date of Hearing: February 18, 2020.
Time of Hearing: 9:00 a.m.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, Benjamin Golshani, being first duly sworn depose and says:

1. I am the sole owner of Petitioner CLA Properties, LLC ("CLA"). I have personal knowledge of the facts stated herein.

2. Both respondent, Shawn Bidsal ("Bidsal"), and I were designated as the original managers of Green Valley Commerce, LLC ("Green Valley"), and there has been no change in that designation since the Operating Agreement so appointing us was signed.

3. Directing my attention to Article V Section IV of the Operating Agreement for Green Valley, the cost of purchase of the property held by Green Valley was $4,049,250.00.

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4. Addressing the formula for the buyout by one member of the other, Green Valley has no pro-rata liabilities.

5. Attached hereto and marked Exhibit 1 is a schedule showing distributions from Green Valley from 2017 through 2019. After CLA's August 3, 2017 election to buy out Bidsal, Bidsal signed checks distributing to himself $500,500.00 as reflected in that schedule.

6. Attached hereto and marked Exhibit 2 is a March 6, 2019 email from Bidsal to me in response to my February 25, 2019 email from me to him along with the rent rolls showing 41% vacancy. Prior thereto, Bidsal had fired the leasing broker to which I complained. Bidsal refused to rehire a leasing broker leading to the vacancy that continues to this date.

7. I attended the arbitration hearing and was present when Bidsal testified to the deferred maintenance of the property that included the need for repairs to the roof, air conditioning, other tenant improvements, parking, and some items in the business park as well as a broken wall and the existence of vacant spaces. I believe those same conditions remain today as I have not heard otherwise.

8. Around two years after Bidsal and CLA formed Green Valley, Bidsal and CLA formed another LLC called Mission Square, LLC likewise to own and operate commercial property. We agreed that I would be the day to day manager of Mission Square.

9. I am well able and qualified to handle the management of commercial properties. I have been managing properties and real estate investments since 2004, and since 2015 that has been my main occupation. The management of Green Valley should be turned over to me ASAP, since that should have occurred in 2017 when the buyout of Mr. Bidsal's interest should have taken place. I want to protect my current and future investment and not leave it in Mr. Bidsal's hands.

Benjamin Golshani

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SWORN TO AND SUBSCRIBED
BEFORE me this 31st day of January, 2020.

Please See Attached
Jurat For Notary

NOTARY PUBLUC
My Commission Expires: 11/01/2023

35A.App.8031

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 31st day of January,

2020 by Benjamin Golshani,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature (Seal)

UPEKSHA THENNAKOON MUDIYANSELAGE
Notary Public - California
Los Angeles County
Commission # 2307839
My Comm. Expires Nov 1, 2023

OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Affidavit OF Benjamin Golshani
(Title or description of attached document)

In Opposition To Respondent's
(Title or description of attached document continued)

Motion For Stay Pending Appeal.

Number of Pages 03 Document Date —

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

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GREEN VALLEY COMMERCE
DISTRIBUTION
2017-2019

ENTITY	BENJAMIN GOLSHANI				SHAWN BIDSAL			
	YEAR AND DATE		CHECK #	AMOUNT	YEAR AND DATE		CHECK #	AMOUNT
GREEN VALLEY COMMERCE	2017	02/29/17	10512	42,000.00	2017	02/29/17	10513	42,000.00
		11/22/2017	10589	100,000.00		11/22/2017	10597	100,000.00
		2/27/2017	1359	14,000.00		2/27/2017	1360	14,000.00
		11/22/2017	1391	45,000.00		11/22/2017	1395	45,000.00
				201,000.00				201,000.00
GREEN VALLEY COMMERCE	2018	4/26/2018	10624	75,000.00	2018	4/26/2018	10625	75,000.00
		8/23/2018	10642	55,000.00		8/23/2018	10643	55,000.00
		4/26/2018	1410	25,000.00		4/26/2018	1411	25,000.00
		8/23/2018	1419	20,000.00		8/23/2018	1420	20,000.00
				175,000.00				175,000.00
	2019	3/8/2019	10716	59,000.00	2019	3/8/2019	10717	59,000.00
		~~8/14/2019~~	~~10758~~	~~55,000.00~~		8/14/2019	10759	55,000.00
		3/8/2019	1440	24,000.00		3/8/2019	1441	24,000.00
		8/14/2019	1462	20,000.00		8/14/2019	1463	20,000.00
		10/7/2019	10769	20,000.00		10/7/2019	10770	20,000.00
		10/7/2019	1471	2,500.00		10/7/2019	1472	2,500.00
				180,500.00				180,500.00

EXHIBIT 116

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 31st day of January, 2020, I caused the foregoing: **AFFIDAVIT OF BENJAMIN GOLSHANI IN OPPOSITION TO RESPONDENT'S MOTION FOR STAY PENDING APPEAL**

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

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

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

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: jshapiro@smithshapiro.com
acannon@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

Melanie Bruner

Melanie Bruner, an Employee of
LEVINE & GARFINKEL

35A.App.8034

EXHIBIT "1"

EXHIBIT "1"

EXHIBIT "2"

EXHIBIT "2"

From: shawn bidsal <wcico@yahoo.com>
Sent: Wednesday, March 6, 2019 12:12 PM
To: ben@claproperties.com
Subject: Re: Financials and deferring maintenance

ben

here are the financials and rent roll for both green valley and green way, please send the rent roll , financials for mission square,

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

On Monday, February 25, 2019, 12:53:04 PM PST, <ben@claproperties.com> wrote:

Shawn,

We have discussed by email the situation of the Green Valley. You were supposed to send me the financials of The Green Valley about 2 months ago but So far I have not received it. There are Issues with Green Valley that needs to be taken care of. I need the name of the brokers who has the listing for both properties . If we do not have a

EXHIBIT 2

broker at this time, I like to know the reason. I could not find the listing of any of the properties which tells me you have abandoned the property and not managing them.

I need the financials of The Green Valley for the period 1/1/18 to 12/31/18 and 1/1/19 to date to the extent available, as well as the name, telephone number and email address of all the vendors who are providing services now and during 2018. I like to contact them and inquire about their services and the situation of the property. In your previous letter you said that there are not differed maintenance but I see that there are a lots of them and none of the issues that you wrote to me in 2017 has been fixed.

As mentioned before, We must inform all the tenants about the buyout and the decision of the arbitrator. The current situation in Green Valley is not favorable and the tenants may leave which will result in another dispute between us.

Please provide me with the information by not later than noon on Wednesday.

I think we should turn over the management of Green valley to CLA immediately. Please advise me if you agree.

I would prefer not having to spend more money getting what I am legally entitled to and would appreciate your cooperation.

Ben

From: shawn bidsal <wcico@yahoo.com>
Sent: Saturday, December 15, 2018 8:56 AM
To: ben@claproperties.com
Subject: Re: Financials and deferring maintenance

ben

there is no deferred maintenance on landscape or the plants , every year, during winter months, plants go dormant and come back to life in spring.

regarding contacting the tenants: the green valley case is not finished, so until that time, there is no reason to contact the tenants.

i sent you the tax returns a while ago, here is the p&L for each property,

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, December 11, 2018, 7:01:37 AM PST, ben@claproperties.com <ben@claproperties.com> wrote:

Shawn, It has been brought to my attention that the trees and plants in Green Valley commerce are dying (See below pictures). I did not believe

EXHIBIT 2

that neglecting and differing the maintenance of the property is something that you wanted. It is not to anybody's interest. Please inform me of the reason of the current situation and what can be done to save them. Although the judge has awarded us the judgment but letting the trees die is not a good practice. Your attorney has stated that you do not wish me to take over the management. How would it benefit you? You have so many other properties to warry about, why would you want to spend your valuable time on this and be responsible if it is neglected.

We have requested from you to send us the financials of The Green Valley Commerce and Country Club LLC, however, we have not received anything yet. CLA is a member and has the right to examine the records. We are already in litigation on Green Valley. I do not wish to start another case, that is why I am writing this letter to you directly to keep this channel open to discuss and resolve simple matters that benefit both parties. As I understand the attorney's fee is going to be awarded. Your attorney has expressed that the attorney fee that you need to pay is high. One would think why would you want to run it higher? Again, I do not wish to escalate this and like to resolve these simple matters in good faith so I will wait for 5 days for your good faith response to resolve the above problems before turning it to the attorneys.

We need to contact the tenants and explain that there is a buyout. I like to also hire contractors to take over the maintenance of the properties. I like to work with you to arrange rather than have the attorneys do it. It is better for both of us.

I look forward to hearing from you and if you have any question or concerns, please contact me.

Ben

EXHIBIT 2

WEST COAST INVESTMENTS INC

RENT ROLL

ENTITY GREEN VALLEY COMMERCE LLC
PROPERTY GREENWAY VILLAGE
3342 EAST GREENWAY ROAD, PHOENIX AZ 85032

UNIT NO	TENANT	START DATE	END DATE	Values SQ FT	PRO-RATED SQFT	RENT SQ FT	BASE RENT	CAM	TOTAL AMOUNT
GW-101	SUBWAY	4/1/2013	2/28/2021	1,460	12.58%	1.64	2,397.76	481.80	2,879.56
GW-102	RODNEY YOUNG INS AGENCY	3/19/2014	2/28/2019	1,200	10.34%	1.10	1,315.74	552.00	1,867.74
GW-103	CAROLE HALSTEAD	4/1/2014	3/31/2020	1,293	11%	1.03	1,337.10	540.00	1,877.10
GW-104	H & R BLOCK	4/1/2013	4/30/2021	1,293	11%	1.08	1,401.00	652.00	2,053.00
GW-105 & 106	VACANT	VACANT	VACANT	2,419	21%	0.00	0.00	0.00	0.00
GW-107	VACANT	VACANT	VACANT	1,167	10%	0.00	0.00	0.00	0.00
GW-108	VACANT	VACANT	VACANT	1,123	10%	0.00	0.00	0.00	0.00
GW-109	CARDINE BEAUTY SALON (ELSA GARCIA)	4/1/2014	9/30/2021	1,650	14%	1.00	1,652.77	544.50	2,197.27
Grand Total				11,605	100%	5.86	8,104.37	2,770.30	10,874.67

EXHIBIT

As of December 31, 2018

35A.App.8041

EXHIBIT 3

EXHIBIT 3

ROSS MILLER
Secretary of State
206 North Carson Street
Carson City, Nevada 89701-4299
(775) 684 5708
Website: www.nvsos.gov

Filed in the office of	Document Number
Ross Miller Secretary of State State of Nevada	20110396703-22
	Filing Date and Time 05/26/2011 8:35 AM
	Entity Number E0308602011-0

Articles of Organization
Limited-Liability Company
(PURSUANT TO NRS CHAPTER 86)

USE BLACK INK ONLY - DO NOT HIGHLIGHT — ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Limited-Liability Company: (must contain approved limited-liability company wording; see instructions)
GREEN VALLEY COMMERCE, LLC
Check box if a Series Limited-Liability Company ☐

2. Registered Agent for Service of Process: (check only one box)
☒ Commercial Registered Agent: GKL REGISTERED AGENTS/FILINGS INC (Name)
☐ Noncommercial Registered Agent (name and address below) OR ☐ Office or Position with Entity (name and address below)
Name of Noncommercial Registered Agent OR Name of Title of Office or Other Position with Entity
Street Address | City | Nevada | Zip Code
Mailing Address (if different from street address) | City | Nevada | Zip Code

3. Dissolution Date: (optional)
Latest date upon which the company is to dissolve (if existence is not perpetual):

4. Management: (required)
Company shall be managed by: ☐ Manager(s) OR ☒ Member(s) (check only one box)

5. Name and Address of each Manager or Managing Member: (attach additional page if more than 3)
1) Name: Shawn BIOSAL
Street Address: 14039 Sherman Way #201 | City: Van Nuys | State: CA | Zip Code: 91405
2) Name:
Street Address | City | State | Zip Code
3) Name:
Street Address | City | State | Zip Code

6. Name, Address and Signature of Organizer: (attach additional page if more than 1 organizer)
Name: Shawn BIOSAL
Organizer Signature: X N BIOSAL
Address: 14039 SHERMAN WAY #201 | City: VAN NUYS | State: CA | Zip Code: 91405

7. Certificate of Acceptance of Appointment of Registered Agent:
I hereby accept appointment as Registered Agent for the above named Entity.
X [signature] 5-25-11
Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity | Date

This form must be accompanied by appropriate fees.

Nevada Secretary of State NRS 86 LLLD Articles
Revised on 7-1-09

DL00 361

35A.App.8043

EXHIBIT 4

EXHIBIT 4

CommerceTitle

Commerce Title of America, LLC dba
Commerce Title Company
6200 Tennyson Parkway, Suite 110 • Plano, TX 75024

Green Valley Commerce

Final Settlement Statement

Note/Loan: GCCFC 2007-GG11 SUNSET OFFICE, LLC

File No: NA11119
Officer: Yvette Cantu/YC
New Loan No:
Settlement Date: 06/03/2011
Disbursement Date: 06/03/2011
Print Date: 06/01/2011, 12:27 PM

Buyer: Green Valley Commerce, LLC
Address: NB-029 Green Valley Commerce Center, 3 Sunset Way, Henderson, NV 89014
Seller: GCCFC 2007-GG11
Address: c/o LNR Partners, LLC, 1601 Washington Avenue, Suite 700, Miami Beach, FL 33139

Buyer Charges	Buyer Credits	Charge Description	Seller Charges	Seller Credits
		Consideration:		
3,850,000.00		Total Consideration		3,850,000.00
		Deposits in Escrow:		
	404,250.00	Receipt No. 395 on 05/20/2011		
		Title/Escrow Charges to:		
75.00		Wire Fee to Commerce Title		
3,000.00		Closing Fee to Commerce Title of America, LLC dba Commerce Title Company		
100.00		Courier / Overnight Fees to Commerce Title Company		
		Disbursements Paid:		
250.00		Property Report to Commerce Title Company		
192,500.00		Premium due Auctioneer to Auction.com, LLC		
3,000.00		Attorney Fees & Cost to Bizin Slumberg Baena Price & Axelrod	4,888.00	
		Post Closing SPE Expenses to LNR Partners, LLC	1,500.00	
17.00		Assignment of Deed of Trust to Office of the County Recorder Clark County Government Center		
		Finder's fee to buyer's broker to Millenium Commercial	19,250.00	
17.00		Assignment of Assignment of Leases and Rents to Office of the County Recorder Clark County Government Center		
	3,644,709.00	Cash (X From) (To) Borrower		
		Cash (X To) (From) Seller	3,824,362.00	
4,048,959.00	4,048,959.00	Totals	3,850,000.00	3,850,000.00

1,215,000
+ 2,430,000

BUYER(S):

Green Valley Commerce, LLC, a Nevada limited liability company

By:Shawn Bidsal, Manager

SELLER(S):

GCCFC 2007-GG11 SUNSET OFFICE, LLC

Commerce Title of America, LLC dba Commerce Title Company

By
Yvette Cantu

404,250 - Ben
2,430,000 - Ben] 2,834,27
1,215,000 - Shahram Bids

= 4,079,250 -

EXHIBIT 4

291

CLA0434

EXHIBIT 5

EXHIBIT 5

Inst #: 201109220004298
Fees: $17.00 N/C Fee: $0.00
RPTT: $20400.00 Ex: #
09/22/2011 02:17:13 PM
Receipt #: 921874
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: MSH Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 161-32-810-001and 161-32-810-002
Recording requested by and when recorded mail to:
First American Title Company.
2490 Paseo Verde Parkway, Suite 100
Henderson, NV 89074

Attention: Julie Skinner

Mail Tax Statements to:

Green Valley Commerce, LLC
9155 Las Vegas Blvd. South
Suite 200
Las Vegas, NV 89123
498935

Space above this line for Recorder's use

GRANT, BARGAIN AND SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Green Valley Commerce Center, LLC, a Nevada limited liability company ("Grantor"), whose address is 901 N. Green Valley Parkway, Suite 200, Henderson, NV 89074 hereby grants, bargains and sells to Green Valley Commerce, LLC, a Nevada limited liability company ("Grantee"), whose address is 9155 Las Vegas Blvd. South, Suite 200, Las Vegas, NV 889123, all of its right, title and interest in and to the real property located in the County of Clark, State of Nevada, described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property").

This deed is an absolute conveyance, Grantor having sold the Property to Grantee for a fair and adequate consideration, such consideration, in addition to that above recited, being full satisfaction of the obligations secured by (i) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated July 17, 2007 (the "Deed of Trust"), executed by Grantor, as trustor, in favor of GOLDMAN SACHS COMMERCIAL MORTGAGE CAPITAL, L.P., as beneficiary, and recorded on July 17, 2007, in the Official Records of the Recorder of Clark County, Nevada in Book 20070717 as Instrument No. 04925.and subsequently assigned to GCCFC 2007-GG11 Sunset Office, LLC, as beneficiary, by assignment recorded in the Official Records of the Recorder of Clark County, Nevada on May 12, 2011 in Book 20110512 as Instrument No. 01222 and as subsequently assigned to Green Valley Commerce, LLC, as beneficiary, by assignment recorded in the Official Records of the Recorder of Clark County, Nevada on June 17, 2011 in Book 20110617 as Instrument No. 04926; and, (ii) a document entitled "Assignment of Leases and Rents" recorded July 17, 2007 in the Official Records of the Recorder of Clark County, Nevada in Book 20070717 as Instrument No. 04926 and a document entitled "Assignment of Assignment of Leases and Rents" recorded in the Official Records of the Recorder of Clark County, Nevada on May 12, 2011 in Book 20110512 as Instrument No. 01223 and a document entitled Assignment of Assignment of Leases and Rents" recorded in the Official Records of the Recorder of Clark County, Nevada on June 17, 2011 in Book 20110617 as Instrument No. 02964.

APN: 161-32-810-001and 161-32-810-002
Recording requested by and when recorded mail to:
First American Title Company.
2490 Paseo Verde Parkway, Suite 100
Henderson, NV 89074

Attention: Julie Skinner

Mail Tax Statements to:

Green Valley Commerce, LLC
9155 Las Vegas Blvd. South
Suite 200
Las Vegas, NV 89123
498135

Recorded Electronically
ID
County
Date Time
Simplifile.com 800.460.5657

Space above this line for Recorder's use

GRANT, BARGAIN AND SALE DEED

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This deed is an absolute conveyance, Grantor having sold the Property to Grantee for a fair and adequate consideration, such consideration, in addition to that above recited, being full satisfaction of the obligations secured by (i) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated July 17, 2007 (the "Deed of Trust"), executed by Grantor, as trustor, in favor of GOLDMAN SACHS COMMERCIAL MORTGAGE CAPITAL, L.P., as beneficiary, and recorded on July 17, 2007, in the Official Records of the Recorder of Clark County, Nevada in Book 20070717 as Instrument No. 04925.and subsequently assigned to GCCFC 2007-GG11 Sunset Office, LLC, as beneficiary, by assignment recorded in the Official Records of the Recorder of Clark County, Nevada on May 12, 2011 in Book 20110512 as Instrument No. 01222 and as subsequently assigned to Green Valley Commerce, LLC, as beneficiary, by assignment recorded in the Official Records of the Recorder of Clark County, Nevada on June 17, 2011 in Book 20110617 as Instrument No. 04926; and, (ii) a document entitled "Assignment of Leases and Rents" recorded July 17, 2007 in the Official Records of the Recorder of Clark County, Nevada in Book 20070717 as Instrument No. 04926 and a document entitled "Assignment of Assignment of Leases and Rents" recorded in the Official Records of the Recorder of Clark County, Nevada on May 12, 2011 in Book 20110512 as Instrument No. 01223 and a document entitled Assignment of Assignment of Leases and Rents" recorded in the Official Records of the Recorder of Clark County, Nevada on June 17, 2011 in Book 20110617 as Instrument No. 02964.

Dated: Sept. 19, 2011

"Grantor"

Green Valley Commerce Center, LLC,
a Nevada limited liability company

By: American Nevada Company, LLC,
a Nevada limited liability company
Its: Manager

By: P.N. Ralston

Name: PHILLIP N. RALSTON

Title: EXECUTIVE VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On September 19, 2011; before me, EVELYN M. RULLIS, a Notary Public for said state, personally appeared PHILLIP N. RALSTON, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Evelyn M. Rullis
Notary Public

EVELYN M. RULLIS
Notary Public State of Nevada
No. 97-4588-1
My appt. exp. Nov. 24, 2013

Evelyn M Rullis
No 97-4588-1
Exp 11-24-2013

Exhibit A

LEGAL DESCRIPTION

PARCEL ONE (1):

THAT PORTION OF LOT A, GREEN VALLEY BUSINESS PARK, AS SHOWN BY MAP THEREOF IN BOOK 25 OF PLATS, PAGE 57, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 62 EAST, M.D.M.; THENCE NORTH 89°45'21" EAST ALONG THE SOUTH LINE THEREOF, 733.02 FEET; THENCE NORTH 37°55'09" WEST, ALONG THE CENTERLINE OF SUNSET ROAD, 203.17 FEET; THENCE NORTH 52°04'51" EAST, ALONG THE CENTERLINE OF SUNSET WAY, 350 FEET TO A POINT OF TANGENCY WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1800.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°23'56", AN ARC DISTANCE OF 232.44 FEET TO A POINT; THENCE NORTH 30°31'33" WEST ALONG A RADIAL LINE AND THE CENTERLINE OF BUSTER BROWN DRIVE, 473.12 FEET; THENCE NORTH 59°28'47" EAST 25.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 30°31'13" WEST, 120.15 FEET TO A POINT OF NON-TANGENCY ON A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 25.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 85°19'18" WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°21'06", AN ARC DISTANCE OF 10.63 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 70°18'40" WEST; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 109°34'17", AN ARC DISTANCE OF 95.62 FEET TO A POINT; THENCE NORTH 00°07'03" EAST, ALONG A RADIAL LINE, 204.51 FEET TO A POINT; THENCE SOUTH 89°52'57" EAST, 509.44 FEET TO A POINT; THENCE SOUTH 00°07'03" WEST, 312.60 FEET; THENCE SOUTH 89°52'57" WEST 282.00 FEET TO A POINT; THENCE SOUTH 59°28'47" WEST, 140.00 FEET TO THE TRUE POINT OF BEGINNING. EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE CITY OF HENDERSON BY DEED RECORDED MAY 21, 1986 IN BOOK 860521 AS DOCUMENT NO. 00684 OF OFFICIAL RECORDS.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION PREVIOUSLY APPEARED IN THAT CERTAIN DOCUMENT RECORDED NOVEMBER 30, 1999 IN BOOK 19991130 AS INSTRUMENT NO. 00002 OF OFFICIAL

EXHIBIT 6

EXHIBIT 6

First American Title Insurance Company
National Commercial Services
2490 Paseo Verde Parkway, #100 • Henderson, NV 89074

Estimated Settlement Statement

Property: 3 Sunset Way, 161-32-810-001 and 002, Henderson, NV 89014

File No: NCS-498935-HHLV
Officer: Michele D. Seibold/mf
New Loan No:
Estimated Settlement Date:
Disbursement Date:
Print Date: 09/22/2011, 12:05 PM

Buyer: Green Valley Commerce, LLC
Address: 9155 Las Vegas Blvd. South, Las Vegas, NV 89123
Seller: Green Valley Commerce Center, LLC
Address: 901 N. Green Valley Parkway, Suite 200, Henderson, NV 89074

Buyer Charge	Buyer Credit	Charge Description	Seller Charge	Seller Credit
		Deposits in Escrow:		
		Receipt No. 410829574 on 09/22/2011 by Green Valley Commerce Center, LLC		369,807.94
		Adjustments:		
	74,549.01	Security Deposit	74,549.01	
	295,258.93	Net Rents	295,258.93	
		Title/Escrow Charges to:		
150.00		Closing-Escrow Fee to First American Title Insurance Company National Commercial Services		
3,800.00		Policy-Standard ALTA 2006 Owner's to First American Title Insurance Company National Commercial Services		
46.00		Record Grant Deed to First American Title Insurance Company National Commercial Services		
20,400.00		Documentary Transfer Tax-County to First American Title Insurance Company National Commercial Services		
345,411.94		**Cash (From) (X To) Borrower**		
		Cash (To) (From) Seller		
369,807.94	369,807.94	**Totals**	369,807.94	369,807.94

Notice - This Estimated Settlement Statement is subject to changes, corrections or additions at the time of final computation of Escrow Settlement Statement.

BUYER(S):

Green Valley Commerce, LLC, a Nevada limited liability company

By: _____
Its: Managing Member

SELLER(S):

Green Valley Commerce Center, LLC, a Nevada limited liability company

By: _____
Its: _____

35A.App.8052

EXHIBIT 7

EXHIBIT 7

Inst #: 201203160001304
Fees: $95.00
N/C Fee: $25.00
03/16/2012 11:01:15 AM
Receipt #: 1099486
Requestor:
NEVADA TITLE LAS VEGAS
Recorded By: MAT Pgs: 79
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE
(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 161-32-810-001
161-32-810-002

(11 digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Green Valley Commerce Center

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:
Nevada Title Company

RETURN TO: Name West Coast Investments
Address 14039 Sherman Way B1
City/State/Zip Van Nuys, Ca 91405

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)
Name West Coast Investments
Address 14039 Sherman Way B1
City/State/Zip Van Nuys, Ca 91405

This page provides additional information required by NRS 111.312 Sections 1-2.
An additional recording fee of $1.00 will apply.
To print this document properly—do not use page scaling.

RECORDING COVER PAGE
(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 161-32-810-001
161-32-810-002

(11 digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrealprop/ownr.aspx)

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(DO NOT Abbreviate)

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This page provides additional information required by NRS 111.312 Sections 1-2.
An additional recording fee of $1.00 will apply.
To print this document properly—do not use page scaling.

APN: 161-32-810-001 & 002

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS

FOR

GREEN VALLEY COMMERCE CENTER

(A COMMERCIAL SUBDIVISION)
CLARK COUNTY, NEVADA

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DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
GREEN VALLEY COMMERCE CENTER

THIS DECLARATION ("**Declaration**"), made and entered into as of the 15 day of March, 2012, by GREEN VALLEY COMMERCE LLC, a Nevada limited-liability company ("**Declarant**"),

WITNESSETH:

WHEREAS:

A. Declarant owns certain real property located in the City of Henderson, Clark County, Nevada, more particularly described on **Exhibit "A"** hereto ("**Property**"). Declarant intends to develop the Property as an integrated business park, to be known as GREEN VALLEY COMMERCE CENTER or similar name (**"CENTER"**), which shall be restricted exclusively to nonresidential use.

B. The Center is comprised of certain building lots ("**Lots**") with buildings thereon and common area ("**Common Area**"). The Center may be amended from time to time, as provided herein.

C. It is the purpose and intent of Declarant that the Lots comprising the Center be an integrated business park in the manner set forth in the site plan attached hereto as **Exhibit "B"** hereto ("**Site Plan**").

D. It is the purpose and intent of Declarant that this Declaration shall subject each of the Lots to the covenants, conditions and restrictions and reservation of easements hereinafter set forth, for the mutual benefit of the present and future owners and Permittees of any and all portions thereof and their respective heirs, executors, successors, assigns, grantees, mortgagees, and tenants.

E. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Center, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created. Declarant will cause the Association to be formed for the purpose of exercising such function.

NOW, THEREFORE, Declarant hereby declares that each and every portion of the Center shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which shall run with the land, and shall be equitable servitudes, binding upon purchasers, and all persons having any right, title or

interest in the land or any part thereof, and their respective heirs, successors and assigns, for the benefit of Declarant, and all persons hereafter having any right, title or interest in the land or any part thereof and may be enforced by Declarant, the Association, and their respective successors and assigns. All Lots within the Center shall be used, improved, and limited exclusively for nonresidential use.

ARTICLE 1
DEFINITIONS

Section 1.1 **ACC** shall mean and refer to the Architectural Control Committee for the Center, as set forth in Article 4, below.

Section 1.2 **Assessments** shall mean and refer to the following:

a) **"Regular Assessments"** shall mean the amounts, which are to be paid by each Owner to the Association for such Owner's share of Maintenance Area Expenses as, provided in Article 6, below.

(b) **"Special Assessments"** shall mean a charge against any particular Owner and such Owner's Lot, to reimburse the Association for costs incurred in bringing said Owner and/or such Lot into compliance with the provisions of this Declaration, and any other charge designated as a Special Assessment in this Declaration, together with reasonable attorneys' fees, interest and other charges payable by such Owner pursuant to the provisions of this Declaration.

Section 1.3 **Architectural Standards** shall mean and refer to the architectural standards for the Center and improvements therein, as may be adopted from time to time by the Board and administered by the ACC, pursuant to Article 4, below.

Section 1.4 **Association** shall mean and refer to the owners association for the Center, which shall be known as the Green Valley Commerce Center Owners Association (or similar name), a nonprofit corporation, incorporated under the laws of the State of Nevada, and its successors and assigns.

Section 1.5 **Board** shall mean and refer to the Board of Directors of the Association.

Section 1.6 **Building** shall mean and refer to a building structure, including any attached loading dock, generator pad and trash enclosure area, constructed within a Building Lot, other than temporary structures which are for construction personnel or the storage of supplies and equipment during construction.

Section 1.7 **Building Lot** or **Lot** shall mean each portions of the Center designated on the Site Plan as a numbered Lot and shall include the building pad.

Section 1.8 **Common Area** shall mean and refer to all of the Property except for that portion of the Property located within a Lot, and shall include, but not be limited to, the Parking Area. The Common Area is more particularly described in **Exhibit "C"** hereto.

Section 1.9 **Estimated Budget** shall mean a pro forma operating statement or budget for each calendar year pursuant to which the Operator shall estimate the total Maintenance Area Expenses to be incurred for such year.

Section 1.10 **Governing Documents** shall mean this Declaration, the Association Articles of Incorporation ("**Articles**") and Bylaws ("**Bylaws**") and any Association Rules and Regulations ("**Rules**"). The Governing Documents shall be construed so as to be reasonably compatible with each other. In the event of any irreconcilable conflict, the Governing Document listed first shall prevail over any other subsequently listed Governing Documents in the preceding sentence.

Section 1.11 **Hazardous Material** shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by, or is subject to, or governed under, any local governmental authority, any agency of the State of Nevada, or any agency of the United States Government, including, without limitation, any material or substance which is: (1) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance", "hazardous material," "toxic material" or "toxic substance" under any federal, state or local governmental rule, regulation, ordinance, statute or act now or hereafter enacted, (2) petroleum and any petroleum by-products, (3) asbestos, (4) urea formaldehyde foam insulation, or (5) polychlorinated biphenyl.

Section 1.12 **Maintenance Area** shall mean and refer to the portion of the Property intended for non-exclusive use by the Owners and their Permittees, tenants, subtenants, employees, concessionaires, licensees, customers, and business invitees in common with other users as permitted by the Declaration. Maintenance Area shall include, but not be limited to, the Common Area, and the Greenbelt.

Section 1.13 **Mortgagee** shall mean a mortgagee, or trustee and beneficiary under a Mortgage (as hereinafter defined), and to the extent applicable, a fee owner or lessor or sublessor of any Lot which is the subject of a lease under which any Owner becomes a lessee in a so-called "sale and leaseback" or "assignment and sublease back" transaction. The term "**Mortgage**" means any first mortgage, indenture of first mortgage, or first deed of trust encumbering the interest, whether fee or leasehold, of an Owner in a Lot and, to the extent applicable, a "sale and leaseback" or assignment and sublease back'' transaction.

Section 1.14 **Occupant** shall mean and refer to, collectively, the Owner and any and all other Person(s) entitled, by ownership, leasehold interest or other legal relationship, to the exclusive right to occupy all or any portion of a Lot or Building.

Section 1.15 **Owner** shall mean and refer to one or more Persons or entities who are the record owners of a fee title to a Lot, including Declarant or the vendee under an installment land sales contract, but excluding those having any interest merely as security for the performance of an obligation. In the event that the ownership of any Building or other improvements and any portion of a Lot shall ever be severed from the land, whether by lease or by deed, only the owner of the interest in the land shall be deemed an Owner hereunder. The Owner of the fee title and not the lessee of a Lot shall be deemed the Owner regardless of the term of any

lease. Such "Owner" shall include any Person designated in writing by any Owner to act in the manner and at the time provided herein with complete authority and in the place of such Owner in the matter for which action is taken, powers exercised or performance required, provided such written authority shall be recorded in the Official Records of the County Recorder for Clark County, Nevada. Owner shall also include a mortgagee who holds title to a Lot by foreclosure.

Section 1.16 **Parking Area** shall mean those portions of the Common Area used for (i) pedestrian and vehicular ingress to and egress from the Center, from and to adjacent public streets, (ii) pedestrian and vehicular movement in and about the Center, and (iii) the parking of motor vehicles together with all parking improvements to the Common Area which at any time are erected thereon, including incidental and interior roadways, pedestrian stairways, walkways and curbs, within or adjacent to such areas, plus such other areas as Declarant may from time to time designate as Parking Area.

Section 1.17 **Permittee** shall mean and refer to, collectively, an Owner, Occupant, and any other Person from time to time entitled to the use and occupancy of any portion of any Building in the Center under any lease, deed or other arrangement whereunder such Person has acquired a right to use and occupy any Building, and all of their respective officers, directors, managers, members, partners, employees, agents, contractors, customers, visitors, invitees, licensees, lessees, subtenants, and concessionaires. Among others, Persons engaging in the following activities on the Common Area or Greenbelt will not be considered Permittees: (i) exhibiting any placard, sign, or notice; (ii) distributing any circular, handbill, placard, booklet; (iii) soliciting memberships; (iv) parading, picketing, or demonstrating; and/or (v) failing to follow regulations relating to the use of the Center.

Section 1.18 **Person** shall mean any individual, partnership, firm, association, joint venture, corporation, limited liability company, business trust, or any form of business or governmental entity.

Section 1.19 **Pro Rata** shall mean and refer to a fraction, determined as follows: the number of square feet of the Lot owned by an Owner (whether developed or not) divided by the total number of square feet of all Lots in the Center (whether developed or not).

Section 1.20 **Site Plan** shall mean the site development plan for the Center attached hereto as Exhibit "B" and incorporated herein by this reference, as may be amended from time to time by Declarant.

Section 1.21 **Greenbelt** shall mean the areas of landscaping immediately adjacent to each building.

ARTICLE 2

USE RESTRICTIONS

Section 2.1 **In General.** The Property shall be a commercial subdivision, as reasonably determined by Declarant. No business operation shall be performed or carried out in such manner that such operation or use, in the judgment of the Declarant, is or shall become an annoyance or nuisance to any other portion of the Property or other Owner or Permittee, or which shall in any way interfere with the quiet enjoyment of a Lot. No Owner or Permittee shall carry any merchandise or substance or perform any activity, in relation to the use of its Lot, which would either: (a) cause or threaten the cancellation of any insurance covering the Lot or any other portion of the Center, or (b) increase the insurance rates applicable to any portion of the Center.

Section 2.2 **Prohibited Uses.** Notwithstanding the provisions of Section 2.1 to the contrary, no use or operation will be made, conducted or permitted on or with respect to all or any part of the Property, which use or operation in Declarant's sole and absolute discretion is obnoxious to, or out of harmony with, the development or operation of a first-class commercial subdivision, including, without limitation, the following:

(a) Any use which constitutes a public or private nuisance.

(b) Any use, which produces noise, or sound, which may be heard outside of any Building Lot within the Property, that is objectionable due to intermittence, beat, frequency, shrillness or loudness.

(c) Any use which produces any noxious odor, which may be smelled outside any Building Lot within the Property.

(d) Any use which produces any excessive quantity of dust, dirt or ashes.

(e) Any assembly, manufacture, distillation, refining, smelting, agriculture, or mining operation.

(f) Any drilling for, and/or removal of, any subsurface substance.

(g) Any dumping, disposal, incineration, or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes.

(h) Any unenclosed outdoor storage of materials of any kind.

Section 2.3 **Hazardous Materials.** No Owner(s) or Permittee shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material within the Property or otherwise permit the presence of any Hazardous Material on, under, or about the Property, or transport any Hazardous Material to or from the Property except in strict accordance with all applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof. Each Owner and Permittee shall immediately advise the Board in writing and provide the Board with a copy of: (1) any notices of violation or potential or alleged violation of any laws, ordinances or regulations

which are received by said Owner and/or Permittee from any governmental agency concerning the use, storage, release and/or disposal of Hazardous Materials on or about the relevant Lot; (2) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to such Owner, its Lot(s) and/or the Permittees thereof; (3) all claims made or threatened by any third party against such Owner, its Lot(s) and/or the Permittees thereof relating to any Hazardous Materials; and (4) any release of Hazardous Materials on or about the Property which such Owner or Permittee knows of or reasonably believes may have occurred. The Operator shall not be liable in damages or otherwise due to its receipt pursuant to this Section of information of any kind submitted to Operator relating to Hazardous Materials, and no duty of any kind shall be inferred or imputed to Operator because of its receipt of such information. In no event shall Operator be obligated to make or perform any inquiry, investigation, enforcement, cleanup, removal or take any other action with respect to the presence of Hazardous Materials on any portion of the Property, nor shall Operator be obligated or permitted to take any action with respect to the presence of Hazardous Materials on any portion of the Property. Every person who submits such information to Operator hereunder agrees by submission of such information, and every Owner of any interest in the Property agrees by acquiring an interest therein, that it will not bring any action or suit against Declarant and/or Association to recover any such damages. Each Owner on behalf of itself and its Permittees agrees to indemnify, defend, and hold harmless Declarant, Association, the Board, the ACC, and all other Owners and Permittees from and against any and all claims, judgments, damages, penalties, fines, costs, losses, expenses and liabilities arising from any breach or violation of this Section by such Owner and its Permittees or arising from the presence, storage, use, release or disposal of any Hazardous Materials within the Property by such Owner or its Permittees.

Section 2.4 **Promotional Activities.** There shall be no promotional, entertainment or amusement activities in the Common Area, which would interfere with the use of the Common Area and related facilities, without the prior written consent of Declarant and the Owners of all Lots upon which any such activities are to be conducted.

Section 2.5 **Amendments Regarding Use Restrictions**. Declarant hereby reserves the right, in its sole discretion, to unilaterally amend and/or supplement any of the provisions of this Article 2, by Recording a Supplemental Declaration, provided that no such Supplemental Declaration shall prohibit any operation or use which is properly in effect prior to the Recordation thereof.

ARTICLE 3
EASEMENTS

Section 3.1 **Parking Easements.** Declarant hereby grants, reserves and establishes for the benefit of itself, the Association, and each Owner of a Lot within the Property, for use by Declarant, the Association, all Owners and their respective Permittees, nonexclusive, perpetual easements in, to, over and across all Parking Areas situated within the Property for the purpose of parking vehicles of Owners and

Permittees thereon, limited, however, to purposes connected with or incidental to use of such parking for commercial subdivision purposes. Notwithstanding the foregoing grant, Covered Parking, if any is reserved exclusively for the use of each Building as set forth on the attached Exhibit D and any space designated as "Handicapped Parking" in front of a building is reserved specifically for the Building and its tenants and invitees. Declarant reserves the right to construct Covered Parking and amend Exhibit D to specifically allocate such Covered Parking to one or more Buildings.

Section 3.2 **Access Easements.** Declarant hereby grants, reserves and establishes for the benefit of itself, the Association and each Owner of a Lot within the Property, for use by Declarant, the Association, all Owners and their respective Permittees, nonexclusive, perpetual easements in, to, over and across all Common Area and Greenbelt portions of the Property, including all Parking Areas, for vehicular (including service vehicles) and pedestrian ingress, egress, access and passage, to, from, within and through the Center and any and all Lots situated within the Center.

Section 3.3 **Utility Easements**. Declarant hereby grants, reserves and establishes for the benefit of itself, any and all utility companies providing utility services to the Center., the Association and each Owner of a Lot within the Property, nonexclusive easements in, to, over, and across the Common Area and Greenbelt portions of the Property for the purposes of installation, operation, maintenance, repair, replacement, removal and relocation of underground storm sewer lines, sanitary sewer lines, water and gas mains, lines and equipment, electric power lines, telephone lines and cable and other utility lines (collectively, "**Utility Lines**"), subject to the following:

(a) The installation and relocation of any Utility Lines shall, to the extent reasonably possible, be outside of Building areas and shall be subject, as to location, to the approval of the Declarant and the Owner of any Lot upon which such Utility Lines are to be installed or relocated, such approval not to be unreasonably withheld or delayed. Except with respect to ground mounted electrical transformers, emergency generators and light standards, or as may be necessary during periods of construction, repair, or temporary service, all Utility Lines shall be underground unless required to be above ground by the utility company providing such service. Any party installing Utility Lines pursuant to this Section shall (i) plan and perform such installation and subsequent use of such utilities in a manner so as to minimize interference with existing utilities previously installed within the Property, (ii) pay all costs and expenses with respect thereto, and (iii) cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be diligently completed following commencement of such work. The initial location and width of any Utility Lines to be installed within the Common Area and Greenbelt portions of an Owner's Lot shall be subject to the prior approval of such Owner, such approval not to be unreasonably withheld or delayed. Easement areas for Utility Lines shall be no larger than necessary to reasonably satisfy the utility company as to any public Utility Lines or five (5) feet on either side of the centerline of the easement area

as to any private Utility Lines

(b) Utility Lines may be for the exclusive use of an Owner and its Permittees or for the use of more than one Owner and Permittees collectively. In installing, repairing, maintaining, replacing or relocating any Utility Lines, each Owner exercising the easement rights of this Section shall (i) notify Declarant, the Association and any other affected Owners or Permittees in writing not less than fifteen (15) days prior to commencement of any such work indicating the need for such easement and identifying the proposed location or relocation of the Utility Lines; (ii) make adequate provision for the safety and convenience of all persons using the surface of such areas during the performance of such work; (iii) cause the areas and facilities affected by such work to be replaced or restored to the condition in which they were prior to the performance of such work; and (iv) hold Declarant, the Association and any granting Owner harmless against claims, including costs and attorneys' fees arising from the performance of such work or the use of such easements. The grantee Owner who obtains a Utility Line easement over an adjacent Owner's Lot shall provide to the grantor Owner, a copy of an as-built survey meeting the basic requirements of the American Land Title Association showing the location of such Utility Lines. The Grantor Owner shall have the right at any time to relocate the Utility Lines situated on such Owner's Lot upon thirty (30) days' prior written notice to Declarant, the Association and the grantee Owner, provided that such relocation (i) shall not interfere with or diminish the utility services to the grantee Owner; (ii) shall not reduce or unreasonably impair the usefulness or function of such utility; (iii) shall be performed without cost or expense to the grantee Owner; (iv) shall be completed using materials and design standards which equal or exceed those originally used; (v) shall have been approved by the utility company and the appropriate governmental or quasi-governmental agencies having jurisdiction thereof; and (vi) shall not materially interfere with the use of the Common Area and/or Greenbelt.

Section 3.4 **Additional Easements**.

(a) In order to accommodate any footings, foundations, columns, walls, or eaves which may be constructed or reconstructed immediately adjacent to a boundary line of the building pad and Greenbelt and which may overlap that boundary line, Declarant initially declares the existence or, and each Owner hereby grants and conveys to each other Owner, a non-exclusive easement in, to, over, under and across that portion of the Greenbelt adjacent to such boundary line, in apace not theretofore occupied by any then-existing structure, for the construction, maintenance, and replacement of footings and foundations, to a maximum distance of three (3) feet onto the Greenbelt, and for the construction, replacement, and maintenance of columns, walls, or eaves to a maximum distance of three (3) feet onto the Greenbelt. The grant of easement shall include the reasonable right of access necessary to exercise and enjoy such grant. The easement shall continue in effect for the term of this Declaration and thereafter for so long as the Building utilizing the easement area exists (including a

reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged, or demolished) and shall include the reasonable right of access necessary to exercise and enjoy such grant.

(b) Prior to utilizing the easement right set forth in (1) above, the Owner shall advise the Association of its intention to use the same, shall provide the plans and specifications and proposed construction techniques for the improvements to be located within the easement area, and shall give the Association opportunity to commence any construction activities which the Association contemplates undertaking at approximately the same time to the end that each party involved shall be able to utilize subterranean construction techniques which will permit the placement above ground of improvements on each portion of the property immediately adjacent to the common boundary line. If a common subterranean construction element is used by an owner and the Association, it is specifically understood that each shall assume and pay its reasonable share of the cost and expense of the initial construction and, so long as the owner and the Association are benefiting therefrom, subsequent maintenance thereof. In the event any improvement utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element shall be left in place for the benefit of any improvement utilizing the same located on the adjoining portion of the property.

(c) Should any improvement to be constructed as provided herein inadvertently encroach on any Greenbelt or Common Area surrounding same, the Declarant hereby declares the existence of and each Owner hereby grants and conveys to each other Owner a perpetual easement for such encroachment to the encroaching party; provided, however that such encroachment easement shall lapse in the event the Improvement benefiting from same is thereafter razed and rebuilt, unless the encroachment is necessary for the structural integrity of the rebuilt structure.

Section 3.5 **Drainage Easements.** Declarant hereby grants, reserves and establishes for the benefit of itself, the Association and each Owner of a Lot within the Property, nonexclusive, perpetual easements in, to, over, and across the Property, for reasonable Building roof and surface water drainage and water runoff purposes.

Section 3.6 **Sign Easements**. Subject to the issuance by the appropriate governmental authorities having jurisdiction over the Center of appropriate permits for the installation, construction and operation of one or more pylon signs and/or monument signs for the Center, Declarant hereby grants, reserves and establishes for itself and the Association, together with the right but not the obligation to grant the same to Owners of Lots within the Property, non-exclusive easements to construct, install, use, maintain, repair and replace a pylon and/or monument sign or signs within the Property. With respect to any Permittee identification portions of any pylon sign(s), Declarant hereby reserves to itself together with the right and obligation to grant the same to the Association and the right but not the obligation to grant the same to Owners of Lots within the Property, non-exclusive

easements to install, maintain, use, repair and replace Permittee identification panels only of any such pylon sign(s).

Section 3.7 **Prescriptive Rights.** Notwithstanding anything to the contrary contained in this Declaration, Declarant hereby reserves to itself and the Association the right to close off the Common Area or such portions thereof for such reasonable period(s) of time as may be legally necessary to prevent the acquisition of any prescriptive rights by anyone with respect to the Common Area or any portion thereof; provided, however, Declarant and/or the Association in exercising the rights reserved in this Section shall coordinate any such closing with all Owners and Permittees affected thereby so as to prevent any unreasonable interference with the operation of any business within the Center.

Section 3.8 **Additional Provisions Pertaining to Greenbelt.**

(a) No Owner shall make changes to the Greenbelt adjacent to its Lot without the prior written approval of the ACC.

(b) Declarant further reserves the right to close of such portion of the Greenbelt for such reasonable period of time as may be legally necessary, in the opinion of Declarant's counsel, to prevent the acquisition of prescriptive rights by anyone, provided, however, that prior to closing off any portion of the Greenbelt as herein provided, Declarant shall give written notice to each other Owner and Permittee of its intention to do so and shall attempt to coordinate such closing with the Owners and Permittees so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.

(c) Declarant reserves the right, at any time and from time to time, to exclude and restrain any Person who is not an Owner or Permittee from using the Greenbelt.

Section 3.9 **Amendments Regarding Easements.** No amendment to this Article 3 shall be effective in the absence of Declarant's prior written approval, in Declarant's sole discretion.

ARTICLE 4
ARCHITECTURAL CONTROL

Section 4.1 **Appointment of Architectural Control Committee.** Declarant shall initially appoint the Architectural Control Committee (the "**ACC**"), and shall retain the right to appoint, augment, or replace all members of the ACC for so long as the Declarant owns or controls at least one (1) Lot or at least one (1) of the available voting rights in the Association (or, in Declarant's sole and absolute discretion, such earlier date on which Declarant records a formal termination of Declarant Control Period) ("**Declarant Control Period**"). The ACC shall consist of not less than two (2) nor more than five (5) persons, as fixed from time to time by

Declarant during the Declarant Control Period, and, thereafter, by resolution of the Board. Persons appointed by the Board to the ACC shall be Owners; however, persons appointed by Declarant to the ACC need not be Owners, in Declarant's sole discretion.

Section 4.2 **General Provisions.**

(a) The ACC may establish reasonable procedural rules and may assess a reasonable fee for submission of plans in connection with review of plans and specifications including without limitations the number of sets of plans to be submitted; provided, however, the ACC may delegate its plan review responsibilities to one or more members of such ACC. Upon such delegation, the approval or disapproval of plans and specifications by such person(s) shall be equivalent to approval or disapproval by the entire ACC. Unless any such rules are complied with such plant and specifications shall be deemed not submitted.

(b) The address of the ACC shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Standards shall be kept.

(c) The establishment of the ACC and the systems herein for architectural approval shall not be construed as changing any rights or obligations upon Owners to maintain, repair, alter, or modify or otherwise have control over the Lots as may otherwise be specified in this Declaration, in the Bylaws, or in any Association Rules.

(d) In the event the ACC fails to approve or disapprove such plans and specifications within sixty (60) days after the same have been duly submitted in accordance with any rules regarding such submission adopted by the ACC, such plans and specifications will be deemed approved.

Section 4.3 **Approval and Conformity of Plans.**

(a) No improvements may be erected, placed, altered, maintained, or permitted to remain on any Lot until plans and specifications showing the plot layout and all exterior elevations with materials and colors therefor and structural designs, signs, parking, driveway, walkways, landscaping, and such other drawings, plans, designs, and specifications as are requested by the ACC, have been submitted to and approved in writing by the ACC; provided, however, that the restrictions set forth in this Subsection (a) shall not apply to improvements which are to be erected, placed or altered entirely within a Building which do not affect the exterior or the structural design of a Building. Such plans and specifications shall be submitted in writing over the authorized signature of the Owner or Occupant of the Lot ("**Applicant**") or his authorized agent. The Board, in its reasonable discretion, may adopt and promulgate, and from time to time, amend and/or supplement the Architectural Standards. Architectural Standards adopted by the Board shall apply with

respect to the plans and specifications and the improvements contemplated thereby which are subject to approval by the ACC and shall be administered by or through the ACC. The Architectural Standards shall include, among other things, those restrictions and limitations on Owners and Occupants set forth below:

(i) Reasonable time limitations for the completion of the improvements for which approval is required pursuant to the Architectural Standards;

(ii) Requirements for conformity of completed improvements to plans and specifications approved by the ACC pursuant to this Article 4; and

(iii) Such other limitations and restrictions as the Board in its reasonable discretion may adopt, which may include, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to, or maintenance of, any Building, structure, wall, fence or other improvement, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface, and location of such improvement; the type, location, and elevation of trees, bushes, shrubs, plants. Hedges, and fences; the harmony of exterior design and color in relation to other improvements in the Center, effect of location and use of improvements and landscaping on neighboring property, improvements, landscaping, operations, and uses; relation of topography, grade, and finished ground elevation of the Property being improved to that of neighboring property; proper facing of primary elevations with respect to nearby streets; preservation of view and aesthetic beauty; and so on.

(iv) The Board shall further adopt a procedure by which a prospective Applicant intending to erect improvements on a Lot may submit and obtain the advance approval of the ACC of such prospective Applicant's plans therefor prior to the purchase of a Lot.

Section 4.4 **Nonliability for Approval of Plans.** Plans and specifications are not approved for engineering design or structural matters, and, by approving such plans and specifications, neither the ACC, the members thereof, the Association, the Owners, the Board, nor Declarant, assumes any liability or responsibility whatsoever therefor or for any defect in any structure or improvement constructed from such plans and specifications.

Section 4.5 **Appeal.** In the event plans and specifications submitted to the ACC are disapproved thereby, the Applicant making such submission may appeal in writing to the Board, but only after the Declarant Control Period. The written request shall be delivered to the Board not more than thirty (30) days following the final decision of the ACC. The Board shall submit such request to the full ACC for review, whose written recommendation will be submitted to the Board. Within thirty (30) days following receipt of the request for appeal, the Board shall

render its written decision. The failure of the Board to render a decision within said thirty (30) day period shall be deemed a decision against the appellant. Before the end of the Declarant Control Period, any decision by the ACC shall be final and may not be appealed as provided for by this Section 4.5.

Section 4.6 **Inspection and Recording of Approval.** Any member of the ACC or any officer, director, employee or agent of the Association, at any reasonable time and after not less than twenty-four (24) hours oral notice to the Applicant, may enter, without being deemed guilty of trespass upon any Lot and improvements thereon, in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with plans and specifications approved by the ACC and in accordance with the Architectural Standards. The ACC shall cause an inspection to be undertaken within thirty (30) days of a request therefor from any Applicant as to his Lot, and it such inspection reveals that the portions of the improvements completed as of the date of the inspection, the completed improvements have been completed in compliance with this Article 4, the President and Secretary of the Association shall provide to such Applicant a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance as of the date of the inspection with the provisions of this Article as to portions of the completed improvements inspected, or if the improvements are completed on the date of inspection, then the completed improvements described in such recorded notice, but as to such improvement, portions of, or completed improvements only. The ACC, may in its sole discretion, assess a fee for any previously mentioned inspections requested by an Applicant to defray the expenses of any such inspections.

Section 4.7 **Subterranean Improvements**. No improvement in the Lot, which will extend beneath the surface of the ground for a distance of more than six (6) inches shall be commenced unless plans and specifications therefor have been approved the ACC. Without limiting the generality of the foregoing, the ACC shall not approve plans or specifications for any such subterranean improvements, which interfere with the intended use of the Lot unless adequate provision has been made to mitigate such interference to the satisfaction of the ACC. The procedure used by the ACC for review of subterranean improvements and the rules governing the same shall be the same as those provided for in this Article 4 for the approval by the ACC of other improvements.

Section 4.8 **Completion of Work.** After the commencement of the work with respect to any improvement approved by the ACC in accordance with this Article 4, such work shall be diligently prosecuted so that the improvements shall not remain in a partly finished condition any longer than reasonably necessary for the completion thereof. All construction shall be done so as to cause minimal interference with the business operations conducted from those Buildings already open for business. During the construction, the construction site and surrounding areas shall be kept reasonably clean and free of construction material, trash, and debris, and appropriate precautions shall be taken to protect against personal injury and property damage to the Declarant, other Owners and Occupants, and Permittees. With regard to excavation and without limiting any other provision of this Declaration, no excavation shall be made on, and no sand, gravel, soil, or other

material shall be removed from, the site except in connection with the construction or alteration of improvements approved in the manner set forth in this Article 4, and upon completion of any such operations, exposed openings shall be backfilled and disturbed ground shall be graded, leveled, and paved or landscaped in accordance with the previously approved plans and specifications contemplated in this Article 4. After such completion of the improvements, there shall not be any other material change in the previously mentioned improvements without prior approval in writing by the ACC in the manner contemplated in this Article 4. Failure to comply with this Section shall constitute a breach of this Declaration and subject the defaulting party or parties to all enforcement procedures set forth in this Declaration and/or any other remedies provided by law or equity.

Section 4.9 **Regulation of Improvements.** The following provisions shall govern the erection construction, placement, and alteration of improvements on the Lots. The provisions shall be deemed incorporated into the Architectural Standards, and shall constitute the initial Architectural Standards until additional Architectural Standards are adopted and promulgated by the Board. These provisions may from time to time be amended, modified, and supplemented by the ACC; provided, however, that such amendments, modifications, and supplements shall be subject to all applicable building and zoning laws.

(a) Buildings. All Buildings and structures shall be placed or constructed wholly within the respective building pads and not upon the Common Area or Greenbelt.

(b) Minimum Setback Lines. Unless the ACC shall enact greater requirements, the minimum setback lines throughout the Center shall be those required by the applicable provisions of the zoning ordinances of the applicable governmental jurisdiction.

(c) Sewer Lines. Unless maintained by the Association, all onsite sanitary sewer mains and laterals on each Lot shall be maintained by the Owner of the Lot, from the Building to the point of connection with the publicly maintained sewer line within public right of way.

(d) Signs and Lighting. Lighting shall be restricted to parking and security lights, fire lighting, and low-level sign illumination and floodlighting of Buildings or landscaping or such other lighting as specifically approved in writing by the ACC. All lighting shall be shielded and contained within property lines.

(e) Access. The Owner of each Lot shall have the right to use, for purposes of ingress and egress, the driveways and walkways of the Common Area and Greenbelt.

(f) Parking Area.

(i) Adequate Parking Area shall be designated within the Common Area.

(ii) All Parking Areas shall be paved by the Association in stable manner and with materials approved by the ACC and shall be striped in the manner required by the ACC.

(iii) Exhibit "D" attached hereto and incorporated herein by this reference shall set forth certain covered parking spaces, to be allocated for the exclusive use of the Owners of certain Lots.

(g) Storage Areas. No materials, supplies, equipment or trash containers, or trash or refuse, shall be stored on a Lot except inside a Building.

(h) Building Specifications. Any Building erected on a building pad within a Lot shall conform to the following general construction practices:

(i) Exterior walls of stucco construction, or other construction as specifically approved in writing by the ACC

(ii) Exterior walls shall be painted or finished in a color and manner acceptable by the ACC.

(i) Certain Equipment. No radio, TV, C.B., or other antennae, nor any mechanical or electrical equipment or other improvements shall be placed or maintained on the roof of any Building in the Center, except to the extent that same can be shielded so as not to be visible, and is approved by the ACC prior to installation. All HVAC equipment shall be maintained such that noise levels emitted from such equipment comply with provisions of applicable noise control ordinances and regulations and do not constitute a nuisance.

(j) General Sign Requirements. All signs in the Center shall comply with all governmental requirements applicable thereto and any sign criteria which may be established by the Declarant or by the ACC. Such signs shall be restricted to identification of the Center, the individual business located therein, or the services or products of said businesses, except that ordinary, temporary, tasteful, and not overly large or obtrusive "For Sale" or "For Lease" signs shall also be permitted, subject to requirements and approval of the ARC. In no event, shall there be any rooftop, flashing, or audible signs in the Center, unless allowed by the Sign Criteria adopted from time to time by the Declarant or the ACC.

Section 4.10 **Conform to Applicable Law.** Everything done, installed, or constructed by each Owner or with its permission or consent to or on its Lot shall conform to, and all operations on its Lot, shall, to the best of such Owner's ability, conform to every applicable requirement of all applicable laws, ordinances, rules, and regulations of governmental authority or duly constituted authority. Each Owner shall use its best efforts to conduct or cause the Occupant(s) and Permittees of such Owner's Lot to conduct their activities in conformity with all applicable laws, ordinances, rules, and regulations of governmental authority, and in such manner as not to constitute a nuisance or create unreasonable interference with other Owners and

Occupants of the Center and their Permittees.

ARTICLE 5
ASSOCIATION

Section 5.1 **Organization**. The Green Valley Commerce Center Owners Association shall be, by not later than the date the first Lot is conveyed by Declarant to a purchaser, incorporated as a non-profit corporation under Nevada law. Upon dissolution of the Association, the assets of the Association shall be disposed of in compliance with Nevada law. In no event may the Association be voluntarily wound up and dissolved during the Declarant Control Period without the express written approval and consent of Declarant.

Section 5.2 **Membership.** Every Owner shall be a member ("**Member**") of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and Bylaws of the Association, and the Association Rules, to the extent the provisions respectively thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights, if any, may be regulated or suspended as provided in the Governing Documents. Not more than one membership shall exist based upon ownership of a single Lot.

Section 5.3 **Voting Rights of Members.** Upon the transfer of voting rights to, or vesting of voting rights in, the Members, each Member shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person is the Owner of a Lot, all such Persons shall be one Member, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If any Owner casts a vote representing his Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. Any vote cast with regard to any such Lot in violation of this provision shall be null and void.

Section 5.4 **General Duties and Powers.** In addition to the duties and powers enumerated in the Articles o Bylaws, or elsewhere provided for herein or in Nevada nonprofit corporation law, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article 5. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

(a) Assessments. The power and duty to levy assessments against the Owners, and to enforce payment of such assessments in accordance with the provisions of this Declaration.

(b) Maintenance and Repair of Common Area. The power and duty to cause the Common Area to be maintained in a neat and attractive condition and kept in good repair (which shall include the power to enter into one or

more maintenance and/or repair contract(s), including contract(s) for materials and/or services, with any Person(s) for the maintenance and/or repair of the Common Area), pursuant to this Declaration and in accordance with standards adopted by the Board, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Area.

(c) Other Services. The power and duty to maintain the integrity of the Common Area and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Area.

(d) Insurances. The power and duty to cause to be obtained and maintained the insurance coverages in accordance with the provisions of this Declaration.

(e) Taxes. The power and duty to pay all taxes and assessments levied upon the Common Area (except to the extent, if any, that property taxes on Common Area are assessed Pro Rata on the Lots), and all taxes and assessments payable by the Association, and to timely file all tax returns required to be filed by the Association.

(f) Utility Services. The power and duty to obtain, for the benefit of the Common Area, any commonly metered water, gas and electric services, and the power but not the duty to provide for all refuse collection and cable or master television service, if any.

(g) Easements and Rights-of-Way. The power, as attorney in fact for and on behalf of the Owners (but not the duty) to grant and convey to any Person, (i) easements, licenses and rights-of-way in, on, over or under the Common Area, and (ii) with the consent of seventy-five percent (75%) of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Common Area, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (A) roads, streets, walks, driveways, parkways, park areas and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public Improvements or facilities.

(h) Right of Entry. The power but not the duty, after notice and hearing (except in the event of emergency which poses an imminent threat to health or substantial damage to property, in which event, notice and hearing shall not be required), to enter upon any area of a Lot or Building, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of

maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment pursuant to this Declaration, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment.

(i) Acquiring Property and Construction on Common Area. The power but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The power but not the duty, by action of the Board, and subject to prior written approval of Declarant or ALC and compliance with Article 3 above, to construct new Improvements or additions to the Common Area, or demolish existing Improvements (other than maintenance or repairs to existing Improvements).

(j) Use Restrictions. The power and duty to enforce use restrictions pertaining to the Center.

(k) Licenses and Permits. The power and duty to obtain from applicable governmental authority any and all licenses and permits necessary or reasonably appropriate to carry out Association functions hereunder.

Section 5.5 **Articles and Bylaws.** The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, irreconcilably conflict with any provisions of this Declaration, the provisions of this Declaration shall govern.

Section 5.6 **Association Rules.** The Board, acting on behalf of the Association, shall be empowered from time to time to adopt, amend, repeal and/or enforce reasonable and uniformly applied Rules, which shall not discriminate among Members, for the use and occupancy of the Center, which Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments.

Section 5.7 **Declarant's Control of Board.** During the Declarant Control Period, Declarant shall have the right to appoint and remove all of the directors of the Board ("Directors") and may at any time, with or without cause, may remove or replace any Director. Directors appointed by Declarant need not be Owners.

Section 5.8 **Continuing Rights of Declarant.** Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair of Common Area). After the end of Declarant's Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Project,

or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices, correspondence, and information to Owners. Such notices and information shall be delivered to Declarant at its most recently designated address. Notwithstanding any provision in this Declaration to the contrary, Declarant shall have the perpetual right (but not the obligation) to veto any and all Board resolutions or actions from time to time if Declarant reasonably believes such Board resolution or action contravenes the Governing Documents, or applicable laws or entitlements.

ARTICLE 6
MAINTENANCE AREA EXPENSES; ASSESSMENTS

Section 6.1 **Maintenance Area Expenses.** As used in this Declaration, "**Maintenance Area Expenses**" shall mean and refer to the total of all costs and expenses reasonably paid or incurred by the Association relative to the maintenance, repair, replacement, improvement, operation and management of the Maintenance Area including, without limitation, the following:

(a) The actual costs of improvement, maintenance, irrigation, management, operation, repair, and replacement of the Maintenance Area or any portion thereof;

(b) Unpaid and uncollectible Assessments;

(c) Reasonably competitive costs of management, administration and performance of the Declarant's and the Association's duties and obligations hereunder, including, but not limited to, compensation paid to employees of the Association and the Declarant and reasonable overhead expenses; provided, however, that in no event shall such costs of administration and management exceed fifteen percent (15%) of the total actual Maintenance Area Expenses, exclusive of such costs of administration and management;

(d) Reasonable costs and fees paid to third parties in addition to and not in lieu of costs incurred under subparagraph (3) above, including managers, contractors, attorneys, accountants, architects and engineers providing services and/or otherwise assisting the Association in the performance of its duties and obligations hereunder;

(e) Reasonably competitive cost of utilities (including Maintenance Area lighting), irrigation, gardening, trash and rubbish removal, snow and ice removal and other services for the Maintenance Area, or other areas within or adjacent to the Property, which generally benefit and enhance the value and desirability of the Property and which are not separately paid by the respective Owners of the Lots;

(f) Reasonably competitive costs of any insurance obtained by the Association pursuant to this Declaration, including, without limitation, general liability

insurance, property damage (e.g., fire and casualty) insurance, worker's compensation insurance and other forms of insurance generally obtained by persons or firms performing functions similar to those performed by the Association;

(g) Reasonable costs incurred by the Association to third parties in the formation, implementation, and/or coordination of transit, crime prevention, and/or hazardous waste disclosure or control programs;

(h) Reasonable reserves as deemed reasonably appropriate by the Association;

(i) Any reasonable costs or expenses incurred with respect to the maintenance, repair or replacement of any Center identification sign or signs erected within the Property by Declarant or the Association for the common use of the Owners and Permittees of the Center consistent with the provisions of this Declaration which relate to signs;

(j) Costs of purchasing and/or renting mechanical equipment and the cost of supplies (excluding office supplies), tools and materials used in connection with the performance of the Association's duties under this Declaration;

(k) Real or personal taxes or assessments levied against all or any portion of the Property as a tax unit rather than against a specific Lot or Lots; and

(l) Any other expenses reasonably incurred by or on behalf of the Association in connection with maintenance, management, administration, operation, and/or repair of the Maintenance Area or in furtherance of the purposes of this Declaration or in the discharge of any duties or powers herein described.

Section 6.2 **Procedure of Maintenance Area Expenses.** All Owners shall be billed monthly by the Association on an estimated basis for their Pro Rata share, of all Maintenance Area Expenses for the Center. The Board upon written request of an Owner shall furnish detailed invoices and itemized evidence with respect to all actual Maintenance Area Expenses for the preceding fiscal year. An annual adjustment based on actual Maintenance Area Expenses in such calendar year shall be made by the Association within one hundred twenty (120) days following the close of each calendar year whereby each Owner shall receive a refund or shall pay any additional amount based upon the difference between the actual Maintenance Area Expenses for such year and the estimated amount of such expenses which was paid by such Owner, both within fifteen (15) days of notice thereof. The Association shall keep accurate books and records of all Maintenance Area Expenses for a minimum of two (2) years and Owners shall have the right to audit, at no expense to the Association, and no more frequently than once annually, all such books and records during normal business hours following delivery of not less than thirty (30) days prior written notice to the Association of such Owner's desire to audit the books and records.

Section 6.3 **Regular Assessments.** For purposes of this Declaration, an Owner's share of

Regular Assessments shall be the Owner's Pro Rata share of all Maintenance Area Expenses shown on the Budget for the Property. The square footage of land contained within a particular Lot shall be determined based upon the actual square footage of real property contained within the boundaries of each such Lot, without reduction for any easements, setbacks or other restrictions burdening said Lot, and shall not be reduced by reason of any subsequent conveyance, dedication, offer of dedication, taking by eminent domain or deed in lieu of any such taking of all or any portion of a Lot or Lots within the Property, and shall be determined by the Board in its reasonable discretion, which determination shall be final and binding upon all Owners. If any Owner disputes the amount or validity of any Regular Assessment, the Owner shall nonetheless pay the disputed amount, but may notify the Board that it is paying under protest pending the outcome of an audit of the Association's books and records.

Section 6.4 **Obligation for Assessments.** Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not so expressed therein, is deemed to covenant and agree to pay to the Association (a) Regular Assessments, and (b) Special Assessments; such assessments to be established and collected as hereinafter provided. All assessments, together with interest, late charges, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Maintenance Area. The personal obligation of assessments shall not pass to the successors-in-title of any Owner of a Lot, unless expressly assumed by them.

Section 6.5 **Assessment Commencement Date.** The Board, by majority vote, shall authorize and levy the amount of the Regular Assessment upon each Lot, as provided herein. On the Assessment Commencement Date, Regular Assessments shall commence on all Lots within the Center. The first Regular Assessment for each Lot shall be pro-rated based on the number of months remaining in the fiscal Year. All installments of Regular Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the Assessments on a Lot have been paid. If, in any fiscal year, the Board reasonably determines that the Regular Assessments levied under the current Budget cannot meet the Maintenance Area Expenses, the Board may levy a supplemental Regular Assessment, applicable to that fiscal year only.

Section 6.6 **Budget.** The Board shall adopt a proposed annual operating budget ("**Budget**") at least forty-five (45) days prior to the commencement of each fiscal year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days nor more than thirty (30) days after mailing of the

summary. Unless at that meeting the proposed Budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as previously mentioned, the annual Budget for the immediately preceding fiscal year shall be reinstated, as if duly approved for the fiscal year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

Section 6.7 **Capital Improvement Assessment.** The Board, with the vote of Members representing at least fifty-one percent (51%) of the voting power of the Association, may levy, in any fiscal year, a capital improvement assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Center, including fixtures and personal property related thereto. All such capital improvement assessments must be fixed in the same proportion as Regular Assessments are levied, and may be collected in the manner and frequency as determined by the Board from time to time.

Section 6.8 **Special Assessments**. The Association may levy Special Assessments against specific Owners and/or Occupants who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, Occupants, and their respective Permittees. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent assessments pursuant to this Declaration.

Section 6.9 **Uniform Rate of Assessment.** Regular Assessments, and Capital Improvement Assessments shall be assessed at an equal and uniform rate against all Owners and their Lots, prorated on the respective Pro Rata share of each relevant Lot.

Section 6.10 **Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments herein:

(a) All portions, if any, of the Center dedicated to and accepted by, the United States, the State of Nevada, the County, the City, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for so long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) Any Maintenance Area owned by the Association in fee.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS; ASSOCIATION REMEDIES

Section 7.1 **Nonpayment of Assessments.** Any installment of any Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until

paid, at the rate of ten percent (10%), as well as a late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by applicable law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Maintenance Area or by abandonment of a Lot.

Section 7.2 **Notice of Delinquent Assessment.** If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of delinquent assessment to the Owner and to each first Mortgagee of the Lot, which has expressly requested such notice. The notice shall specify: (1) the amount of Assessments and other sums due; (2) a description of the Lot against which the lien is imposed; (3) the name of the record Owner of the Lot; (4) the fact that the installment is delinquent; (5) the action required to cure the default; (6) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (7) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current fiscal year and sale of the Lot. The notice shall further inform the Owner of its right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and its Lot to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 **Notice of Default and Election to Sell.** No action shall be brought to enforce any assessment lien herein, unless at least sixty (60) days have expired following the later of: (1) the date a notice of default and election to sell is recorded; or (2) the date the recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Lot. Such notice of default and election to sell must recite a good and sufficient legal description of such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Association to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by the Person designated by the Association. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 **Foreclosure Sale.** Any such foreclosure sale may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of Covenants Nos. 6, 7, and 8 of NRS §107.030 and §107.090, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to

bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as set forth above. Notice of time and place of sale shall be provided as required by applicable law.

Section 7.5 **Cure of Default**. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the officers thereof shall record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and recording such release. A certificate, executed and acknowledged by two (2) members of the Board of Directors, stating the indebtedness secured by the lien upon any Lot created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.6 **Cumulative Remedies**. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 7.7 **Mortgagee Protection.** Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the beneficiary under any Qualifying Mortgage (as defined below) encumbering a Lot, made in good faith and for value; provided that after such beneficiary or other Person obtains title to such Lot by judicial foreclosure, other foreclosure, or exercise of power of sale, such Lot shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any Qualifying Mortgage on the Lot. The release or discharge of any lien for unpaid assessments due to the foreclosure or exercise of power of sale by the trustee or beneficiary shall not relieve the prior Owner of its personal obligation for the payment of such unpaid assessments. "Qualifying Mortgage" shall mean a First Mortgage, and any Qualifying Second Mortgage. "First Mortgage" shall mean the first priority Mortgage of record encumbering a Lot. "Qualifying Second Mortgage" shall mean a second priority Mortgage, junior only to a First Mortgage, recorded concurrently with a First Mortgage (i.e., securing SBA 504 financing) or otherwise approved in writing by Declarant or the Board. "Eligible Beneficiary" shall mean a Beneficiary under a Qualifying Mortgage which has notified the Association, in writing, that it is such a beneficiary, with regard to a specified Lot (and said written notification must include the name and address of the beneficiary, and the description and address of the Lot).

Section 7.8 **Priority of Assessment Lien.** Recording of the Declaration constitutes record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all

other liens and encumbrances on a Lot, except for: (a) liens and encumbrances recorded before the Declaration was recorded; (b) a Qualifying Mortgage recorded before the delinquency of the assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges. The sale or transfer of any Lot shall not affect an assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a Qualifying Mortgage shall extinguish the lien of such assessment as to payments, which became due before such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments, which thereafter become due. Where the beneficiary of a Qualifying Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and its successors and assigns shall not be liable for the share of the Maintenance Area Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person. Such unpaid share of Maintenance Area Expenses and assessments shall be deemed to become expenses collectible from all of the Lots, including the Lot belonging to such Person and its successors and assigns.

ARTICLE 8
BUILDING UPKEEP AND MAINTENANCE.

Except as otherwise specifically provided herein each Owner shall provide for appropriate upkeep and maintenance of all improvements located in or on each Owner's Lot in order to assure that the Center and each part thereof is maintained in a safe, clean, and attractive condition and retains at all times the appearance of a first-class Center. Such maintenance shall include, but not be limited to, maintenance, repair, and replacement of the exterior portions of each Building's roof areas, exterior doors, and window glass surfaces.

ARTICLE 9
INSURANCE

Section 9.1 **Insurance on Lot and Improvement**. Each Owner shall, at all times, at its sole expense, maintain insurance on such Owner's Lot and all improvements located thereon, and all fixtures, furnishings, equipment, and contents, as the same may exist from time to time. Said insurance shall be in the amount of the full replacement value thereof as ascertained by the insurance carrier and shall insure against all risks and perils normally covered under an "extended coverage all risk" policy as that term is ordinarily used in the insurance industry.

Section 9.2 **Liability Insurance.** Each Owner shall at all times, at its sole expense maintain a policy of public liability and property damage insurance with respect to such Owner's Lot, the business operated by such Owner, and any Permittees, concessionaires, or licensees of Owner on the Lot with limits of public liability coverage of not less than $500,000 per person and $1,000,000 per occurrence and with limits of property damage liability coverage of not less than $100,000 per accident or occurrence. The policy shall name the Association and any person, firms, or corporations designated by the Association additional insured's.

Section 9.3 **Requirements for Insurance Policies**. Insurance required to be maintained by Owner hereunder shall be in companies holding a "General Policyholders' Rating" of A or better and a "Financial Rating of 10 or better as set forth in the most current issue of "Best's Insurance Guide". Owner shall promptly deliver to the Association, within ten days of close of escrow, original certificates evidencing the existence and amounts of such insurance. No such policy shall be cancelable or subject to reduction of coverage except after sixty (60) days prior written notice to Association. Owner shall, within sixty (60) days before the expiration, cancellation, or reduction of such policies, furnish the Association with renewals or "binders" thereof. Owner shall not do or permit to be done anything, which shall invalidate the insurance policies required under these Covenants, Conditions, and Restrictions. All public liability, property damage, and other liability policies shall be written as primary policies, not contributing with and not in excess of any other coverage, which may be applicable. All such policies shall contain a provision that the Association, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of Owner of the indemnity agreement as to liability for injury to or death of persons or injury or damage to property contained in this Declaration.

Section 9.4 **Lenders**. Any mortgage lender interested in any part of any Owner's Lot, may, at lender's option, be afforded coverage under any policy required to be secured by Owner hereunder by use of a mortgagee's endorsement to the policy concerned.

Section 9.5 **Owner's Failure to Maintain Insurance**. In the event, any Owner fails to maintain such insurance coverage as is required hereunder; the Association may, but shall have no obligation to, obtain such coverage at Owner's expense. The premiums paid by the Association for such insurance plus twenty percent (20%) for overhead shall be reimbursed to the Association by Owner immediately upon presentation of a bill therefor.

Section 9.6 **Waiver Of Subrogation/Blanket Policies and Certificates/No Cancellation or Reduction Without Notice**. The Association and each Owner, on its behalf and on behalf of its insurance company(ies), waives all subrogation and other rights of recovery as it might have against each other and their respective Permittees, agents, servants, employees invitees, and insurers with respect to (1) all perils actually covered by insurance, and (2) all perils required by the terms of this Declaration to be covered by insurance, whether or not such insurance is actually obtained. Any insurance required to be carried by an owner pursuant to this paragraph may be carried by an Owner's Permittee(s) and under a blanket policy or under policies maintained by said Owner or Permittee with respect to other premises or property owned or operated by said Owner or Permittee or its or their subsidiaries or affiliates. Each Owner shall provide to the other Owners proper certificates evidencing the coverages required hereunder. All insurance carried by any Owner shall provide that it shall not be canceled or the coverage reduced below the amount required hereunder without at least twenty (20) days' notice to the other parties.

ARTICLE 10

DAMAGE TO IMPROVEMENTS

Section 10.1 **Reconstruction to Improvements.** In the event of any damage or destruction to any part of any Owner's improvements constructed within its building pad, whether insured or uninsured, such Owner shall be obligated to restore, repair or rebuild the damaged or destroyed area with all due diligence such Owner shall restore and reconstruct such Building and/or improvements to at least as good a condition as they were in immediately prior to such damage or destruction. All such construction shall be accomplished in accordance with the requirements of this Declaration. All such restoration and reconstruction shall be performed in accordance with the following requirements, as the same are applicable thereto:

(a) No such work shall be commenced unless the Owner desiring to perform the same has, in each instance, complied with the appropriate provisions of Article 4 hereof with respect to plan approval;

(b) All work shall be performed in a good and workmanlike manner and shall conform to and comply with:

(i) The plans and specifications prepared therefor as previously mentioned;

(ii) All applicable requirements, regulations, rules, laws, and codes; and

(iii) All applicable requirements of this Declaration.

(c) All such work shall be completed with due diligence and at the sole cost and expense of the Owner performing the same.

ARTICLE 11
EMINENT DOMAIN

Section 11.1 **Condemnation.** If the whole or any part of the real Property comprising the Center shall be taken by right of eminent domain or any similar authority of law (a "**Taking**"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the property so taken or to such Owner's Mortgagees or Permittees, as their interests may appear, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Declaration. Any Owner of any real property which is not the subject of a Taking may, however, file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so take if such claim shall not operate to reduce the award allocable to the Owner of the property taken.

Section 11.2 **Reallocation Following Condemnation.** Following the Condemnation of any Owners Lot or portions thereof ("**Condemnation**"), the Association shall deduct

from the Lot the total square footage of the condemned portions, and shall notify each Owner in writing of the results of such calculation. A Condemnation shall not excuse an Owner from payment of all or any portions of Maintenance Area Expenses due for the year of the occurrence of the Condemnation. However, any and all Maintenance Area Expenses payable thereafter shall be prorated based on the recalculated square footage of the Lot.

ARTICLE 12
RIGHTS OF MORTGAGEES

Section 12.1 **Filing Notice; Notices and Approvals.** A Mortgagee shall be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees when such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Center. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such Mortgages is a First Mortgagee. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 12.2 **Priority of Mortgage Lien.** No breach of the covenants, conditions, or restrictions herein contained, nor in the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot but all of said covenants, conditions, and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise with respect to a Lot except as otherwise provided in this Article.

Section 12.3 **Curing Defaults**. A Mortgagee or the immediate transferee of such Mortgage who acquires title by judicial foreclosure, deed in lieu of foreclosure, or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which occurred prior to the date such Mortgagee acquired the title to a Lot which is nondurable or of a type which in not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is nondurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 12.4 **Resale.** It is intended that any loan to facilitate the resale of any Lot lien of foreclosures or trustee is sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 12.5 **Other Rights of Mortgagees.** Any Mortgagee or its mortgage-servicing contractor shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours; and

(b) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such Mortgagee's Mortgage which default has not been cured within sixty (60) days of a request therefor by the Association; provided however, the Association shall only be obligated to provide such notice to Mortgagees who have delivered a written request to the Association specifying the Lot or Lots to which such request relates.

Section 12.6 **Mortgagees Furnishing Information.** Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage.

Section 12.7 **Conflicts.** In the event of any conflict between any of the provisions of this Section and any of the other provisions of this Declaration, the provisions of this Section shall control.

ARTICLE 13
APPROVAL OF OWNER/DEEMED APPROVAL

Except as otherwise specifically provided herein, if any Owner having a right of approval hereunder fails to give such approval or specific grounds for disapproval within thirty (30) days of receipt of the request therefor (which shall include such background data, including required elevations, as may be necessary to make an informed decision on such request), said Owner shall be deemed to have given its approval. Except as otherwise specifically provided herein, no such approval shall be unreasonably withheld or delayed.

ARTICLE 14
NOT A PUBLIC DEDICATION

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any Person to make any use whatsoever of the Center or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission and subject to control of the Declarant and/or Association.

ARTICLE 15
BREACH SHALL NOT PERMIT TERMINATION

No breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of any of said covenants or restrictions, however, shall not defeat or render invalid

the lien of any mortgage or deed of trust made in good faith for value, but such covenants or restrictions shall be binding upon and effective against the Person acquiring title to a Lot or a portion thereof or interest therein by way of foreclosure, trustee's sale, or otherwise.

ARTICLE 16
INDEMNITY

Section 16.1 **Hold Harmless.** Each Owner (the "**Indemnifying Owner**") shall protect, indemnify, defend, and hold Declarant and each other Owner (the "**Indemnified Owner(s)**") harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of or any accident, injury, loss, or damage, howsoever caused, to any person or loss or damage to the property of any person as shall occur in or about the indemnifying Owner's Lot, except claims resulting from the negligence or willful act or omission of the Indemnified Owner or any occupant of such Indemnified Owner's Lot, or the agent, servants, or employees of such indemnified Owner, wherever the same may occur. Notwithstanding any of the provisions of this Article 16 to the contrary, each Owner for itself and its Permittees waives any right of recovery against the other Owner(s) and their Permittees for any loss, damage, or injury to the extent the same (1) is actually covered by insurance, or (2) would have been covered by such insurance as is required to be carried pursuant to the provisions of this Declaration.

Section 16.2 **Construction Indemnity.** With respect to the obligations undertaken and/or the work to be performed hereunder by or on behalf of any Owner, each such Owner shall protect, indemnify, defend, and save harmless the other Owners and their Permittees against all claims, expenses, liabilities, loss, damage, and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of or any accident, injury, loss, or damage, howsoever caused, to any person or loss or damage to the property of any person as shall occur in or about the indemnifying Owner's Lot, except claims resulting from the negligence or willful act or omission of the Indemnified Owner or any occupant of such Indemnified Owner's Lot, or the agent, servants, or employees of such indemnified Owner, wherever the same may occur. Notwithstanding any of the provisions of this Article 16 to the contrary, each Owner for itself and its Permittees waives any right of recovery against the other Owner(s) and their Permittees for any loss, damage, or injury to the extent the same (1) is actually covered by insurance, or (2) would have been covered by such insurance as is required to be carried pursuant to the provisions of this Declaration.

ARTICLE 17
CONFORMITY TO LAWS

Each Owner shall maintain, or cause to be maintained, in a safe and clean condition and in good order and repair, the Building and improvements which may from time to time be

located within its building pad, so that said Building and improvements conform to, and comply with, all applicable laws, ordinances, rules, and regulations of any governmental authority having jurisdiction with respect to construction and maintenance of the Center and the health and safety of the Owners, Permittees occupants, business invitees, customers, and other Persons using the Center and in such a manner as to not constitute a nuisance or create unreasonable interference with occupants of the Center and their customers and business invitees.

Each Owner shall pay, or cause to be paid by such Owner's Permittees when due all real estate and personal property taxes and Assessments which may be levied, assessed, or charged by any public authority against such Owner's Lot the improvements thereon, or any other part thereof. If an Owner shall deem any property tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, such owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Article shall require such Owner to pay any such real property tax or assessment as long as (i) no other Owner's Lot would be immediately affected by such failure to pay (or bond); and (ii) the amount and/or validity thereof shall be contested in good faith. If the failure to pay for bond, such real property tax or assessment affects another Owner's Lot, such other Owner shall 'have the right to pay such tax and shall have the lien an the nonpaying Owner's Lot for the amount so paid until reimbursed for such payment. Any such lien shall be subject and junior to, and shall in no way impair or defeat, a lien or charge of any Mortgagee.

ARTICLE 18
CONSTRUCTION BY DECLARANT

Section 18.1 **General.** Nothing in this Declaration shall limit the right of Declarant to alter any Lot or to construct such improvements, as Declarant deems advisable before Declarant's sale of such Lot. Such right shall include, but not be limited to, erecting, constructing, and maintaining on the unsold Lots such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same by sale, lease, or otherwise. This Declaration shall not limit the right of Declarant, at any time prior to acquisition of title by a purchaser, to establish on the Property subject hereto additional licenses, reservations, and rights of way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The rights of Declarant hereunder may be assigned to any successor or successors to Declarant's interest in the Property by an express assignment transferring such interest to such successor. Declarant shall exercise its rights contained in this provision in such a way as not to unreasonably interfere with the any other Owner's right to use and enjoy its Lot.

Section 18.2 **Declarant Exemption.** Any and all improvements built, constructed, erected, repaired, or replaced by Declarant on the Common Area or on any Lot shall not be subject to the provisions of Article 2 ("Use Restrictions") or Article 4 ("Architectural Control").

Section 18.3 **Amendment**. The provisions of this Article 18 may not be amended without the written approval and consent of Declarant, and any purported amendment in violation of the foregoing shall be void.

ARTICLE 19
MISCELLANEOUS

Section 19.1 **Notices.** All notices hereunder shall be in writing and addressed to the recipient at such addresses as each shall supply to the others in the manner hereafter provided. All notices given pursuant to this Declaration shall be deemed received upon personal delivery or, if mailed, upon expiration of four (4) business days after mailing or, if sent by express delivery service, upon expiration of one (1) business day after pickup by such express delivery service, unless actually received sooner. Each party may change its address by written notice to the other Owner(s) given in the manner hereinabove stated.

Section 19.2 **No Joint Venture.** The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted to create a joint venture, a partnership, or other similar relationship between the parties.

Section 19.3 **Captions/Headings.** The captions heading the various articles and/or sections of this Declaration are for convenience and identification only and shall not be deemed to limit or define the contents of their respective sections.

Section 19.4 **Entire Declaration.** This Declaration contains the entire agreement between the parties hereto with respect to the Subject matter hereof and supersedes all prior written or verbal agreements with respect thereto. This Declaration may not be modified without the written agreement of all of the Owners.

Section 19.5 **No Waiver.** The failure of an Owner or of the Association to insist upon strict performance of any of the provisions of this Declaration shall not be deemed a waiver of any rights or remedies that such Owner or the Association may have and shall not be deemed a waiver of any subsequent breach or default of any of the obligations contained herein by the same or any other party.

Section 19.6 **Time of Essence.** Time is of the essence with respect to matters in this Declaration wherein time limitations are mentioned.

Section 19.7 **Remedies Cumulative.** All remedies provided in this Declaration shall be deemed cumulative. Therefore, notwithstanding the exercise by a party of any remedy hereunder, such Owner shall have recourse to all other remedies as may be available at law or in equity.

Section 19.8 **Binding Effect/Covenants Running With the Land.** The covenants contained in this Declaration shall constitute covenants running with the land and shall be binding upon, and shall inure to the benefit of the Center and any portion thereof or interest therein and any Person having or acquiring any portion of the Center or any interest therein and their successive Owners and assigns.

Section 19.9 **Recordation**. This Declaration shall be recorded in the official records of Clark County, Nevada and this Declaration shall be effective upon such recordation.

Section 19.10 **Governing Law.** This Declaration and the obligations of the parties bound

hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Nevada.

Section 19.11 **Counterparts.** This Declaration may be executed in any number of counterparts, each of which, when fully executed, shall be deemed to be an original, and all of which together shall deemed to constitute one and the same instrument.

Section 19.12 **Estoppel Certificate.** Upon the written request of any Owner, the Board shall provide such owner with a written certificate stating that, to the best of its actual knowledge, the Owner or Owner's Lot is not in violation of any of the provisions of this Declaration and the Board has not received written notice from any Owners stating that the Owner or Owner's Lot is in violation of this Declaration, or if there are any such violations or the Board has received such notices, stating in sufficient detail the nature Of such violations. The Board shall deliver the certificate to the Owner no later than thirty (30) days after such request. The Board may charge the Owner a reasonable fee to recover its costs in researching and preparing the certificate. Any prospective purchaser or Mortgagee of the Owner's Lot shall be entitled to rely an the information contained in the certificate; provided however that such reliance may not extend to any violations of this Declaration of which the Board does not have actual knowledge or which have not been brought to its attention by written notice of an Owner. To the fullest extent permitted by law and provided the Board, the Association, any committee of the Association or Board and any members thereof, and any officers of the Association or Board, acted in good faith and consistent with what they reasonably believed to be within the scope of their authority and duties, neither the Board, the Association, any committees of the Association or Board, any members thereof, or any officers of the Association or Board shall be liable to the Owner requesting the certificate or any other Owner of a Lot for any damage, loss or prejudice suffered or claimed an account of the failure to supply such certificate or on account of any information contained in the certificate being incomplete or inaccurate and said was actually unknown to any of the above Persons.

Section 19.13 **Mechanics' Liens.** If an Owner (the "**Responsible Owner**") shall permit or allow any mechanic's liens to be filed against another Owner's Lot (an "**Affected Owner**") the Responsible Owner shall either pay the same and have it discharged of record, promptly, or take such action as may be required to reasonably and legally object to such lien and the placing of same against such Affected Owner's Lot, and in all events the Responsible Owner shall cause the lien to be discharged prior to the entry of judgment for foreclosure of such lien. Upon request of an Affected Owner, the Responsible Owner shall furnish such security or indemnity as may be required, to and for the benefit of such Affected Owner to permit a title endorsement or title policy to be issued relating to such Affected Owner's Lot without showing thereon the effect of such lien.

Section 19.14 **Duration.** This Declaration and each term, easement, covenant, restriction and undertaking contained herein will remain in effect for a term of fifty (50) years from the recordation date hereof and will automatically be renewed for successive ten (10) year periods unless the Owners of sixty-six and two-thirds percent (66 2/3%) or more of the Lots comprising the Center elect In writing not to so renew;

provided, however, that the easements referred to in this Declaration which are specified as being perpetual or as continuing beyond the term of this Declaration shall continue in force and effect as provided therein. Upon termination of this Declaration, all rights and privileges derived herefrom and all duties and obligations created and imposed hereunder, except as relate to the easements mentioned above, shall terminate and have no further force or effect, provided however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity which may be available with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

Section 19.15 **Severability.** If any clause, sentence, or other portion of this Declaration shall become illegal, null, or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

Section 19.16 **Attorneys' Fees/Costs**. Should suit or legal action be instituted to enforce any of the foregoing terms, covenants, conditions, restrictions, and encumbrances, then the losing party, in addition to any judgment, order, or decree agrees to pay the prevailing party its reasonable attorneys' fees and court costs as may be awarded by the trier of fact adjudging or decreeing such suit or action.

Section 19.17 **Force Majeure.** If any Owner or any other party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots or insurrections, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed a cause beyond the control of such party.

Section 19.18 **Rules.** Each Owner shall observe and comply with, and shall cause its respective Permittees to observe and comply with, such Rules as the Association may adopt from time to time. Amending the Rules shall not require the amendment of this Declaration. The Association shall enforce the Rules.

Section 19.19 **Enforcement.** The Association, for any Owner, or both, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, and reservations now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. Without limiting the generality of the immediately preceding sentence the Association, or any Owner, or both, shall have the right to enforce as equitable servitudes all restrictions, conditions, covenants, and reservations now or hereafter imposed by the provisions of this Declaration or any amendments thereto. The Association, or any Owner, or both, shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or Bylaws and any amendments thereto. With respect to architectural control, Maintenance Area Expense liens, or other liens or charges

and Association Rules the Association shall have the exclusive right to the enforcement thereof.

Section 19.20 **Nuisance.** The result of every act or omission whereby any provision, condition, restriction, covenant, easement, or reservation contained in the Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 19.21 **Nonliability of Officials.** To the fullest extent permitted by law, neither the Board, the ACC, any other committees of the Association, any member of such Board or committee, nor any officer of the Board or Association shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications whether or not defective, course of action, act, omission, error, negligence, or the like made in good faith or which such Board, committees, or Persons reasonably believed to be within the scope of their duties.

Section 19.22 **Leases.** Any agreement for the leasing or rental of a Lot or any Building thereon (hereinafter in this Section referred to as a **"Lease")** shall provide that the terms of such Lease shall be subject in all respects to the provisions of this Declaration the Articles, the Bylaws, and the Association Rules. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing document shall be a default under the Lease. All Leases shall be in writing. Any Owner who shall lease his Lot or Building thereon shall be responsible for assuring compliance by such Owner's lessee with the Governing Documents.

Section 19.23 **Construction.** Unless the context otherwise requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural includes the singular.

Section 19.24 **Amendments/Repeal.** Except as otherwise provided in this Declaration, neither this Declaration nor any provision hereof or any covenant, condition or restriction herein contained, may be terminated, extended, modified or amended, as to the Center or any portion thereof, except with approval of Declarant and recordation of the same.

(a) Notwithstanding the foregoing, and in addition to any other rights which Declarant may have to amend this Declaration as provided elsewhere herein: (A) before the close of the conveyance by Declarant of a Lot to the purchaser thereof, this Declaration may be unilaterally amended in any respect, or revoked, by Declarant's unilateral execution of an instrument amending or revoking the Declaration, and (B) Declarant may unilaterally, without the consent of any other Owners, make and record additions, deletions or amendments to this Declaration for the purpose of correcting ambiguities or technical errors, or for the purpose of clarification, or otherwise to ensure that the Declaration conforms with the requirements of

entitlements and applicable laws.

(b) Subject to the foregoing, thereafter, this Declaration may be amended or modified only by the affirmative vote or written ballot or written consent of Members representing at least two-thirds (2/3) of the voting power of the Association.

(c) Any amendment recorded in accordance with this Section shall be conclusive in favor of all Persons who rely upon it in good faith.

Section 19.25 **Amendment of Map.** By acceptance of a deed conveying a Lot in the Center, whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and its successors and assigns, to unilaterally execute and record amendment(s) to the recorded commercial subdivision map of the Center ("**Map**"), provided that no such amendment may change the boundaries of any Building, change the uses to which any Lot is restricted, without the unanimous consent of all Owners whose Lots are so affected.

Section 19.26 **Effective Upon Recordation.** This Declaration shall be effective upon, from and after Recordation hereof in the Office of the County Recorder for Clark County, Nevada.

IN WITNESS WHEREOF, this Declaration is executed by Declarant as of the date first above written.

Green Valley Commerce LLC
a Nevada limited-liability company
By: its Manager,

By: _____
Shawn Bidsal
aka SHAHRAM BIDSAL

STATE OF NEVADA)
)
COUNTY OF CLARK)

This instrument was acknowledged before me on this_____day of March, 2012, by Shawn Bidsal, as Manager of GREEN VALLEY COMMERCE LLC, a Nevada limited-liability company.

NOTARY PUBLIC
(Seal)

State of California
County of LOS ANGELES } 55.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On MARCH 15, 2012 (Date), before me, GEORGE MARTINEZ, NOTARY PUBLIC (Printed Name of Notary Public),

personally appeared SHAHRAM BIDSAL (Printed Name(s) of Signer(s)),

- [ ] personally known to me - or -
- [X] proved to me on the basis of satisfactory evidence:
  - [ ] form(s) of identification CALIFORNIA D/L V8124133
  - [ ] credible witness(es)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

GEORGE MARTINEZ
Commission # 1813914
Notary Public - California
Los Angeles County
My Comm. Expires Oct 2, 2012

(Seal)

Signature of Notary Public

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document

titled/for the purpose of DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS,

containing 41 pages, and dated _____.

The signer(s) capacity or authority is/are as:

- [ ] Individual(s)
- [ ] Attorney-in-Fact
- [ ] Corporate Officer(s) _____ (Title(s))
- [ ] Guardian/Conservator
- [ ] Partner - Limited/General
- [ ] Trustee(s)
- [ ] Other: _____

representing: _____ (Name(s) of Person(s) or Entity(ies) Signer is Representing)

Additional Optional Information

- [ ] Additional Signer(s)
- [ ] Signer(s) Thumbprint(s)
- [ ] Other