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 37

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CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration) vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31 **CLA'S REPLY IN SUPPORT OF MOTION TO VACATE [PARTIALLY] ARBITRATION AWARD** Date of Hearing: November 9, 2022 Time of Hearing: 8:30 a.m.

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CLA Properties, LLC, ("CLA"), Respondent in the arbitration and Movant in this Court, replies to the Opposition ("Opp.") of Shawn Bidsal ("Bidsal") to CLA's Motion To Vacate (In Part) Arbitration Award and For Entry of Judgment. CLA is owned by Benjamin Golshani ("Golshani").[1]

On August 3, 2017, Bidsal was in control of Green Valley's books, records and cash. The Nevada Supreme Court has confirmed that on that date, CLA became entitled to purchase Bidsal's membership interest in Green Valley. But for over four and one-half years, Bidsal refused to

[1] CLA's exhibits are included in an Appendix and are identified by Appendix page number as "PX" and exhibit ("Exh.") with any page numbers here cited being the numbers within the exhibit itself. Exhibits affixed to Bidsal's Opposition are identified as "Opp. Exh."

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surrender that control. Using that control, Bidsal distributed to himself Green Valley's cash during that four and one-half years. CLA sought a return of that cash. The arbitration Award denied CLA that relief. CLA seeks a Judgment vacating the Award to that extent and instead ordering Bidsal to pay CLA the amount of those distributions plus interest. The amount thereof (taken in 2017-2019) as of the time the evidence taking in the terminated arbitration proceeding is $514,500[2]. The goal of the Motion is to permit CLA to recover those distributions.

Bidsal in his Opposition raises many points equally irrational with the Award, and because of the more than half-million dollar importance of this Motion, CLA must avoid being insouciant. That results in this Reply being lengthy.

I.

SUMMARY OF CORE FACTS

A. Introduction

We apologize if what follows are matters which Your Honor is well-aware and well remembers from 2019 when the dispute between its members was last before Your Honor.

As much as Bidsal would like to continue to re litigate the issues that have been now decided three times (by Judge Haberfeld, Your Honor, and the Nevada Supreme Court), and which are irrelevant to the issue at hand, which is what is the "effective date" of the sale of Bidsal's membership interest in Green Valley for the determination of the rights to the benefits and burdens of that membership interest. CLA's claim is (i) that the Operating Agreement provides that the sale of the membership interest should have closed within 30 days after acceptance, (ii) that Bidsal cannot refuse to proceed and delay that sale for 4 1/2 years taking all of the benefits that should have been CLA's, (iii) that regardless of a dispute over the application of the formula to determine the price to be paid, CLA was the equitable owner of all of the rights and burdens of that membership

[2]CLA misstated the amount in the moving papers as only $500,500. An exhibit submitted by Bidsal shows each of those distributions and adding them up shows the true amount is $514,500.

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interest as of the date that the sale should have been consummated; and (iv) that the Arbitrator's ruling effectively rewrote the agreement denying CLA the benefit of its bargain under the contract, and well established Nevada law, and was irrational, arbitrary and capricious.

B. Brief Overview Of The Facts

Green Valley owns buildings in which it leases space. The only benefit to Green Valley of the buildings owned by Green Valley are the rentals it collects from leasing space.

On August 3, 2017, CLA exercised its right to purchase Bidsal's membership interest in Green Valley using in the formula to determine the purchase price the fair market value of Green Valley("FMV") theretofore asserted by Bidsal in his offer to buy CLA's membership interest. (PX 921, Exh. 154). In its election to buy, CLA told Bidsal not to make any further distributions.[3] On August 5, 2017, Bidsal (through his counsel) responded claiming a non-existent right to have Green Valley appraised as grounds for not proceeding to conclude the sale. That began the disputes between Bidsal and CLA.

On August 15, 2017, Golshani wrote to Bidsal in part saying he was planning to open escrow (PX 1832, Exh. 175). The next day Bidsal responded in part saying, "we cannot open any escrow since we do not agree on this matter." (Id.) For the next four and one-half years, Bidsal never waivered from that position.

On that same day Bidsal's counsel wrote to CLA's counsel, "Mr. Bidsal is ready to proceed forward with arbitration." (PX 1837, Exh. 176.) As will be noted below, Bidsal's current position (like the Arbitrator's Award) is that notwithstanding his refusal to enter into an escrow and his counsel's stating he would "not move forward," CLA should nonetheless have paid him for the membership interest, and CLA's failure to do so delayed the date when the benefits of ownership of that membership interest should change.

[3] It must be noted that CLA was a co-manager of Green Valley at this time.

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On August 28, 2017, CLA notified Bidsal that he had the money to complete the purchase and provided evidence of his having the necessary funds and asked that escrow be opened to complete the purchase (Exh. 14 to Opposition). Bidsal's response (on August 31st through his counsel) was to deny the obligation to close escrow or close the sale based on his offer, and again demand the nonexistent right to an appraisal (PX 2951, Exh. 205). Thus, the matter proceeded to arbitration before Judge Stephen Haberfeld, Ret.

As will bear repeating below, had CLA done as Bidsal argues, that is attempted to open an escrow without Bidsal's joining, just to deposit its money, not only would it have been an idle act, but it would also have been so foolish as to border on making Golshani certifiably insane. As it turns out, had CLA been able to deposit funds into an escrow without joinder by Bidsal, it would have remained there for almost five years. From as early as 1929, it has been recognized that "[T]he law does not require idle acts." *Allenbach v. Ridenour*, 51 Nev. 437, 279 P. 32,37 (1929). No one would have benefitted had CLA been able to convince some escrow holder to accept and keep its money while Bidsal refused to participate in any escrow or the sale.

In the first arbitration, Judge Haberfeld found Bidsal's position meritless and determined that CLA was entitled to so purchase Bidsal's membership interest using the FMV Bidsal had set, and that Bidsal had no right to demand an appraisal to determine FMV. (Opp. Exh. 17) Your Honor issued a Judgment not only concurring, but independently agreeing with Judge Haberfeld's Award (PX 169, Exh. 114). To avoid being forced to transfer his membership interest, Bidsal appealed and sought and obtained a stay of execution enabling him to avoid being forced to transfer his membership interest. (PX 2123, Exh. 194.) After that CLA's tendering the price would have been an equally idle (and foolish) act.

Bidsal instituted a second arbitration to fix the remaining elements of the formula as provided in the Green Valley Operating Agreement to determine the purchase price, but never once,

either before filing his arbitration demand or even in his arbitration demand did he ever set forth what he contended the amount of the other elements of the formula were or even what he conceded the amount was to be paid. (Opp. Exh. 18).

The Nevada Supreme Court rejected Bidsal's appeal on March 17, 2022 (Opp. Exh. 21) ending Bidsal's refusal to transfer his interest, and CLA paid the full amount determined by the Arbitrator, within seven days thereafter! (Opp. Exh. 21 and 24.)

So, at all times since CLA's right to purchase Bidsal's interest arose in August, 2017, Bidsal prevented the transaction from closing. First, by use of self-help in simply refusing to proceed, and then after being ordered to transfer in the Judgment confirming the Award against him in the first arbitration by obtaining a stay of execution on that Judgment.

But starting after August of 2017 and continuing while Bidsal at all times refused to transfer his interest, insisting that CLA had no right to buy based on the fair market value he set in his offer[4], and while he was in control of Green Valley's cash, after September 2, 2017, Bidsal distributed to himself $514,500 from Green Valley. CLA sought the return of that money in the second arbitration claiming the Bidsal's rights to distributions terminated as of the date the sale should have closed which, per the Operating Agreement was 30-days after acceptance (i.e. September 2, 2017).

C. The Effect Of The Arbitrator's Ruling

The Arbitrator ruled that since the purchase price for Bidsal's interest had not been paid during the four and one-half years that Bidsal was refusing to transfer, the time that the transfer

[4] The Specific Intent language made it clear that the offer was to buy or sell based on the offered FMV:

"The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) and according to the procedure set forth in Section 4.. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s)". (Section 4.2 of Operating Agreement Exh. 9).

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should be made had not yet arrived, and that until it did arrive, Bidsal was entitled to diminish the value of Green Valley by taking its cash notwithstanding the fact that the purchase price for Bidsal's membership interest in Green Valley was calculated as of August of 2017. (Section 4.2 of Opp. Exh. 9).

But the provisions of the Green Valley Operating Agreement governing one member's buying out the other called for the escrow handling the transfer to close in 30 days from the Remaining Member's (here CLA) acceptance of the fair market value which the Offering Member (here Bidsal) stated in his offer. (Section 4.2, pg 11 of Opp. Exh. 9.) In this case that thirty days expired in early September 2017.

While the Arbitrator acknowledged that he had no right to revise the agreement of the parties, his ruling, in effect, did exactly that, and that is what CLA's Motion to Vacate seeks to correct. Bidsal does not dispute the authorities cited in the Motion that an arbitrator's recognizing the law (here that he may not rewrite and change the contract terms), and then nonetheless disregarding the law (here changing those terms) constitutes the manifest disregard of the law which is a ground for vacating an award.

But even had there been no such provision within the Operating Agreement, allowing a seller to drain the business being sold by simply refusing to proceed with the sale is irrational, capricious and arbitrary, each a separate ground for vacating an award, as shown by the authorities in the Motion and which, again, the Opposition does not dispute.

Let it be made clear there has been no evidence presented that CLA refused pay Bidsal for the transfer of his membership interest. None! Never! So, when at Opp. 30:6 Bidsal says that his "refusal to transfer his membership interest without being paid did not repudiate the contract" this is just one of many Bidsal's "Red Herrings" to attempt to avoid dealing with the real issue. The evidence is irrefutable that Bidsal never said he refused to transfer unless he was paid; what he said

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was he refused to transfer using the FMV he put in his offer, a refusal that every court that has heard this case has rejected.

II.

THE TRANSACTION WAS TO CLOSE WITHIN 30 DAYS AFTER THE REMAINING MEMBER'S ACCEPTANCE THE FAIR MARKET VALUE STATED IN THE OFFER (EFFECTIVE DATE) THAT IS WHEN CLA BECAME ENTITLED TO THE BENEFITS OF BIDSAL'S MEMBERSHIP INTEREST AND THE AND THE ARBITRATOR'S RULING THAT THE EFFECTIVE DATE HAD NOT YET ARISEN REWRITES THE CONTRACT

As above stated, the issue here is when does the benefits and burdens of membership interest ownership change (vest). The provision in the contract (the Operating Agreement) establishes that it was in 2017 when the entitlement to all the benefits of Bidsal's membership interest passed to CLA, and not in 2022, as the Arbitrator ruled (and Bidsal contends).

In paragraph starting at Opp. 23:1 Bidsal claims the 30-day provision does not apply because he never stated an "offered price." Bidsal reaches that erroneous conclusion by misstating the meaning of "offered price." Bidsal argues that "offered price" means the purchase price for the membership interest, and Bidsal's offer never included a purchase price so therefore there was no "offered price," and, so he argues since there was no offered price the 30-day provision did not apply. Since Bidsal's premise is false (offered price means purchase price), his conclusion is wrong. That is the same argument Bidsal made in the first arbitration, and it was rejected there, and should be rejected here.

A review of the Operating Agreement clearly shows that the escrow to purchase the membership interest was to close 30 days after CLA accepted Bidsal's offer [which as determined by Your Honor's judgment and the Nevada Supreme Court effectively was an offer to either buy or sell] with the price to be paid determined as of July 7, 2017 (the date of Bidsal's valuation PX 919, Exh. 153) and when CLA rights to the benefits of Bidsal's membership interest became fixed. Below

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are the relevant portions of the Operating Agreement regarding the CLA's exercise of its option to buy.

> **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. . .
>
> **Section 4.2 Purchase of 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 . . . (Emphasis added.) (Pg 11 of Opp. Exh. 9.)

The definition of "Offering Member" in Section 4.1 is a member who makes an offer. When Section 4.2 refers to "notice" by an Offering Member, it therefore can only mean an offer. In context, the word "acceptance" from which the 30 days runs is the Remaining Member's acceptance of the fair market value (FMV) stated in the Offering Member's notice which, as noted, was confirmed three times, was an offer to buy or sell. That is proved in a few ways.

The second paragraph of Section 4.2 begins by saying what happens if the "offered price" (which we below show can only mean the fair market value in the notice) was not "acceptable" to the Remaining Member. Within eight words, the words "acceptance" and "acceptable" appear. Concluding that to which "acceptable" refers (the fair market value) is not that to which "acceptance" refers would be ludicrous, and the Opposition does not so contend. So if that which is "not acceptable" is the fair market value in the notice the reference to "acceptance" eight words earlier must likewise be of the fair market value in the notice.

Second, the nearest antecedent to "acceptance" which is something of which there could be an "acceptance" is what "the Offering Member thinks is the "fair market value" referred to in the

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immediately prior sentence. In other words, that to which the "acceptance" refers is "acceptance" by the Remaining Member of the FMV stated in the offer.

Finally, there is nothing in Section 4.2 before the word "acceptance" which could be the subject of being accepted or not accepted other than the fair market value offered in the notice. And acceptance means acceptance of amount set forth as the fair market value to buy or sell.

There can be no doubt but that "offered price" means the fair market value stated by the Offering Member in his offer. The first sentence of Section 4.2 refers to "a price the Offering Member thinks is the fair market value," thereby equating "price" and "fair market value." There is no amount that could be considered a "price" "offered" other than the amount stated as the fair market value. Thus, the term "offered price" is used both here and in the final paragraph of Section 4.2 to refer to the fair market value stated in the offer. The offered priced is the FMV which is then to be used to compute the purchase price using the formula.

If Bidsal's argument were accepted, then the 30-day provision could never apply and would be meaningless because the provision calls for the notice to include amount of fair market value, not the purchase price as determined by application of a formula. To comply with Section 4.2, the notice would never state the purchase price; it would only state the fair market value to which the formula would then be applied. Only if offered the price meant fair market value could the 30-day provision have meaning. As stated in *Musser v. Bank of Am*, 114 Nev. 945,949, 964 P.2d 51, 54 (1998) cited on page 18 of CLA's Motion, "every word must be given effect if at all possible." Bidsal's interpretation would make the provision meaningless and without any effect.

The Operating Agreement used the term "price" as stated by an Offering Member in his notice as an equivalent for "fair market value." When "offered price" is then used as in the second paragraph quoted above, it must likewise mean the fair market value included in the offer. Bidsal's

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attempted distraction (Opp. 23:6) that he "did not offer a price" is simply wrong. The FMV in his offer was the "offered price" which CLA accepted in electing to buy instead of sell.

When CLA accepted the fair market value (offered price) set by Bidsal in his offer (Opp. Exh. 3), that triggered the 30-day provision to close escrow applied. That CLA's acceptance constituted acceptance of the offered price or Bidsal's stated fair market value, and that acceptance set the fair market value was the entire issue decided in the first arbitration and the Judgment confirming the award therein.

And the above is not just CLA's interpretation. CLA pointed out in its moving papers that Bidsal's counsel stated exactly that on March 17, 2021, when he represented to the Arbitrator that "[U]nder the terms of the operating agreement, it's very specific about what is supposed to happen. They're supposed to close escrow within 30 days." [Exh. 264, PX 5256, pg 43.] Noteworthy is that Bidsal's Opposition does not deny or even attempt to explain away that statement. To the contrary, Bidsal in effect repeats it at Opp. 8:25 where he says, "Section 4 makes it clear that any forced sale is a cash sale which is expected to close within 30 days." And on what did Bidsal's counsel there rely for that statement–the very provision being discussed, "('The terms to be all cash and close escrow within 30 days of the acceptance.')" (Opp. 8:27.)

Actually, Bidsal's counsel made it even clearer that the sale was supposed to close 30-days after his proposed fair market value was accepted by CLA. Right after the portion of the transcript at Exh. 264, PX 5256, pg. 43 quoted above. Bidsal's counsel continued: "They had an obligation under the operating agreement to pay what the amount was that they thought that the formula was within 30 days." "They" (CLA) could not have had an obligation to pay within 30-days unless the rights and obligation attaching to the membership interests were to change by closing the sale (effective date) in 30-days and the only 30-days that is mentioned is the 30-days after CLA's acceptance of Bidsal's statement of fair market value.

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At Opp. 12:11, Bidsal argued that the Operating Agreement "provides no timeline or deadlines by which this Forced Sale must be completed." But as CLA just set out, it does, and Bidsal's counsel has now twice acknowledged that it does.

The balance of this Reply addresses the purported bases on which the Arbitrator and/or Bidsal attempt to support the unavoidable conclusion that Bidsal was not entitled to take those distributions.

III.

EXAMINATION OF WHAT THE AWARD PROVIDES

How did the Arbitrator explain his finding that the date the sale should have closed had not yet even arrived in face of the contract provision which both parties stated called for the escrow to close in 30-days from "acceptance" of the offered FMV? The Arbitrator did not. The Arbitrator just ignored the provision and rewrote the agreement to provide that the date the sale should close (effective date) was not until it did close. That disregards the Operating Agreement and in so doing disregards the law that he cannot rewrite the agreement. That is arbitrary. That is irrational and that is capricious.

In treating the issue, it is helpful to bear in mind what the Arbitrator's Award (pg. 23 of Opp. Exh. 20) says, along with CLA's response (injected in italics) with emphasis added:

- "The transaction has never been completed." (*Agreed–but not the issue*)
- "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." (*That issue was not before Judge Haberfeld.)*
- "The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed." (*Agreed, but it does not address the claim.)*
- "Claimant has continued to act as a member (and manager) of GVC since September of 2017 (*only because Bidsal refused to honor the contract and continued over CLA's objection and again does not support the Arbitrator's*

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conclusion), and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA." (*The payment for the membership interest is not determinative of the issue of when the benefits of the membership interest passed.)*

- "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." (*Bidsal took the distributions despite being told not do so and over CLA's objections (PX 921, Exh. 154). A delay in receiving the purchase price can be compensated with interest but does not justify stripping the LLC of its cash and profits and diluting the value of the membership interest that CLA is purchasing.)*
- "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." *(Bidsal directed the tax return preparation and therefore bore the risk; wrongful distributions are not made appropriate just because taxes are paid. And for that a possible claim for reimbursement thereof conceivably could be made.)*
- "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." *(That issue was bifurcated and never tried (Transcript 21:22-22:2, PX 5256, Exh. 264). The Arbitrator's ruling without trial is not only inappropriate, but disturbing. It should not be a certainty that a seller who refuses to proceed with a sale, or turnover management, and continued to manage over the objections of the buyer and co-manager, should be entitled to any fees. In any event, it does not address whether the distributions were proper. The fact that Bidsal might have another claim does not make his distributions proper.)*[5]
- "It is the determination of the Arbitrator, based upon all of the relevant evidence in this matter, that the effective date of the purchase of Bidsal's interest has not yet come to pass."

[5]The unnecessary and improper pronouncement by the Arbitrator that Bidsal would be entitled to management fees, without trial is not only puzzling (to say the least) but is at the very least, arbitrary and capricious.

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CLA addresses further the statement "since he remains a member of GVC, he cannot be required to divest himself of those distributions". The only logical conclusion to what the award is thereby saying is that if a seller of a business breaches an agreement of sale, his wrongful refusal to consummate the sale and dilution of the value of the business by liquidating its assets and the distributing the proceeds to himself without change in price is perfectly acceptable and the buyer has no remedy. CLA argues that simply is not the law and never has been, and Bidsal offers no citation of authority that it is the law.[6] Disagreements as to closing matters, here the application of the formula, and ensuing litigation, does not affect when the beneficial interests and rights of the membership interest vests.

IV.

CLA'S AUTHORITIES JUSTIFYING VACATING THE AWARD IN PART ARE UNCHALLENGED

Under Section IV of CLA's Motion to Vacate, CLA set out the law on the separate bases on which the Motion is made, any one which justifies the grant of the Motion. One is the Arbitrator's manifest disregard of the law by recognizing the law, and then disregarding it, which is treated either as a common law ground for vacation or as the statutory ground of the Arbitrator exceeding his powers. Compare *Clark Cnty. Educ. Ass'n v. Clark Cnty Sch. Dist*., 122 Nev. 337, 341, 131 P.3d 5,8 (2006) [common law ground] and *Kyocera Corp. v. Prudential Bache Trade Servs., Inc*, 341 Fed 987,997 (9th Cir 2003) [exceeding power--NRS 38.241(d)].

At 15:9 of the Motion, CLA quoted the Arbitrator's acknowledgment that "a court may not modify [an agreement] or create a new or different one." So, the first element is proved, that is the Arbitrator knew he could not modify the Operating Agreement or modify it.

[6]And as we noted in our moving papers that would be a horrible policy decision to encourage sellers to initiate litigation for the purpose of delaying the consummation of a sale in order to claim an entitlement to profits (and in this case, management fees), That is not the law in Nevada and never has been.

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At 9:16 of the Motion, CLA showed that not only did the Operating Agreement call for closing the sale within 30-days of August 3, 2017, but that (as stated above) Bidsal's counsel expressly acknowledged that "under the terms of the operating agreement . . . they're supposed to close escrow within 30 days." And what provision in the Operating Agreement speaks of 30-days? Section 4.2 on page 11 (Opp. Ex. 9). And what 30 days does it talk about? Thirty days from CLA's acceptance of Bidsal's stated fair market value.

So, the second element, the agreement which the Arbitrator disregarded, is that Section 4.2. of the Operating Agreement. Yet Bidsal at Opp. 27:1 complains that CLA "completely" failed to explain how the Arbitrator disregarded the law by changing what the agreement provided.

The authorities cited in the Motion also establish that an award that is irrational, capricious or arbitrary is also subject to a motion to vacate. Once again, some cases treat them as being within the statutory ground of an arbitrator's exceeding his power or authority and some cases treat them as common law grounds available in Nevada and the Ninth Circuit.

The critical point is that the Opposition does not challenge the existence of the grounds stated or the authorities cited in support thereof in the Motion.

V.

BOTH THE ARBITRATOR AND BIDSAL PLACE ALL BUT TOTAL RELIANCE UPON THE FACT THAT CLA HAD NOT PAID BIDSAL TO JUSTIFY BIDSAL'S RETENTION OF DISTRIBUTIONS

To support the Arbitrator's conclusion that the effective date would not occur until the stay of execution on Your Honor's judgment was lifted, the Arbitrator found, and Bidsal argues, "Bidsal had no obligation to transfer his membership interest unless payment was received for his interest." (Opp. 12:25). In fact, Bidsal repeats that argument another 35 times.

What at once jumps out is that that statement does not even pretend to address the 30-day provision in the Operating Agreement.

First, at no time did CLA ever contend, nor has Bidsal offered any evidence, that CLA demanded the transfer of Bidsal's membership interest without paying for it. And this does not address the real issue which is the "effective date," the vesting of the beneficial rights of the membership interest being purchased. A dispute, whether contrived or otherwise, and delays caused by litigation, does not give Bidsal the right to deprive CLA of the benefit of its contract and strip Green Valley of cash while doing so. This is especially so since the FMV and ultimately the price to be paid was determined **as of August 2017, not 2022** (Section 4.2 of Opp. Exh. 9).

More than that, while Bidsal may well have been entitled to condition his execution of a transfer instrument unless CLA was simultaneously paying him, that does not come within shooting distance of addressing whether delays in the transfer of the membership interest for over four-and one-half years permits Bidsal during those years to drain Green Valley of its cash. In other words, the date of a transfer instrument and the date when the benefits and burdens of owning the membership interest change are not one and the same. While Bidsal's appeal was pending, simultaneously the application of the formula to determine the purchase price was being litigated in the subject arbitration. In fact, the ruling from the Nevada Supreme Court was issued on March 17, 2022, in the middle of the March 12, 2022 date of the Award (Opp. Exh. 20) and its publication by "Log Notification" from JAMS on March 23, 2022. There was no delay caused by the arbitration. But even had there been, that did does not convey to Bidsal the right to continue to receive distributions after the date that the sale should have been concluded.

Additionally, the Arbitrator's reliance on the fact that the transaction had not closed, and the purchase price had not been paid, while Bidsal steadfastly refused to participate in transferring his membership interest on its face is at best irrational. Even if the Operating Agreement had not provided for when the sale should close, while Bidsal refused to sell, and was appealing the

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Judgment, holding that the date when Bidsal was no longer to take from the rental stream cannot occur until he is paid is irrational, arbitrary and capricious.

And the Arbitrator's reliance upon the fact that Bidsal had not yet been paid is proved to be even more capricious when one considers what the Arbitrator himself wrote, starting on page 8 of Exh. 117, PX 223:

> "Initially, Claimant argues that CLA failed to tender the purchase price in the fall of 2017 when offers and counteroffers were made. It is the determination of the Arbitrator that this issue is beyond the scope of the current Arbitration proceeding and needed to be addressed in the original Arbitration proceeding before Judge Haberfeld. In April of 2019, Judge Haberfeld determined that Claimant must transfer his interest in GVC to Respondent. As such, it is the determination of the Arbitrator that Claimant is not entitled to relief on this issue in the current proceeding. Next, Claimant argues that CLA's failure to tender any funds to Bidsal after Judge Haberfeld's arbitration award terminated CLA's right to purchase Bidsal's interest in GVC. Immediately following Judge Haberfeld's award, Claimant filed a Motion to Vacate the award in the Clark County District Court. That Motion was denied by Hon. Joanna Kishner in December of 2019 and Claimant immediately sought and received a stay of enforcement of Judge Haberfeld's award to take an appeal to the Nevada Supreme Court. Under these facts, it is the determination of the Arbitrator that any perceived failure of Respondent to tender was appropriate given the state of the proceedings and is consistent with Claimant's actions in seeking to vacate the award prior to its enforcement. Respondent effectively had an order in place compelling Claimant to sell his interest in GVC to CLA, and valid tender was no longer a prerequisite to Respondent's ability to enforce the buy-sell provision". (Emphasis added.)

Based thereon on page 31 the Arbitrator said, "the Arbitrator hereby finds in favor of respondent on the issue of Respondent's alleged failure to tender."

Thus, the Arbitrator determined that Bidsal lost and by virtue of Judge Haberfeld's Award up until the date thereof, was barred from contending an absence of tender, and thereafter Bidsal was likewise barred by virtue of his conduct which made clear that Bidsal would never have transferred his interest until the Nevada Supreme Court ruled against him, and there was nothing CLA could have paid or deposited back in 2017, or at any time until the 2022 Nevada Supreme

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Court ruling that could have gotten Bidsal's membership interest so as to avoid his siphoning off Green Valley's cash.

Bidsal himself conceded that at no time prior to the Nevada Supreme Court's affirmance of the Judgment was he willing to proceed to sell. Not only did Bidsal never tell Golshani that he was willing to sell based on his stated $5,000,000 fair market value (Tr. 812:20-813:2, PX 6237, Exh. 266), but when challenged that he "never offered to proceed for CLA to buy your interest based on the 5 million dollar valuation" he answered "I never offered him, no." (Tr. 814:4-9, PX 6239, Exh. 266.)

So, the Arbitrator knew that any uncertainty or disagreement of the result of applying the formula to determine price to be paid was irrelevant in determining the effective date until the Nevada Supreme Court ruled. Still armed with the knowledge that CLA could not have closed because of Bidsal's conduct, nevertheless the Arbitrator issued a ruling which in effect rewarded Bidsal for his delay and which allowed Bidsal to strip Green Valley of its cash.

Here, the Operating Agreement established when the sale should close. If either party breached and failed to transfer or failed to pay, the law provides remedies for that breach. But here the only breaching party was Bidsal. Bidsal steadfastly refused to transfer for four- and one-half years.

But even without a contract provision such as here, the date when a sale should close can be, and often must be, determined. There are many circumstances in which the passage of title is delayed for many reasons including but not limited to the seller's breach or refusal to proceed, or disputes as to the actual purchase price, as in this case disputes about the application of the formula. Such matters, and delay in the transfer of legal title, should not control when the benefits of the purchase should be vested, i.e. the effective date. Otherwise, a breaching buyer could delay payment forever and the seller could never claim interest on the purchase price. Similarly, an innocent buyer is not

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required to sit by while the seller distributes the stream of income to himself that the buyer is buying. A date earlier than when the sale is ultimately completed can be and frequently is the "effective date" after which the parties are treated as though the sale had in fact been completed. The effective date of the sale in this case is that date when by virtue of the contractual agreement between the parties CLA became the equitable owner of Bidsal's membership interest even though Bidsal retained legal title until the litigation had been completed.

The Arbitrator's (and Bidsal's) position would make the words "effective date" meaningless. The law does not have a policy that would allow a seller to continue to reap the benefits of the business interest he is selling simply by refusing to sell and then scream he was not paid for not selling. Even a good faith dispute as to the calculation of the price to be paid when using a formula as in this instance should not change the effective date of the sale. That price (paid by CLA) was based on Bidsal's FMV in August 2017; to maintain that purchase price while allowing the assets to be depleted [in this case the distribution of Green Valley profits] is utterly capricious and irrational.[7]

On page 9 of the Motion, CLA noted that the Arbitrator's ruling was that the date the sale should have closed (the "effective date") had not yet taken place thus deciding that the sale should have closed (effective date) would always be the date the sale actually closed. Not only does this ignore the transfer of the beneficial interest, but also ignores the fact that Your Honor's Judgment, confirmed by the Nevada Supreme Court, called for the sale to close three years earlier. The two are not possibly reconcilable. An award determining that the date a sale should close had not yet arisen is simply at total odds with a prior judgment that the sale should have closed some three years before that award.

[7] As we noted earlier, if there was a delay not caused by Bidsal he can be compensated by an award of interest calculated from the "effective date", which Bidsal has claimed.

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If one were to accept stated basis of the Arbitrator's ruling (the transaction had not closed), it would mean that even though CLA bore the risk of a decline in the market value, loss of tenants, recession, possible pandemics, and everything else, while paying the same purchase price based on an August 2017 valuation, Bidsal still would be entitled to continue to deplete the assets that CLA was buying, by taking Green Valley's cash.

VI.

LONG ESTABLISHED NEVADA LAW (AND POLICY) CONTROL WHAT IS THE EFFECTIVE DATE OF THE TRANSER OF THE BENEFICIAL INTEREST

Without citation of authority (there being none) at Opp. 13:25, Bidsal argues that the "payment by CLA controls the actual effective date." Further, while at Opp. 12:27 Bidsal argues that the Arbitrator applied "controlling Nevada law," none of the authorities cited by Bidsal are analogous or relevant. In fact, the law (cited in the moving papers) is clear: the breaching party must place the nonbreaching party in as good a position as if the contract were performed. See *Eaton v. J. H. Inc.*, 94 Nev. 446, 450, 581 P.2d 14, 16 (1978) and *Lagrange Constr., Inc. v. Kent Corp.*, 88 Nev. 271, 275, 496 P.2d 766, 768 (1972). The damages to the non-breaching party include losses caused to the nonbreaching party, or gains the nonbreaching party was prevented from obtaining, caused by the breach.

The policy considerations behind these cases are very much applicable here. Contracting parties, like Bidsal, cannot be allowed to delay consummating sales in order to continue taking profits that would, when the sale is consummated, belong to the buyer. To hold otherwise would encourage breaches of contract and extended litigation.

But neither the Arbitrator, nor Bidsal, cite any law that says a seller can delay and then reap the benefits of the ownership while litigation is being resolved.

Bidsal in Section L starting at Opp. 28:19 argues that it was not determined that he had breached the Operating Agreement so that CLA's authorities cited in moving papers regarding relief

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to a buyer arising after a seller's breach were not applicable. This is utterly meritless.

Bidsal refused to proceed to sell on the basis of the FMV he included in his offer and instead claimed he was entitled to an appraisal. CLA sought an order for specific performance on account of Bidsal's breach of the contract and refusal to proceed. Judge Haberfeld ruled that Bidsal was not entitled to an appraisal that he demanded and ordered him to transfer his interest using the FMV stated in his offer and held that CLA was the prevailing party and that Bidsal take nothing by his counterclaim. Judge Haberfeld's Award was confirmed by Your Honor, and Bidsal was ordered to transfer. In what world would Bidsal make demands for an appraisal that he was not entitled to, and refusing to proceed with the sale, and his ongoing refusal to transfer not be a breach of breach of the Operating Agreement?

As noted just days after the Arbitrator published his Award, the Nevada Supreme Court issued its ruling denying Bridal's appeal. It is undisputed that CLA paid the purchase price 7 days after the Nevada Supreme Court decision. While Bidsal points to the fact that the application of the formula to his FMV was uncertain and needed to be decided, there was no delay caused by that.

In deciding that the effective date was not until the price was paid, the Arbitrator (and Bidsal) ignored how the price was calculated. That has to be the starting point in deciding the transfer and vesting of the beneficial rights. Starting at Opp. 21:26, Bidsal argues that the formula was unclear. The FMV element of the formula was set by Bidsal's offer on August 3, 2017, when CLA accepted the offer using Bidsal's $5,000,0000 determination of fair market value and elected to buy. All of the elements of the formula were likewise determined as of August 3, 2017. The purchase price was calculated on Bidsal's determination of FMV as of August 3, 2017, and was used by the Arbitrator in making his decision. CLA paid Bidsal based on those determinations. All of the risk of purchase was on CLA once CLA exercise its option to buy, including the risk that the fair market value would have diminished (remember 2008), tenants could have been lost, and of course what happened

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subsequently–the pandemic. All these factors were CLA's risk and burdens. Instead of ignoring these issues, the Arbitrator should have deemed the effective date to be the date that transaction should have closed, and thus awarded CLA the benefits (i.e. the income stream) from the same date.

At Opp. 27:26, Bidsal argued that CLA has not explained how the passage of these four and one-half years would change the purchase price. CLA never contended that it did. What CLA did contend was that the value of the rental income stream and therefore of Green Valley on September 2, 2017 would necessarily have been depleted as rent was collected and then taken by Bidsal during the four and one-half years, while the purchase price remained unchanged. Indeed, Bidsal concedes, as he must, that there has been no change in the purchase price from what it would have been had the sale been completed in 2017.

That is why, despite any ambiguity in the formula, the effective date was necessarily September 2, 2017, and that is why the Arbitrator award must be partially vacated.

VII.

BIDSAL'S AUTHORITIES DO NOT ADDRESS WHAT THE AGREEMENT HERE PROVIDED AND MOREOVER DO NOT SANCTION OR APPROVE OF SETTING A CLOSING OR EFFECTIVE DATE IN A WAY TO ENABLE THE SELLER TO STRIP THE BUSINESS INTERESTS BEING SOLD OF ITS VALUE

At 10:15 of the Motion, CLA postulated that "If instead it had been CLA who had refused to *proceed,* then Bidsal as the seller would have been entitled to interest on the purchase price. But then it would be necessary to determine the date when the sale should have taken place from which interest would run. Similarly, determination of the date that fixes the parties' rights and obligations regarding the sale or stated differently when the sale should have taken place (effective date) would establish the date after which the seller, here Bidsal, no longer was entitled to share in Green Valley's profits or distributions."

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At no place does Bidsal in his Opposition even attempt to refute that proposition[8].

Why, because Bidsal cannot. No cited or known case supports the determination (as made by the Arbitrator and Bidsal) that if a sale is delayed because of the seller, that the seller gets to strip the object of the sale of its value by taking its stream of income.

To support the Arbitrator's untenable position, Bidsal quotes from *Ellis v. Nelson*, 68 Nev. 410 (1951) (and Washington state cases) that "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." Opp. 9:3. Bidsal repeats that point and citation at 19:5 and 21:24.

The statement does not address the issue here. The question is not when Bidsal should have delivered title, albeit the effective date could not possibly be after the date he was directed to do so in the Judgment. Rather, the issue here is who gets to reap the benefits of the business during the period that the seller simply refuses to proceed based on the false claim that appraisal was required followed by the period of a stay of execution during his appeal of the Judgment saying his refusal was wrongful. That is an issue that *Ellis* does not come within light years of addressing. While Bidsal does not tell the Court what *Ellis* involved, CLA does. The one and only issue in *Ellis* was whether the authority of an agent over selling a trailer had been terminated before the sale thereof.

Bidsal's reliance upon *Maloff v. B-Nava, Inc.*, 85 Nev. 471, 456 P.2d 438 (1969) cited at Opp. 15:1, is even more head-scratching. Far from this case being "precisely the situation described" in that case, there the issue was whether an option had been properly exercised. *Maloff* says nothing about whether the seller can continue to drain the business, his interest in which he has

[8] At Opp. 24:1, Bidsal argues that if the effective date were September 2, 2017, then CLA would owe interest. Maybe and maybe not. When a seller refuses to sell, he is not necessarily entitled to interest during the period of his delay. Perhaps that is why Bidsal has not included any authority that a breaching seller gets to recover interest for the period of delay he caused.

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agreed to sell. On page 15, Bidsal quotes from *Maloff* that "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." How that comes even close to whether the Operating Agreement here called for closing escrow within 30-days of acceptance of Offering Member's statement of FMV by Remaining Member is impossible to discern.

So enamored is Bidsal with the foregoing quotation from *Maloff* that he repeats it on page 19 and then again on page 30. CLA contends that even if he repeats it a dozen times, that does not make it apt.

More obscure is Bidsal's reliance at Opp. 15:6 upon *Finnell v. Bromberg*, 79 Nev. 211, 381 P.2d 221 (1963). There the court confirmed a judgment that an optionor had breached the option to sell her shares of stock but remanded for reconsideration of damages awarded because the value of the stock had been determined as of a date prior to the breach. It has nothing to do with whether after the date when a sale should be consummated a seller who refuses to proceed is thereafter entitled to continue to reap the benefits of ownership, much less whether this agreement provides that the sale should have closed 30-days after August 3, 2017, as has previously been acknowledged by Bidsal's counsel.

At Opp. 11:5 and again at 18:26, Bidsal quotes from *Mohr Park Manor, Inc. v. Mohr*, 83 Nev. 107,111, 424 P.2d 101,104 (1967) that "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." CLA agrees. And that agreement goes further. CLA also agrees that "A court should ascertain the intention of the parties from the language employed." Opp. 11:13. CLA urges that "close escrow within 30 days" means that is the date that should determine the parties' rights and obligations or if one prefers the "effective date." And, when as here, the agreement uses those

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words the parties must have intended that a seller could not simply delay closing and take the cash out of the LLC as did Bidsal.

VIII.

BIDSAL'S ARGUMENT THAT HE BECAME ENTITLED TO RETAIN THE LEASE RENTAL PROCEEDS HE CONFISCATED BECAUSE THERE WAS A DISPUTE REGARDING THE PURCHASE PRICE IS ANYTHING BUT MERITORIOUS

At Opp. 13:11, Bidsal argues that CLA was at fault for not calculating the precise price, and that as a result he became entitled to retain the money he took. Bidsal at Opp. 18:1 says CLA's March 4, 2020 answer to the arbitration demand "was the first time that CLA had ever identified what it believed the purchase price should be." That has nothing to do with Bidsal's refusal to transfer, or the date that the rights to the income stream and assets of the LLC became fixed.

The fact is that Bidsal not only did not include his contention of what that price was in his arbitration demand, he at first objected to stating it and then only provided it five months after the interrogatory seeking it was served which was eight months after he filed his arbitration (Opp. Exh. 18, PX, Exh. 2993, Exh. 218 and PX 3306, Exh. 218).

Bidsal's statement at Opp. 17:17 actually belies his complaint that CLA did not calculate the price. In explaining his initiation of the second arbitrary Bidsal said, "It became apparent that there was a dispute regarding what price CLA would be required to pay." Now of course for that he offers no citation. But more importantly, if as he repeatedly complained, CLA never revealed what it contended the final price would be, how could it possibly have been apparent that there was a dispute.

And in any case, none of that touches on the Arbitrator's rewriting the contract to avoid its requiring effective date for the passage of the beneficial interests and rights of the buyer to the income stream, or the capriciousness of allowing Bidsal to drain out the value of what he ultimately sold while he maintained he was not obligated to sell and while that application of the formula and

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price were being litigated.

It is true that the price to be paid was decided in this Arbitration; but that does not address the date at which the price became fixed. The parties may not have agreed how to apply the formula, but both sides applied the formula using the facts as they were on August 3, 2017, the date that CLA exercised its option to buy.

IX.

THE ARBITRATOR'S RULING RESTS ON AN INCORRECT INTERPRETATION OF THE EFFECT OF THE STAY OF EXECUTION

The determination of whether Bidsal was entitled to retain the $514,500 he paid himself, was dependent on establishing what has been labeled as the "effective date," what rights were retained by Bidsal during the adjudication of the Bridal's appeal and the application of the formula. The Arbitrator concluded that Bidsal was entitled to retain $514,500 he paid himself relying in part on what he stated on page 23 of Exh. 117, PX 223:

"Pursuant to Judge Haberfeld's final award, the transfer is to take place ten days of the effective issuance thereof. As that award (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement [sic. "of" ?] Judge Haberfeld's award requiring the sale is effectively postponed. The instant Award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective." (Emphasis added.)

Your Honor confirmed Arbitrator Haberfeld's Award so one should truly substitute Your Honor's Judgment in that final phrase so that it reads, "Should the stay be lifted Judge Kishner's Judgment (confirming Arbitrator Haberfeld's award) directing that the sale take place becomes effective."

By that statement hardly did the Arbitrator merely state that the Judgment could not be enforced. First, he had just said that in the immediately prior sentence, and second, it would have

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been irrelevant to the issue of when the sale should have closed. Further, on page 8 of the Award (Exh. 117, PX 223) the Arbitrator said, "valid tender was no longer a prerequisite to Respondent's ability to enforce the buy-sell provision." So, how could the Judgment confirming Judge Haberfeld's Award not have become "effective?'

Rather, reducing that to its essential impact, what the Arbitrator there said is that Your Honor's Judgment was not effective until the stay was lifted. With all due respect, the Arbitrator could not have been more wrong. Your Honor's stay did not undue Your Honor's Judgment; it merely delayed its enforcement. A Judgment on appeal is effective albeit it may not be enforceable.

The classical, and CLA suggests the only known, purpose of a stay of execution is to achieve a retention of the status quo while an appeal is pending so that an appeal does not become meaningless. But here the Arbitrator claimed that Your Honor's intent was far greater. The Arbitrator in effect says that Your Honor intended the issuance of the stay to make a nullity of Your Honor's Judgment since, so the Arbitrator said, the Judgment became ineffective by virtue of such stay.

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X.

RECOGNIZING THE MERITS OF THE MOTION BIDSAL SEEKS TO AVOID VACATION OF AWARD BY ATTEMPTING TO RELITIGATE ISSUES NOT AT ISSUE, USE OF STRAWMEN, AND RED HERRINGS, IRRELEVANCIES AND OUTRIGHT DECEPTION

Attempting to support the Arbitrator's decision Bidsal resorts to arguing issues that have already been decided, or that are simply red herrings and irrelevant to the issue at hand.

A. Tender

Simply because of the number of times (and ways) that Bidsal has tried to relitigate the tender issue CLA notes:

- The "tender" issue has been fully resolved against Bidsal, and his repeated repetition of that claim does not make his position any better.
- First, it was never raised in Arbitration #1, and was therefore waived.
- Second, it was decided by the Arbitrator in his decision which has not been challenged by Bidsal.

Bidsal's many repeated arguments about this, is the equivalent of beating a dead horse. The tender issue is dead.

B. Closing the Sale.

At Opp. 28:6, Bidsal says that "CLA chose not to close the sale until 2022." Were it not so serious the response would be "Are you kidding?" Who refused to proceed with the sale? Not CLA; it was Bidsal. Who challenged Judge Haberfeld's Award, both in federal and state court? Not CLA; it was Bidsal. Who appealed the confirmation of that Award? Not CLA; it was Bidsal. Who avoided closing after being so ordered in the Judgment of confirmation by obtaining a stay of execution? Not CLA; it was Bidsal.

C. Bidsal Not CLA Breached The Operating Agreement.

At Opp. 29:1, Bidsal argues that CLA breached the Operating Agreement. There is nothing in the Award that could make CLA a breaching party. The only order in the Award that anyone do anything is that CLA pay attorney's fees and costs. Indeed, the Award says, "The instant Award is essential declaratory in nature." Page 23 of Exh. 117, PX 223. To the same effect is N. 5 on page 6 thereof. Bidsal's identification of CLA's breaches are even more irrational and outrageous than the Award. Bidsal complains that CLA never identified a purchase price when, as above noted, by his own words CLA did so a half year before he would do so, and even though Bidsal continued to refuse to close until the Nevada Supreme Court rejected his appeal. The argument that CLA did not open a worthless useless escrow during the period that he refused to proceed to sell or pay Bidsal while he refused to sell is, at best, frivolous.

D. Taxes.

Without citation to the record, Bidsal complains he paid taxes. In truth, Bidsal did not introduce, much less offer to introduce, his tax returns. Even assuming Bidsal did, he chose to

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distribute the money (over CLA's express direction not to do so (PX 921, Exh. 154)[9]. CLA cannot be held responsible for Bidsal's distributions that CLA expressly told him not to take. The payment of taxes do not make his wrongful distributions valid or appropriate. Beyond that, Bidsal's return of the ill-taken gains from taking Green Valley's cash would be a tax deduction. And just like interest and management fees, his taxes have nothing to do with whether the sale should have closed on September 2, 2017.

E. Miscellaneous assortment of Bidsal irrelevant or unsupported claims.

(1) At Opp. 30:19, Bidsal argues that the determination of who gets distributions is based on the "record date" which is the day "the Manager adopts the resolution for payment of a distribution of profits." There is no such resolution in the record because none was ever made. More than that, Section 01 of Article IV on page 8 of the Operating Agreement (Opp. Exh. 9) states "the administration and regulation of the affairs, business and assets of the Limited Liability Company shall be managed by Two (2) managers (alternatively, the 'Managers' or "Management'). . . .The initial Managers shall be Mr. Shawn Bidsal and Mr. Benjamin Golshani." So, any such resolution would have required Mr. Golshani's joinder and for sure he never joined in a resolution for the distributions here in question.

(2) At Opp. 12: 26, Bidsal raises the strawman that CLA contends Bidsal had to transfer without being paid. For that assertion he of course cites nothing because CLA has never so contended

(3) At Opp. 14:3, Bidsal supports his position by claiming that Judge Haberfeld "never determined that any sale had been completed." Of course not. Otherwise, Judge Haberfeld would not have ordered Bidsal to complete the transfer. Your Honor's Judgment directed Bidsal to

[9]In CLA's election to buy Bidsal was expressly told not to distribute any funds; this was repeated in communications with Bidsal's counsel.

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conclude the sale in 14 days. The date Bidsal was supposed to have closed therefore, could not have been any later than December 30, 2019, fourteen days after the Judgment. PX 169, Exh. 114. If the Judgment called for Bidsal to transfer in 14 days, then absent some remarkable other language in the Judgment it most certainly would be "contradicted" by an arbitrator's ruling two years later that the date the sale should close had not yet arisen.

(4) At Opp. 22:27, Bidsal claims that the Motion at 9:9 exhibits CLA's agreement that the date of CLA's response, containing an acceptance of Bidsal's FMV (August 3, 2017) should be the effective date. A reading of that portion of the Motion reveals it said no such thing. The closing date was set as 30-days after that response.

(5) At Opp. 5:1 and 23:26, Bidsal argues that CLA was trying to take advantage of him. That is the very argument that the Nevada Supreme Court and Your Honor rejected. To the contrary, the Arbitrator's Award enables Bidsal to take advantage of CLA, not the other way around. Beyond that it is irrelevant.

(6) Bidsal brags about what he did at the inception of Green Valley starting at Opp. 6:4, and going on for two more pages. None of that which follows has anything to do with whether the Arbitrator recognized the law prohibiting modifying the contract, and then did exactly that or whether allowing a seller to drain the object of the sale of its value after the date the sale should have closed is capricious and arbitrary. Equally irrelevant is how sales proceeds were divided (starting at Opp. 6:14). The ruling on that dispute has not been challenged, and there is nothing to be done about it.

(7) To support his contention that the Arbitrator's Award here should not be partially vacated (and if for not that reason, then why is it mentioned), at Opp. 16:13 Bidsal is still complaining that Judge Haberfeld "deviated from the language of the" Operating Agreement. And

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Your Honor should not feel left out. At Opp. 17:8 Bidsal snipes that Your Honor's Judgment "created" ambiguity.

(8) At Opp. 18:3-25, Bidsal recites his victories in the arbitration. Except for Bidsal's taking Green Valley's income stream after the 30-days none are any relevant as the purchase price has already been paid, and the membership interest transferred.

(9) While Bidsal incorrectly argues (at Opp. 27:14 and 29:3) that CLA's claim is that the Arbitrator's irrational, arbitrary and/or capricious and/or that he disregarded the law stemmed from his reliance upon an expert or business records, that has never been CLA's contention. The issue raised by this petition is the Arbitrator's irrational, arbitrary and/or capricious or contract violating permission allowing Bidsal to drain Green Valley's income flow after September 2, 2017.

(10) At Opp. 20:10, Bidsal argues that there is nothing that says that the "sale would be treated as completed before CLA had actually paid the purchase price." CLA agrees. But completion of the sale is not the predicate for an entitlement for Bidsal to take Green Valley's cash while he refuses to sell, much less addresses that Section 4.2 says when the sale should have closed. Bidsal further argues that even if a buyer gets specific performance, he must still pay the purchase price. Yes, that is true, but that does not say the seller is entitled to drain the object of the sale of its value while he refuses to sell. Under *Eaton* and *Lagrange* it is clear that he does not.

XI.

JUDGMENT

Some consideration must be given to what the Judgment should provide assuming this Motion is granted. CLA believes that as to the $514,500, there is nothing to be returned to arbitration, and the Judgment should simply award that amount to CLA. That was precisely the result in *Comedy Club Inc. v. Improv. W. Assocs*., 553 F.3d 1277 (9th Cir. 2009) in which partial vacation was awarded.

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Seemingly, Bidsal acknowledges that there is no reason to return to arbitration with regard to the $514,500. In Opp. Section E on page 24 he discusses reasons for returning to arbitration to handle issues of interest on the purchase price and management fees. What stands out is that Bidsal does not suggest in any way that this matter should return to arbitration with regard to the determination that the effective date was not as found by the Arbitrator.

Bidsal contends the if the Award is so vacated, then he is entitled to return for further arbitration. CLA argues that if he is correct, then he merely needs to file another claim.

But Bidsal's claim that it would return to Arbitrator Wall errs. Just as Bidsal's counsel successfully opposed having the second arbitration heard by Arbitrator Haberfeld, CLA would object that any hearing of a third arbitration by Arbitrator Wall and anticipates a similar conclusion. In any event, to whom JAMS assigns arbitration would appear to be a matter for JAMS rather than this Court.

It must be kept in mind that as above noted, Arbitrator Wall has improperly pre-judged the issue of management fees despite the fact this matter was bifurcated, and no evidence was taken with regard to it. Arbitrator Wall's prejudgment was improper, and at least creates the appearance of favoritism and bias. Your Honor can determine any remaining issues arising from the Motion.

In a matter where Bidsal's side alone spent over a half-million dollars in fees and costs in this second arbitration, it would seem unwise to initiate more court proceedings by Your Honor's directing who should preside over any further arbitration. While not relevant to this Motion, CLA

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believes it has far more grounds for objecting to Judge Wall's again acting as arbitrator than Bidsal had for objecting to Judge Haberfeld's presiding over the second arbitration.

Dated this 7th day of October, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the 7th day of October 2022, a true and correct copy of **CLA PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION TO VACATE [PARTIALLY] ARBITRATION AWARD** was served to the following in the manner set forth below:

James E. Shapiro, Esq.
Aimee M. Cannon, Esq.
Smith & Shapiro, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
Attorneys for Plaintiff/Counter-Defendant
Shawn Bidsal

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2450 St. Rose Parkway, Suite 200
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Attorneys for Plaintiff/Counter-Defendant
Shawn Bidsal

___ Hand Delivery

_X_ Electronic Service via the Court's CM/ECF system

___ U.S. Mail, Postage Prepaid

___ Certified Mail, Receipt No. _____

___ Return Receipt Requested

/s/ Melanie Bruner
An employee of Reisman Sorokac

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OPPS

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration) vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31 **CLA'S OPPOSITION TO SHAWN BIDSAL'S COUNTERMOTION TO CONFIRM ARBITRATION AWARD** Date of Hearing: November 9, 2022 Time of Hearing: 8:30 a.m.

CLA Properties, LLC, ("CLA") hereby submits its opposition to Shawn Bidsal ("Bidsal") Countermotion to Confirm the Arbitration Award and For Entry of Judgment.

The grounds upon which CLA opposes Bidsal's Countermotion to Confirm are the same grounds as set forth in (i) CLA's Motion To Vacate Arbitration Award (NRS 38.241) And For Entry Of Judgment, filed on June 17, 2022, along with the Appendix of Exhibits filed concurrently therewith; and (ii) CLA's Reply Memorandum In Support Of Motion To Vacate [Partially] Arbitration Award filed concurrently herewith. Both the Motion and Reply are incorporated into

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Case Number: A-22-854413-B

this opposition and copies of both the Motion and Reply are attached hereto as Exhibits "1" (without the Appendix) and "2" respectively.

Dated this 7th day of October, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the 7th day of October 2022, a true and correct copy of **CLA'S OPPOSITION TO SHAWN BIDSAL'S COUNTERMOTION TO CONFIRM ARBITRATION AWARD** was served to the following in the manner set forth below:

James E. Shapiro, Esq.
Aimee M. Cannon, Esq.
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Shawn Bidsal

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/s/ Melanie Bruner
An employee of Reisman Sorokac

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EXHIBIT 1

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

(continued...)

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

WHEREFORE, CLA respectfully requests that this Court:

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

Dated this 17th day of June, 2022.

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

ISSUES BEFORE COURT

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

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

II.

BACKGROUND

A.

PARTIES AND JURISDICTION

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

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

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

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

Disputes between CLA and Bidsal arose.

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

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

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

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

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

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B.

FIRST ARBITRATION

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

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

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

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

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

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

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

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

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

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

The December 6, 2019, Judgment ordered:

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

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

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

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

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

C.

THE SECOND ARBITRATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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IV.

APPLICABLE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.

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

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

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

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

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

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

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

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

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

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

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

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

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

VI.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII.

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

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

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

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

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

VIII.

THE AWARD OF ATTORNEYS' FEES MUST BE VACATED

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

IX.

CONCLUSION RE AWARD EXCEEDING JUDGE WALL'S POWERS

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

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

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

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

DATED this 17th day of June, 2022.

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EXHIBIT 117

APPENDIX (PX)000222

HON. DAVID T. WALL (Ret.)

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Arbitrator

JAMS

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

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

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

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

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

I. Factual Background

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

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

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

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

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

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

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

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

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

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

OA, Article V, Section 4.2.

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

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

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

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

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

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

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

II. Procedural History

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

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

III. Legal Standard

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

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

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

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

Mohr Park Manor, 83 Nev. at 111.

IV. Factual and Legal Analysis

A. Failure to tender funds

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

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

B. Distribution of proceeds from the sale of properties

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

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

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

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

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

OA, Exhibit B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OA, Exhibit B.

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

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

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

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

Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Application of formula to determine purchase price

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

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

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

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

OA, Article V, Section 4.2.

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

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

OA, Article V, Section 4.1.

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

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

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

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

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

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

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

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

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

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

D. Effective Date of Sale

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

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

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

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

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

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

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

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

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

V. Award of Attorneys' Fees and Costs

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

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

Interim Award, pp. 25-26.

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

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

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

A. Attorneys' Fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Costs

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

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

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

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

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

APPENDIX (PX)000252

VI. Conclusion

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

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

Dated: March 12, 2022

Hon. David T. Wall (Ret.)
Arbitrator

EXHIBIT 122

APPENDIX (PX)000330

OPERATING AGREEMENT

Of

Green Valley Commerce, LLC
A Nevada limited liability company

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

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

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

Article I.
DEFINITIONS

Section 01 Defined Terms

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

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

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

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

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

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

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

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

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

State of Formation shall mean the State of Nevada.

Article II.
OFFICES AND RECORDS

Section 01 Registered Office and Registered Agent.

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

The resident agent shall be appointed by the Member Manager.

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

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

Section 02 Limited Liability Company Offices.

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

Section 03 Records.

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

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

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

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

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

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

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

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

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

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

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

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

Section 04 Inspection of Records.

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

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

Article III.
MEMBERS' MEETINGS AND DEADLOCK

Section 01 Place of Meetings.

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

Section 02 Annual Meetings.

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

Section 03 Special Meetings.

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

Section 04 Action in Lieu of Meeting.

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

Section 05 Notice.

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

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

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

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

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

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

Section 06 Waiver of Notice.

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

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

Section 07 Presiding Officials.

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

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

Section 08 Business Which May Be Transacted at Annual Meetings.

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

Section 09 Business Which May Be Transacted at Special Meetings.

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

Section 10 Quorum.

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

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

Section 11 Proxies.

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

Section 12 Voting.

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

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

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

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

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

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

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

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

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

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

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

Section 13 Meeting by Telephonic Conference or Similar Communications Equipment.

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

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Section 14. Deadlock.

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

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

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

Article IV.
MANAGEMENT

Section 01 Management.

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

Section 02 Rights, Powers and Obligations of Management.

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

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

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

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

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

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

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

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

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

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

Section 03 Removal.

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

Article V.
MEMBERSHIP INTEREST

Section 01 Contribution to Capital.

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

Section 02 Transfer or Assignment of Membership Interest.

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

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

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

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

Section 4. Purchase or Sell Right among Members.

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

Section 4.1 Definitions

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

Section 4.2 Purchase or Sell Procedure.

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

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

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

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

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

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

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

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

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

Section 4.3 Failure To Respond Constitutes Acceptance.

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

Section 5. Return of Contributions to Capital.

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

Section 6. Addition of New Members.

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

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

DISTRIBUTION OF PROFITS

Section 03 Qualifications and Conditions.

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

Section 04 Record Date.

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

Section 05 Participation in Distribution of Profit.

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

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

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

Section 07 Date of Payment of Distribution of Profit.

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

Article VI.
ISSUANCE OF MEMBERSHIP INTEREST CERTIFICATES

Section 01 Issuance of Certificate of Interest.

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

Section 02 Transfer of Certificate of Interest.

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

Section 03 Lost, Stolen or Destroyed Certificates.

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

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

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

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

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

Article VII.
AMENDMENTS

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Section 01 Amendment of Articles of Organization.

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

Section 02 Amendment, Etc. of Operating Agreement.

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

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

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

Section 01 Title to Company Property.

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

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

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

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Article X.
MISCELLANEOUS

a. Fiscal Year.

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

b. Financial Statements; Statements of Account.

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

c. Events Requiring Dissolution.

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

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

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d. Choice of Law.

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

e. Severability.

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

f. Successors and Assigns.

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

g. Non-waiver.

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

h. Captions.

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

i. Counterparts.

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

j. Definition of Words.

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

k. Membership.

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

l. Tax Provisions.

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

ARTICLE XI
INDEMNIFICATION AND INSURANCE

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

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

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

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

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

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

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

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

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

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

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ARTICLE XII
INVESTMENT REPRESENTATIONS; PRIVATE OFFERING EXEMPTION

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

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

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

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

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

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

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

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

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

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

ARTICLE XIII

Preparation of Agreement.

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

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

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

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

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

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

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

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

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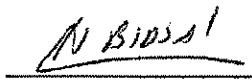
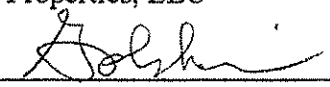
Member:



Shawn Bidsal, Member

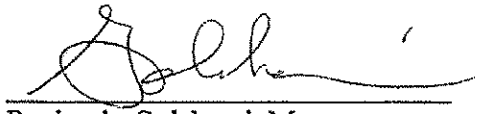
CLA Properties, LLC

by 

Benjamin Golshani, Manager

Manager/Management:

Shawn Bidsal, Manager



Benjamin Golshami, Manager

TAX PROVISIONS

EXHIBIT A

1.1 Capital Accounts.

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

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

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

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

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

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

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

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ALLOCATION OF PROFITS AND LOSSES; TAX AND ACCOUNTING MATTERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3 **Tax Status and Returns**.

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

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

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

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

BG FB

EXHIBIT B

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

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

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

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

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

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

Losses shall be allocated according to Capital Accounts.

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

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

BC

SB

EXHIBIT 2

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES, LLC, a California limited liability company, Movant (Respondent in arbitration) vs. SHAWN BIDSAL, an individual, Respondent (Claimant in arbitration).	Case No. A-22-854413-B Dept. No. 31 **CLA'S REPLY IN SUPPORT OF MOTION TO VACATE [PARTIALLY] ARBITRATION AWARD** Date of Hearing: November 9, 2022 Time of Hearing: 8:30 a.m.

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CLA Properties, LLC, ("CLA"), Respondent in the arbitration and Movant in this Court, replies to the Opposition ("Opp.") of Shawn Bidsal ("Bidsal") to CLA's Motion To Vacate (In Part) Arbitration Award and For Entry of Judgment. CLA is owned by Benjamin Golshani ("Golshani").[1]

On August 3, 2017, Bidsal was in control of Green Valley's books, records and cash. The Nevada Supreme Court has confirmed that on that date, CLA became entitled to purchase Bidsal's membership interest in Green Valley. But for over four and one-half years, Bidsal refused to

[1] CLA's exhibits are included in an Appendix and are identified by Appendix page number as "PX" and exhibit ("Exh.") with any page numbers here cited being the numbers within the exhibit itself. Exhibits affixed to Bidsal's Opposition are identified as "Opp. Exh."

Case Number: A-22-854413-B

surrender that control. Using that control, Bidsal distributed to himself Green Valley's cash during that four and one-half years. CLA sought a return of that cash. The arbitration Award denied CLA that relief. CLA seeks a Judgment vacating the Award to that extent and instead ordering Bidsal to pay CLA the amount of those distributions plus interest. The amount thereof (taken in 2017-2019) as of the time the evidence taking in the terminated arbitration proceeding is $514,500[2]. The goal of the Motion is to permit CLA to recover those distributions.

Bidsal in his Opposition raises many points equally irrational with the Award, and because of the more than half-million dollar importance of this Motion, CLA must avoid being insouciant. That results in this Reply being lengthy.

I.

SUMMARY OF CORE FACTS

A. Introduction

We apologize if what follows are matters which Your Honor is well-aware and well remembers from 2019 when the dispute between its members was last before Your Honor.

As much as Bidsal would like to continue to re litigate the issues that have been now decided three times (by Judge Haberfeld, Your Honor, and the Nevada Supreme Court), and which are irrelevant to the issue at hand, which is what is the "effective date" of the sale of Bidsal's membership interest in Green Valley for the determination of the rights to the benefits and burdens of that membership interest. CLA's claim is (i) that the Operating Agreement provides that the sale of the membership interest should have closed within 30 days after acceptance, (ii) that Bidsal cannot refuse to proceed and delay that sale for 4 1/2 years taking all of the benefits that should have been CLA's, (iii) that regardless of a dispute over the application of the formula to determine the price to be paid, CLA was the equitable owner of all of the rights and burdens of that membership

[2]CLA misstated the amount in the moving papers as only $500,500. An exhibit submitted by Bidsal shows each of those distributions and adding them up shows the true amount is $514,500.

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interest as of the date that the sale should have been consummated; and (iv) that the Arbitrator's ruling effectively rewrote the agreement denying CLA the benefit of its bargain under the contract, and well established Nevada law, and was irrational, arbitrary and capricious.

B. Brief Overview Of The Facts

Green Valley owns buildings in which it leases space. The only benefit to Green Valley of the buildings owned by Green Valley are the rentals it collects from leasing space.

On August 3, 2017, CLA exercised its right to purchase Bidsal's membership interest in Green Valley using in the formula to determine the purchase price the fair market value of Green Valley("FMV") theretofore asserted by Bidsal in his offer to buy CLA's membership interest. (PX 921, Exh. 154). In its election to buy, CLA told Bidsal not to make any further distributions.[3] On August 5, 2017, Bidsal (through his counsel) responded claiming a non-existent right to have Green Valley appraised as grounds for not proceeding to conclude the sale. That began the disputes between Bidsal and CLA.

On August 15, 2017, Golshani wrote to Bidsal in part saying he was planning to open escrow (PX 1832, Exh. 175). The next day Bidsal responded in part saying, "we cannot open any escrow since we do not agree on this matter." (Id.) For the next four and one-half years, Bidsal never waivered from that position.

On that same day Bidsal's counsel wrote to CLA's counsel, "Mr. Bidsal is ready to proceed forward with arbitration." (PX 1837, Exh. 176.) As will be noted below, Bidsal's current position (like the Arbitrator's Award) is that notwithstanding his refusal to enter into an escrow and his counsel's stating he would "not move forward," CLA should nonetheless have paid him for the membership interest, and CLA's failure to do so delayed the date when the benefits of ownership of that membership interest should change.

[3] It must be noted that CLA was a co-manager of Green Valley at this time.

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On August 28, 2017, CLA notified Bidsal that he had the money to complete the purchase and provided evidence of his having the necessary funds and asked that escrow be opened to complete the purchase (Exh. 14 to Opposition). Bidsal's response (on August 31st through his counsel) was to deny the obligation to close escrow or close the sale based on his offer, and again demand the nonexistent right to an appraisal (PX 2951, Exh. 205). Thus, the matter proceeded to arbitration before Judge Stephen Haberfeld, Ret.

As will bear repeating below, had CLA done as Bidsal argues, that is attempted to open an escrow without Bidsal's joining, just to deposit its money, not only would it have been an idle act, but it would also have been so foolish as to border on making Golshani certifiably insane. As it turns out, had CLA been able to deposit funds into an escrow without joinder by Bidsal, it would have remained there for almost five years. From as early as 1929, it has been recognized that "[T]he law does not require idle acts." *Allenbach v. Ridenour*, 51 Nev. 437, 279 P. 32,37 (1929). No one would have benefitted had CLA been able to convince some escrow holder to accept and keep its money while Bidsal refused to participate in any escrow or the sale.

In the first arbitration, Judge Haberfeld found Bidsal's position meritless and determined that CLA was entitled to so purchase Bidsal's membership interest using the FMV Bidsal had set, and that Bidsal had no right to demand an appraisal to determine FMV. (Opp. Exh. 17) Your Honor issued a Judgment not only concurring, but independently agreeing with Judge Haberfeld's Award (PX 169, Exh. 114). To avoid being forced to transfer his membership interest, Bidsal appealed and sought and obtained a stay of execution enabling him to avoid being forced to transfer his membership interest. (PX 2123, Exh. 194.) After that CLA's tendering the price would have been an equally idle (and foolish) act.

Bidsal instituted a second arbitration to fix the remaining elements of the formula as provided in the Green Valley Operating Agreement to determine the purchase price, but never once,

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either before filing his arbitration demand or even in his arbitration demand did he ever set forth what he contended the amount of the other elements of the formula were or even what he conceded the amount was to be paid. (Opp. Exh. 18).

The Nevada Supreme Court rejected Bidsal's appeal on March 17, 2022 (Opp. Exh. 21) ending Bidsal's refusal to transfer his interest, and CLA paid the full amount determined by the Arbitrator, within seven days thereafter! (Opp. Exh. 21 and 24.)

So, at all times since CLA's right to purchase Bidsal's interest arose in August, 2017, Bidsal prevented the transaction from closing. First, by use of self-help in simply refusing to proceed, and then after being ordered to transfer in the Judgment confirming the Award against him in the first arbitration by obtaining a stay of execution on that Judgment.

But starting after August of 2017 and continuing while Bidsal at all times refused to transfer his interest, insisting that CLA had no right to buy based on the fair market value he set in his offer[4], and while he was in control of Green Valley's cash, after September 2, 2017, Bidsal distributed to himself $514,500 from Green Valley. CLA sought the return of that money in the second arbitration claiming the Bidsal's rights to distributions terminated as of the date the sale should have closed which, per the Operating Agreement was 30-days after acceptance (i.e. September 2, 2017).

C. The Effect Of The Arbitrator's Ruling

The Arbitrator ruled that since the purchase price for Bidsal's interest had not been paid during the four and one-half years that Bidsal was refusing to transfer, the time that the transfer

[4] The Specific Intent language made it clear that the offer was to buy or sell based on the offered FMV:

"The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) and according to the procedure set forth in Section 4.. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s)". (Section 4.2 of Operating Agreement Exh. 9).

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should be made had not yet arrived, and that until it did arrive, Bidsal was entitled to diminish the value of Green Valley by taking its cash notwithstanding the fact that the purchase price for Bidsal's membership interest in Green Valley was calculated as of August of 2017. (Section 4.2 of Opp. Exh. 9).

But the provisions of the Green Valley Operating Agreement governing one member's buying out the other called for the escrow handling the transfer to close in 30 days from the Remaining Member's (here CLA) acceptance of the fair market value which the Offering Member (here Bidsal) stated in his offer. (Section 4.2, pg 11 of Opp. Exh. 9.) In this case that thirty days expired in early September 2017.

While the Arbitrator acknowledged that he had no right to revise the agreement of the parties, his ruling, in effect, did exactly that, and that is what CLA's Motion to Vacate seeks to correct. Bidsal does not dispute the authorities cited in the Motion that an arbitrator's recognizing the law (here that he may not rewrite and change the contract terms), and then nonetheless disregarding the law (here changing those terms) constitutes the manifest disregard of the law which is a ground for vacating an award.

But even had there been no such provision within the Operating Agreement, allowing a seller to drain the business being sold by simply refusing to proceed with the sale is irrational, capricious and arbitrary, each a separate ground for vacating an award, as shown by the authorities in the Motion and which, again, the Opposition does not dispute.

Let it be made clear there has been no evidence presented that CLA refused pay Bidsal for the transfer of his membership interest. None! Never! So, when at Opp. 30:6 Bidsal says that his "refusal to transfer his membership interest without being paid did not repudiate the contract" this is just one of many Bidsal's "Red Herrings" to attempt to avoid dealing with the real issue. The evidence is irrefutable that Bidsal never said he refused to transfer unless he was paid; what he said

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was he refused to transfer using the FMV he put in his offer, a refusal that every court that has heard this case has rejected.

II.

THE TRANSACTION WAS TO CLOSE WITHIN 30 DAYS AFTER THE REMAINING MEMBER'S ACCEPTANCE THE FAIR MARKET VALUE STATED IN THE OFFER (EFFECTIVE DATE) THAT IS WHEN CLA BECAME ENTITLED TO THE BENEFITS OF BIDSAL'S MEMBERSHIP INTEREST AND THE AND THE ARBITRATOR'S RULING THAT THE EFFECTIVE DATE HAD NOT YET ARISEN REWRITES THE CONTRACT

As above stated, the issue here is when does the benefits and burdens of membership interest ownership change (vest). The provision in the contract (the Operating Agreement) establishes that it was in 2017 when the entitlement to all the benefits of Bidsal's membership interest passed to CLA, and not in 2022, as the Arbitrator ruled (and Bidsal contends).

In paragraph starting at Opp. 23:1 Bidsal claims the 30-day provision does not apply because he never stated an "offered price." Bidsal reaches that erroneous conclusion by misstating the meaning of "offered price." Bidsal argues that "offered price" means the purchase price for the membership interest, and Bidsal's offer never included a purchase price so therefore there was no "offered price," and, so he argues since there was no offered price the 30-day provision did not apply. Since Bidsal's premise is false (offered price means purchase price), his conclusion is wrong. That is the same argument Bidsal made in the first arbitration, and it was rejected there, and should be rejected here.

A review of the Operating Agreement clearly shows that the escrow to purchase the membership interest was to close 30 days after CLA accepted Bidsal's offer [which as determined by Your Honor's judgment and the Nevada Supreme Court effectively was an offer to either buy or sell] with the price to be paid determined as of July 7, 2017 (the date of Bidsal's valuation PX 919, Exh. 153) and when CLA rights to the benefits of Bidsal's membership interest became fixed. Below

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are the relevant portions of the Operating Agreement regarding the CLA's exercise of its option to buy.

> **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. . .
>
> **Section 4.2 Purchase of 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 . . . (Emphasis added.) (Pg 11 of Opp. Exh. 9.)

The definition of "Offering Member" in Section 4.1 is a member who makes an offer. When Section 4.2 refers to "notice" by an Offering Member, it therefore can only mean an offer. In context, the word "acceptance" from which the 30 days runs is the Remaining Member's acceptance of the fair market value (FMV) stated in the Offering Member's notice which, as noted, was confirmed three times, was an offer to buy or sell. That is proved in a few ways.

The second paragraph of Section 4.2 begins by saying what happens if the "offered price" (which we below show can only mean the fair market value in the notice) was not "acceptable" to the Remaining Member. Within eight words, the words "acceptance" and "acceptable" appear. Concluding that to which "acceptable" refers (the fair market value) is not that to which "acceptance" refers would be ludicrous, and the Opposition does not so contend. So if that which is "not acceptable" is the fair market value in the notice the reference to "acceptance" eight words earlier must likewise be of the fair market value in the notice.

Second, the nearest antecedent to "acceptance" which is something of which there could be an "acceptance" is what "the Offering Member thinks is the "fair market value" referred to in the

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immediately prior sentence. In other words, that to which the "acceptance" refers is "acceptance" by the Remaining Member of the FMV stated in the offer.

Finally, there is nothing in Section 4.2 before the word "acceptance" which could be the subject of being accepted or not accepted other than the fair market value offered in the notice. And acceptance means acceptance of amount set forth as the fair market value to buy or sell.

There can be no doubt but that "offered price" means the fair market value stated by the Offering Member in his offer. The first sentence of Section 4.2 refers to "a price the Offering Member thinks is the fair market value," thereby equating "price" and "fair market value." There is no amount that could be considered a "price" "offered" other than the amount stated as the fair market value. Thus, the term "offered price" is used both here and in the final paragraph of Section 4.2 to refer to the fair market value stated in the offer. The offered priced is the FMV which is then to be used to compute the purchase price using the formula.

If Bidsal's argument were accepted, then the 30-day provision could never apply and would be meaningless because the provision calls for the notice to include amount of fair market value, not the purchase price as determined by application of a formula. To comply with Section 4.2, the notice would never state the purchase price; it would only state the fair market value to which the formula would then be applied. Only if offered the price meant fair market value could the 30-day provision have meaning. As stated in *Musser v. Bank of Am*, 114 Nev. 945,949, 964 P.2d 51, 54 (1998) cited on page 18 of CLA's Motion, "every word must be given effect if at all possible." Bidsal's interpretation would make the provision meaningless and without any effect.

The Operating Agreement used the term "price" as stated by an Offering Member in his notice as an equivalent for "fair market value." When "offered price" is then used as in the second paragraph quoted above, it must likewise mean the fair market value included in the offer. Bidsal's

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attempted distraction (Opp. 23:6) that he "did not offer a price" is simply wrong. The FMV in his offer was the "offered price" which CLA accepted in electing to buy instead of sell.

When CLA accepted the fair market value (offered price) set by Bidsal in his offer (Opp. Exh. 3), that triggered the 30-day provision to close escrow applied. That CLA's acceptance constituted acceptance of the offered price or Bidsal's stated fair market value, and that acceptance set the fair market value was the entire issue decided in the first arbitration and the Judgment confirming the award therein.

And the above is not just CLA's interpretation. CLA pointed out in its moving papers that Bidsal's counsel stated exactly that on March 17, 2021, when he represented to the Arbitrator that "[U]nder the terms of the operating agreement, it's very specific about what is supposed to happen. They're supposed to close escrow within 30 days." [Exh. 264, PX 5256, pg 43.] Noteworthy is that Bidsal's Opposition does not deny or even attempt to explain away that statement. To the contrary, Bidsal in effect repeats it at Opp. 8:25 where he says, "Section 4 makes it clear that any forced sale is a cash sale which is expected to close within 30 days." And on what did Bidsal's counsel there rely for that statement–the very provision being discussed, "('The terms to be all cash and close escrow within 30 days of the acceptance.')" (Opp. 8:27.)

Actually, Bidsal's counsel made it even clearer that the sale was supposed to close 30-days after his proposed fair market value was accepted by CLA. Right after the portion of the transcript at Exh. 264, PX 5256, pg. 43 quoted above. Bidsal's counsel continued: "They had an obligation under the operating agreement to pay what the amount was that they thought that the formula was within 30 days." "They" (CLA) could not have had an obligation to pay within 30-days unless the rights and obligation attaching to the membership interests were to change by closing the sale (effective date) in 30-days and the only 30-days that is mentioned is the 30-days after CLA's acceptance of Bidsal's statement of fair market value.

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At Opp. 12:11, Bidsal argued that the Operating Agreement "provides no timeline or deadlines by which this Forced Sale must be completed." But as CLA just set out, it does, and Bidsal's counsel has now twice acknowledged that it does.

The balance of this Reply addresses the purported bases on which the Arbitrator and/or Bidsal attempt to support the unavoidable conclusion that Bidsal was not entitled to take those distributions.

III.

EXAMINATION OF WHAT THE AWARD PROVIDES

How did the Arbitrator explain his finding that the date the sale should have closed had not yet even arrived in face of the contract provision which both parties stated called for the escrow to close in 30-days from "acceptance" of the offered FMV? The Arbitrator did not. The Arbitrator just ignored the provision and rewrote the agreement to provide that the date the sale should close (effective date) was not until it did close. That disregards the Operating Agreement and in so doing disregards the law that he cannot rewrite the agreement. That is arbitrary. That is irrational and that is capricious.

In treating the issue, it is helpful to bear in mind what the Arbitrator's Award (pg. 23 of Opp. Exh. 20) says, along with CLA's response (injected in italics) with emphasis added:

- "The transaction has never been completed." (*Agreed–but not the issue*)
- "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." (*That issue was not before Judge Haberfeld.)*
- "The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed." (*Agreed, but it does not address the claim.)*
- "Claimant has continued to act as a member (and manager) of GVC since September of 2017 (*only because Bidsal refused to honor the contract and continued over CLA's objection and again does not support the Arbitrator's*

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conclusion), and Respondent cannot now divest Claimant of his membership interest because it has not yet paid him for his interest pursuant to the OA." (*The payment for the membership interest is not determinative of the issue of when the benefits of the membership interest passed.)*

- "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." (*Bidsal took the distributions despite being told not do so and over CLA's objections (PX 921, Exh. 154). A delay in receiving the purchase price can be compensated with interest but does not justify stripping the LLC of its cash and profits and diluting the value of the membership interest that CLA is purchasing.)*
- "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." *(Bidsal directed the tax return preparation and therefore bore the risk; wrongful distributions are not made appropriate just because taxes are paid. And for that a possible claim for reimbursement thereof conceivably could be made.)*
- "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." *(That issue was bifurcated and never tried (Transcript 21:22-22:2, PX 5256, Exh. 264). The Arbitrator's ruling without trial is not only inappropriate, but disturbing. It should not be a certainty that a seller who refuses to proceed with a sale, or turnover management, and continued to manage over the objections of the buyer and co-manager, should be entitled to any fees. In any event, it does not address whether the distributions were proper. The fact that Bidsal might have another claim does not make his distributions proper.)*[5]
- "It is the determination of the Arbitrator, based upon all of the relevant evidence in this matter, that the effective date of the purchase of Bidsal's interest has not yet come to pass."

[5]The unnecessary and improper pronouncement by the Arbitrator that Bidsal would be entitled to management fees, without trial is not only puzzling (to say the least) but is at the very least, arbitrary and capricious.

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CLA addresses further the statement "since he remains a member of GVC, he cannot be required to divest himself of those distributions". The only logical conclusion to what the award is thereby saying is that if a seller of a business breaches an agreement of sale, his wrongful refusal to consummate the sale and dilution of the value of the business by liquidating its assets and the distributing the proceeds to himself without change in price is perfectly acceptable and the buyer has no remedy. CLA argues that simply is not the law and never has been, and Bidsal offers no citation of authority that it is the law.[6] Disagreements as to closing matters, here the application of the formula, and ensuing litigation, does not affect when the beneficial interests and rights of the membership interest vests.

IV.

CLA'S AUTHORITIES JUSTIFYING VACATING THE AWARD IN PART ARE UNCHALLENGED

Under Section IV of CLA's Motion to Vacate, CLA set out the law on the separate bases on which the Motion is made, any one which justifies the grant of the Motion. One is the Arbitrator's manifest disregard of the law by recognizing the law, and then disregarding it, which is treated either as a common law ground for vacation or as the statutory ground of the Arbitrator exceeding his powers. Compare *Clark Cnty. Educ. Ass'n v. Clark Cnty Sch. Dist*., 122 Nev. 337, 341, 131 P.3d 5,8 (2006) [common law ground] and *Kyocera Corp. v. Prudential Bache Trade Servs., Inc*, 341 Fed 987,997 (9th Cir 2003) [exceeding power--NRS 38.241(d)].

At 15:9 of the Motion, CLA quoted the Arbitrator's acknowledgment that "a court may not modify [an agreement] or create a new or different one." So, the first element is proved, that is the Arbitrator knew he could not modify the Operating Agreement or modify it.

[6]And as we noted in our moving papers that would be a horrible policy decision to encourage sellers to initiate litigation for the purpose of delaying the consummation of a sale in order to claim an entitlement to profits (and in this case, management fees), That is not the law in Nevada and never has been.

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At 9:16 of the Motion, CLA showed that not only did the Operating Agreement call for closing the sale within 30-days of August 3, 2017, but that (as stated above) Bidsal's counsel expressly acknowledged that "under the terms of the operating agreement . . . they're supposed to close escrow within 30 days." And what provision in the Operating Agreement speaks of 30-days? Section 4.2 on page 11 (Opp. Ex. 9). And what 30 days does it talk about? Thirty days from CLA's acceptance of Bidsal's stated fair market value.

So, the second element, the agreement which the Arbitrator disregarded, is that Section 4.2. of the Operating Agreement. Yet Bidsal at Opp. 27:1 complains that CLA "completely" failed to explain how the Arbitrator disregarded the law by changing what the agreement provided.

The authorities cited in the Motion also establish that an award that is irrational, capricious or arbitrary is also subject to a motion to vacate. Once again, some cases treat them as being within the statutory ground of an arbitrator's exceeding his power or authority and some cases treat them as common law grounds available in Nevada and the Ninth Circuit.

The critical point is that the Opposition does not challenge the existence of the grounds stated or the authorities cited in support thereof in the Motion.

V.

BOTH THE ARBITRATOR AND BIDSAL PLACE ALL BUT TOTAL RELIANCE UPON THE FACT THAT CLA HAD NOT PAID BIDSAL TO JUSTIFY BIDSAL'S RETENTION OF DISTRIBUTIONS

To support the Arbitrator's conclusion that the effective date would not occur until the stay of execution on Your Honor's judgment was lifted, the Arbitrator found, and Bidsal argues, "Bidsal had no obligation to transfer his membership interest unless payment was received for his interest." (Opp. 12:25). In fact, Bidsal repeats that argument another 35 times.

What at once jumps out is that that statement does not even pretend to address the 30-day provision in the Operating Agreement.

First, at no time did CLA ever contend, nor has Bidsal offered any evidence, that CLA demanded the transfer of Bidsal's membership interest without paying for it. And this does not address the real issue which is the "effective date," the vesting of the beneficial rights of the membership interest being purchased. A dispute, whether contrived or otherwise, and delays caused by litigation, does not give Bidsal the right to deprive CLA of the benefit of its contract and strip Green Valley of cash while doing so. This is especially so since the FMV and ultimately the price to be paid was determined **as of August 2017, not 2022** (Section 4.2 of Opp. Exh. 9).

More than that, while Bidsal may well have been entitled to condition his execution of a transfer instrument unless CLA was simultaneously paying him, that does not come within shooting distance of addressing whether delays in the transfer of the membership interest for over four-and one-half years permits Bidsal during those years to drain Green Valley of its cash. In other words, the date of a transfer instrument and the date when the benefits and burdens of owning the membership interest change are not one and the same. While Bidsal's appeal was pending, simultaneously the application of the formula to determine the purchase price was being litigated in the subject arbitration. In fact, the ruling from the Nevada Supreme Court was issued on March 17, 2022, in the middle of the March 12, 2022 date of the Award (Opp. Exh. 20) and its publication by "Log Notification" from JAMS on March 23, 2022. There was no delay caused by the arbitration. But even had there been, that did does not convey to Bidsal the right to continue to receive distributions after the date that the sale should have been concluded.

Additionally, the Arbitrator's reliance on the fact that the transaction had not closed, and the purchase price had not been paid, while Bidsal steadfastly refused to participate in transferring his membership interest on its face is at best irrational. Even if the Operating Agreement had not provided for when the sale should close, while Bidsal refused to sell, and was appealing the

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Judgment, holding that the date when Bidsal was no longer to take from the rental stream cannot occur until he is paid is irrational, arbitrary and capricious.

And the Arbitrator's reliance upon the fact that Bidsal had not yet been paid is proved to be even more capricious when one considers what the Arbitrator himself wrote, starting on page 8 of Exh. 117, PX 223:

> "Initially, Claimant argues that CLA failed to tender the purchase price in the fall of 2017 when offers and counteroffers were made. It is the determination of the Arbitrator that this issue is beyond the scope of the current Arbitration proceeding and needed to be addressed in the original Arbitration proceeding before Judge Haberfeld. In April of 2019, Judge Haberfeld determined that Claimant must transfer his interest in GVC to Respondent. As such, it is the determination of the Arbitrator that Claimant is not entitled to relief on this issue in the current proceeding. Next, Claimant argues that CLA's failure to tender any funds to Bidsal after Judge Haberfeld's arbitration award terminated CLA's right to purchase Bidsal's interest in GVC. Immediately following Judge Haberfeld's award, Claimant filed a Motion to Vacate the award in the Clark County District Court. That Motion was denied by Hon. Joanna Kishner in December of 2019 and Claimant immediately sought and received a stay of enforcement of Judge Haberfeld's award to take an appeal to the Nevada Supreme Court. Under these facts, it is the determination of the Arbitrator that any perceived failure of Respondent to tender was appropriate given the state of the proceedings and is consistent with Claimant's actions in seeking to vacate the award prior to its enforcement. Respondent effectively had an order in place compelling Claimant to sell his interest in GVC to CLA, and valid tender was no longer a prerequisite to Respondent's ability to enforce the buy-sell provision". (Emphasis added.)

Based thereon on page 31 the Arbitrator said, "the Arbitrator hereby finds in favor of respondent on the issue of Respondent's alleged failure to tender."

Thus, the Arbitrator determined that Bidsal lost and by virtue of Judge Haberfeld's Award up until the date thereof, was barred from contending an absence of tender, and thereafter Bidsal was likewise barred by virtue of his conduct which made clear that Bidsal would never have transferred his interest until the Nevada Supreme Court ruled against him, and there was nothing CLA could have paid or deposited back in 2017, or at any time until the 2022 Nevada Supreme

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Court ruling that could have gotten Bidsal's membership interest so as to avoid his siphoning off Green Valley's cash.

Bidsal himself conceded that at no time prior to the Nevada Supreme Court's affirmance of the Judgment was he willing to proceed to sell. Not only did Bidsal never tell Golshani that he was willing to sell based on his stated $5,000,000 fair market value (Tr. 812:20-813:2, PX 6237, Exh. 266), but when challenged that he "never offered to proceed for CLA to buy your interest based on the 5 million dollar valuation" he answered "I never offered him, no." (Tr. 814:4-9, PX 6239, Exh. 266.)

So, the Arbitrator knew that any uncertainty or disagreement of the result of applying the formula to determine price to be paid was irrelevant in determining the effective date until the Nevada Supreme Court ruled. Still armed with the knowledge that CLA could not have closed because of Bidsal's conduct, nevertheless the Arbitrator issued a ruling which in effect rewarded Bidsal for his delay and which allowed Bidsal to strip Green Valley of its cash.

Here, the Operating Agreement established when the sale should close. If either party breached and failed to transfer or failed to pay, the law provides remedies for that breach. But here the only breaching party was Bidsal. Bidsal steadfastly refused to transfer for four- and one-half years.

But even without a contract provision such as here, the date when a sale should close can be, and often must be, determined. There are many circumstances in which the passage of title is delayed for many reasons including but not limited to the seller's breach or refusal to proceed, or disputes as to the actual purchase price, as in this case disputes about the application of the formula. Such matters, and delay in the transfer of legal title, should not control when the benefits of the purchase should be vested, i.e. the effective date. Otherwise, a breaching buyer could delay payment forever and the seller could never claim interest on the purchase price. Similarly, an innocent buyer is not

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required to sit by while the seller distributes the stream of income to himself that the buyer is buying. A date earlier than when the sale is ultimately completed can be and frequently is the "effective date" after which the parties are treated as though the sale had in fact been completed. The effective date of the sale in this case is that date when by virtue of the contractual agreement between the parties CLA became the equitable owner of Bidsal's membership interest even though Bidsal retained legal title until the litigation had been completed.

The Arbitrator's (and Bidsal's) position would make the words "effective date" meaningless. The law does not have a policy that would allow a seller to continue to reap the benefits of the business interest he is selling simply by refusing to sell and then scream he was not paid for not selling. Even a good faith dispute as to the calculation of the price to be paid when using a formula as in this instance should not change the effective date of the sale. That price (paid by CLA) was based on Bidsal's FMV in August 2017; to maintain that purchase price while allowing the assets to be depleted [in this case the distribution of Green Valley profits] is utterly capricious and irrational.[7]

On page 9 of the Motion, CLA noted that the Arbitrator's ruling was that the date the sale should have closed (the "effective date") had not yet taken place thus deciding that the sale should have closed (effective date) would always be the date the sale actually closed. Not only does this ignore the transfer of the beneficial interest, but also ignores the fact that Your Honor's Judgment, confirmed by the Nevada Supreme Court, called for the sale to close three years earlier. The two are not possibly reconcilable. An award determining that the date a sale should close had not yet arisen is simply at total odds with a prior judgment that the sale should have closed some three years before that award.

[7] As we noted earlier, if there was a delay not caused by Bidsal he can be compensated by an award of interest calculated from the "effective date", which Bidsal has claimed.

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If one were to accept stated basis of the Arbitrator's ruling (the transaction had not closed), it would mean that even though CLA bore the risk of a decline in the market value, loss of tenants, recession, possible pandemics, and everything else, while paying the same purchase price based on an August 2017 valuation, Bidsal still would be entitled to continue to deplete the assets that CLA was buying, by taking Green Valley's cash.

VI.

LONG ESTABLISHED NEVADA LAW (AND POLICY) CONTROL WHAT IS THE EFFECTIVE DATE OF THE TRANSER OF THE BENEFICIAL INTEREST

Without citation of authority (there being none) at Opp. 13:25, Bidsal argues that the "payment by CLA controls the actual effective date." Further, while at Opp. 12:27 Bidsal argues that the Arbitrator applied "controlling Nevada law," none of the authorities cited by Bidsal are analogous or relevant. In fact, the law (cited in the moving papers) is clear: the breaching party must place the nonbreaching party in as good a position as if the contract were performed. See *Eaton v. J. H. Inc.*, 94 Nev. 446, 450, 581 P.2d 14, 16 (1978) and *Lagrange Constr., Inc. v. Kent Corp.*, 88 Nev. 271, 275, 496 P.2d 766, 768 (1972). The damages to the non-breaching party include losses caused to the nonbreaching party, or gains the nonbreaching party was prevented from obtaining, caused by the breach.

The policy considerations behind these cases are very much applicable here. Contracting parties, like Bidsal, cannot be allowed to delay consummating sales in order to continue taking profits that would, when the sale is consummated, belong to the buyer. To hold otherwise would encourage breaches of contract and extended litigation.

But neither the Arbitrator, nor Bidsal, cite any law that says a seller can delay and then reap the benefits of the ownership while litigation is being resolved.

Bidsal in Section L starting at Opp. 28:19 argues that it was not determined that he had breached the Operating Agreement so that CLA's authorities cited in moving papers regarding relief

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to a buyer arising after a seller's breach were not applicable. This is utterly meritless.

Bidsal refused to proceed to sell on the basis of the FMV he included in his offer and instead claimed he was entitled to an appraisal. CLA sought an order for specific performance on account of Bidsal's breach of the contract and refusal to proceed. Judge Haberfeld ruled that Bidsal was not entitled to an appraisal that he demanded and ordered him to transfer his interest using the FMV stated in his offer and held that CLA was the prevailing party and that Bidsal take nothing by his counterclaim. Judge Haberfeld's Award was confirmed by Your Honor, and Bidsal was ordered to transfer. In what world would Bidsal make demands for an appraisal that he was not entitled to, and refusing to proceed with the sale, and his ongoing refusal to transfer not be a breach of breach of the Operating Agreement?

As noted just days after the Arbitrator published his Award, the Nevada Supreme Court issued its ruling denying Bridal's appeal. It is undisputed that CLA paid the purchase price 7 days after the Nevada Supreme Court decision. While Bidsal points to the fact that the application of the formula to his FMV was uncertain and needed to be decided, there was no delay caused by that.

In deciding that the effective date was not until the price was paid, the Arbitrator (and Bidsal) ignored how the price was calculated. That has to be the starting point in deciding the transfer and vesting of the beneficial rights. Starting at Opp. 21:26, Bidsal argues that the formula was unclear. The FMV element of the formula was set by Bidsal's offer on August 3, 2017, when CLA accepted the offer using Bidsal's $5,000,0000 determination of fair market value and elected to buy. All of the elements of the formula were likewise determined as of August 3, 2017. The purchase price was calculated on Bidsal's determination of FMV as of August 3, 2017, and was used by the Arbitrator in making his decision. CLA paid Bidsal based on those determinations. All of the risk of purchase was on CLA once CLA exercise its option to buy, including the risk that the fair market value would have diminished (remember 2008), tenants could have been lost, and of course what happened

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subsequently–the pandemic. All these factors were CLA's risk and burdens. Instead of ignoring these issues, the Arbitrator should have deemed the effective date to be the date that transaction should have closed, and thus awarded CLA the benefits (i.e. the income stream) from the same date.

At Opp. 27:26, Bidsal argued that CLA has not explained how the passage of these four and one-half years would change the purchase price. CLA never contended that it did. What CLA did contend was that the value of the rental income stream and therefore of Green Valley on September 2, 2017 would necessarily have been depleted as rent was collected and then taken by Bidsal during the four and one-half years, while the purchase price remained unchanged. Indeed, Bidsal concedes, as he must, that there has been no change in the purchase price from what it would have been had the sale been completed in 2017.

That is why, despite any ambiguity in the formula, the effective date was necessarily September 2, 2017, and that is why the Arbitrator award must be partially vacated.

VII.

BIDSAL'S AUTHORITIES DO NOT ADDRESS WHAT THE AGREEMENT HERE PROVIDED AND MOREOVER DO NOT SANCTION OR APPROVE OF SETTING A CLOSING OR EFFECTIVE DATE IN A WAY TO ENABLE THE SELLER TO STRIP THE BUSINESS INTERESTS BEING SOLD OF ITS VALUE

At 10:15 of the Motion, CLA postulated that "If instead it had been CLA who had refused to *proceed,* then Bidsal as the seller would have been entitled to interest on the purchase price. But then it would be necessary to determine the date when the sale should have taken place from which interest would run. Similarly, determination of the date that fixes the parties' rights and obligations regarding the sale or stated differently when the sale should have taken place (effective date) would establish the date after which the seller, here Bidsal, no longer was entitled to share in Green Valley's profits or distributions."

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At no place does Bidsal in his Opposition even attempt to refute that proposition[8].

Why, because Bidsal cannot. No cited or known case supports the determination (as made by the Arbitrator and Bidsal) that if a sale is delayed because of the seller, that the seller gets to strip the object of the sale of its value by taking its stream of income.

To support the Arbitrator's untenable position, Bidsal quotes from *Ellis v. Nelson*, 68 Nev. 410 (1951) (and Washington state cases) that "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." Opp. 9:3. Bidsal repeats that point and citation at 19:5 and 21:24.

The statement does not address the issue here. The question is not when Bidsal should have delivered title, albeit the effective date could not possibly be after the date he was directed to do so in the Judgment. Rather, the issue here is who gets to reap the benefits of the business during the period that the seller simply refuses to proceed based on the false claim that appraisal was required followed by the period of a stay of execution during his appeal of the Judgment saying his refusal was wrongful. That is an issue that *Ellis* does not come within light years of addressing. While Bidsal does not tell the Court what *Ellis* involved, CLA does. The one and only issue in *Ellis* was whether the authority of an agent over selling a trailer had been terminated before the sale thereof.

Bidsal's reliance upon *Maloff v. B-Nava, Inc.*, 85 Nev. 471, 456 P.2d 438 (1969) cited at Opp. 15:1, is even more head-scratching. Far from this case being "precisely the situation described" in that case, there the issue was whether an option had been properly exercised. *Maloff* says nothing about whether the seller can continue to drain the business, his interest in which he has

[8] At Opp. 24:1, Bidsal argues that if the effective date were September 2, 2017, then CLA would owe interest. Maybe and maybe not. When a seller refuses to sell, he is not necessarily entitled to interest during the period of his delay. Perhaps that is why Bidsal has not included any authority that a breaching seller gets to recover interest for the period of delay he caused.

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agreed to sell. On page 15, Bidsal quotes from *Maloff* that "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." How that comes even close to whether the Operating Agreement here called for closing escrow within 30-days of acceptance of Offering Member's statement of FMV by Remaining Member is impossible to discern.

So enamored is Bidsal with the foregoing quotation from *Maloff* that he repeats it on page 19 and then again on page 30. CLA contends that even if he repeats it a dozen times, that does not make it apt.

More obscure is Bidsal's reliance at Opp. 15:6 upon *Finnell v. Bromberg*, 79 Nev. 211, 381 P.2d 221 (1963). There the court confirmed a judgment that an optionor had breached the option to sell her shares of stock but remanded for reconsideration of damages awarded because the value of the stock had been determined as of a date prior to the breach. It has nothing to do with whether after the date when a sale should be consummated a seller who refuses to proceed is thereafter entitled to continue to reap the benefits of ownership, much less whether this agreement provides that the sale should have closed 30-days after August 3, 2017, as has previously been acknowledged by Bidsal's counsel.

At Opp. 11:5 and again at 18:26, Bidsal quotes from *Mohr Park Manor, Inc. v. Mohr*, 83 Nev. 107,111, 424 P.2d 101,104 (1967) that "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." CLA agrees. And that agreement goes further. CLA also agrees that "A court should ascertain the intention of the parties from the language employed." Opp. 11:13. CLA urges that "close escrow within 30 days" means that is the date that should determine the parties' rights and obligations or if one prefers the "effective date." And, when as here, the agreement uses those

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words the parties must have intended that a seller could not simply delay closing and take the cash out of the LLC as did Bidsal.

VIII.

BIDSAL'S ARGUMENT THAT HE BECAME ENTITLED TO RETAIN THE LEASE RENTAL PROCEEDS HE CONFISCATED BECAUSE THERE WAS A DISPUTE REGARDING THE PURCHASE PRICE IS ANYTHING BUT MERITORIOUS

At Opp. 13:11, Bidsal argues that CLA was at fault for not calculating the precise price, and that as a result he became entitled to retain the money he took. Bidsal at Opp. 18:1 says CLA's March 4, 2020 answer to the arbitration demand "was the first time that CLA had ever identified what it believed the purchase price should be." That has nothing to do with Bidsal's refusal to transfer, or the date that the rights to the income stream and assets of the LLC became fixed.

The fact is that Bidsal not only did not include his contention of what that price was in his arbitration demand, he at first objected to stating it and then only provided it five months after the interrogatory seeking it was served which was eight months after he filed his arbitration (Opp. Exh. 18, PX, Exh. 2993, Exh. 218 and PX 3306, Exh. 218).

Bidsal's statement at Opp. 17:17 actually belies his complaint that CLA did not calculate the price. In explaining his initiation of the second arbitrary Bidsal said, "It became apparent that there was a dispute regarding what price CLA would be required to pay." Now of course for that he offers no citation. But more importantly, if as he repeatedly complained, CLA never revealed what it contended the final price would be, how could it possibly have been apparent that there was a dispute.

And in any case, none of that touches on the Arbitrator's rewriting the contract to avoid its requiring effective date for the passage of the beneficial interests and rights of the buyer to the income stream, or the capriciousness of allowing Bidsal to drain out the value of what he ultimately sold while he maintained he was not obligated to sell and while that application of the formula and

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price were being litigated.

It is true that the price to be paid was decided in this Arbitration; but that does not address the date at which the price became fixed. The parties may not have agreed how to apply the formula, but both sides applied the formula using the facts as they were on August 3, 2017, the date that CLA exercised its option to buy.

IX.

THE ARBITRATOR'S RULING RESTS ON AN INCORRECT INTERPRETATION OF THE EFFECT OF THE STAY OF EXECUTION

The determination of whether Bidsal was entitled to retain the $514,500 he paid himself, was dependent on establishing what has been labeled as the "effective date," what rights were retained by Bidsal during the adjudication of the Bridal's appeal and the application of the formula. The Arbitrator concluded that Bidsal was entitled to retain $514,500 he paid himself relying in part on what he stated on page 23 of Exh. 117, PX 223:

"Pursuant to Judge Haberfeld's final award, the transfer is to take place ten days of the effective issuance thereof. As that award (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement [sic. "of" ?] Judge Haberfeld's award requiring the sale is effectively postponed. The instant Award is essentially declaratory in nature. Should the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective." (Emphasis added.)

Your Honor confirmed Arbitrator Haberfeld's Award so one should truly substitute Your Honor's Judgment in that final phrase so that it reads, "Should the stay be lifted Judge Kishner's Judgment (confirming Arbitrator Haberfeld's award) directing that the sale take place becomes effective."

By that statement hardly did the Arbitrator merely state that the Judgment could not be enforced. First, he had just said that in the immediately prior sentence, and second, it would have

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been irrelevant to the issue of when the sale should have closed. Further, on page 8 of the Award (Exh. 117, PX 223) the Arbitrator said, "valid tender was no longer a prerequisite to Respondent's ability to enforce the buy-sell provision." So, how could the Judgment confirming Judge Haberfeld's Award not have become "effective?'

Rather, reducing that to its essential impact, what the Arbitrator there said is that Your Honor's Judgment was not effective until the stay was lifted. With all due respect, the Arbitrator could not have been more wrong. Your Honor's stay did not undue Your Honor's Judgment; it merely delayed its enforcement. A Judgment on appeal is effective albeit it may not be enforceable.

The classical, and CLA suggests the only known, purpose of a stay of execution is to achieve a retention of the status quo while an appeal is pending so that an appeal does not become meaningless. But here the Arbitrator claimed that Your Honor's intent was far greater. The Arbitrator in effect says that Your Honor intended the issuance of the stay to make a nullity of Your Honor's Judgment since, so the Arbitrator said, the Judgment became ineffective by virtue of such stay.

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X.

RECOGNIZING THE MERITS OF THE MOTION BIDSAL SEEKS TO AVOID VACATION OF AWARD BY ATTEMPTING TO RELITIGATE ISSUES NOT AT ISSUE, USE OF STRAWMEN, AND RED HERRINGS, IRRELEVANCIES AND OUTRIGHT DECEPTION

Attempting to support the Arbitrator's decision Bidsal resorts to arguing issues that have already been decided, or that are simply red herrings and irrelevant to the issue at hand.

A. Tender

Simply because of the number of times (and ways) that Bidsal has tried to relitigate the tender issue CLA notes:

- The "tender" issue has been fully resolved against Bidsal, and his repeated repetition of that claim does not make his position any better.
- First, it was never raised in Arbitration #1, and was therefore waived.
- Second, it was decided by the Arbitrator in his decision which has not been challenged by Bidsal.

Bidsal's many repeated arguments about this, is the equivalent of beating a dead horse. The tender issue is dead.

B. Closing the Sale.

At Opp. 28:6, Bidsal says that "CLA chose not to close the sale until 2022." Were it not so serious the response would be "Are you kidding?" Who refused to proceed with the sale? Not CLA; it was Bidsal. Who challenged Judge Haberfeld's Award, both in federal and state court? Not CLA; it was Bidsal. Who appealed the confirmation of that Award? Not CLA; it was Bidsal. Who avoided closing after being so ordered in the Judgment of confirmation by obtaining a stay of execution? Not CLA; it was Bidsal.

C. Bidsal Not CLA Breached The Operating Agreement.

At Opp. 29:1, Bidsal argues that CLA breached the Operating Agreement. There is nothing in the Award that could make CLA a breaching party. The only order in the Award that anyone do anything is that CLA pay attorney's fees and costs. Indeed, the Award says, "The instant Award is essential declaratory in nature." Page 23 of Exh. 117, PX 223. To the same effect is N. 5 on page 6 thereof. Bidsal's identification of CLA's breaches are even more irrational and outrageous than the Award. Bidsal complains that CLA never identified a purchase price when, as above noted, by his own words CLA did so a half year before he would do so, and even though Bidsal continued to refuse to close until the Nevada Supreme Court rejected his appeal. The argument that CLA did not open a worthless useless escrow during the period that he refused to proceed to sell or pay Bidsal while he refused to sell is, at best, frivolous.

D. Taxes.

Without citation to the record, Bidsal complains he paid taxes. In truth, Bidsal did not introduce, much less offer to introduce, his tax returns. Even assuming Bidsal did, he chose to

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distribute the money (over CLA's express direction not to do so (PX 921, Exh. 154)[9]. CLA cannot be held responsible for Bidsal's distributions that CLA expressly told him not to take. The payment of taxes do not make his wrongful distributions valid or appropriate. Beyond that, Bidsal's return of the ill-taken gains from taking Green Valley's cash would be a tax deduction. And just like interest and management fees, his taxes have nothing to do with whether the sale should have closed on September 2, 2017.

E. Miscellaneous assortment of Bidsal irrelevant or unsupported claims.

(1) At Opp. 30:19, Bidsal argues that the determination of who gets distributions is based on the "record date" which is the day "the Manager adopts the resolution for payment of a distribution of profits." There is no such resolution in the record because none was ever made. More than that, Section 01 of Article IV on page 8 of the Operating Agreement (Opp. Exh. 9) states "the administration and regulation of the affairs, business and assets of the Limited Liability Company shall be managed by Two (2) managers (alternatively, the 'Managers' or "Management'). . . .The initial Managers shall be Mr. Shawn Bidsal and Mr. Benjamin Golshani." So, any such resolution would have required Mr. Golshani's joinder and for sure he never joined in a resolution for the distributions here in question.

(2) At Opp. 12: 26, Bidsal raises the strawman that CLA contends Bidsal had to transfer without being paid. For that assertion he of course cites nothing because CLA has never so contended

(3) At Opp. 14:3, Bidsal supports his position by claiming that Judge Haberfeld "never determined that any sale had been completed." Of course not. Otherwise, Judge Haberfeld would not have ordered Bidsal to complete the transfer. Your Honor's Judgment directed Bidsal to

[9]In CLA's election to buy Bidsal was expressly told not to distribute any funds; this was repeated in communications with Bidsal's counsel.

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conclude the sale in 14 days. The date Bidsal was supposed to have closed therefore, could not have been any later than December 30, 2019, fourteen days after the Judgment. PX 169, Exh. 114. If the Judgment called for Bidsal to transfer in 14 days, then absent some remarkable other language in the Judgment it most certainly would be "contradicted" by an arbitrator's ruling two years later that the date the sale should close had not yet arisen.

(4) At Opp. 22:27, Bidsal claims that the Motion at 9:9 exhibits CLA's agreement that the date of CLA's response, containing an acceptance of Bidsal's FMV (August 3, 2017) should be the effective date. A reading of that portion of the Motion reveals it said no such thing. The closing date was set as 30-days after that response.

(5) At Opp. 5:1 and 23:26, Bidsal argues that CLA was trying to take advantage of him. That is the very argument that the Nevada Supreme Court and Your Honor rejected. To the contrary, the Arbitrator's Award enables Bidsal to take advantage of CLA, not the other way around. Beyond that it is irrelevant.

(6) Bidsal brags about what he did at the inception of Green Valley starting at Opp. 6:4, and going on for two more pages. None of that which follows has anything to do with whether the Arbitrator recognized the law prohibiting modifying the contract, and then did exactly that or whether allowing a seller to drain the object of the sale of its value after the date the sale should have closed is capricious and arbitrary. Equally irrelevant is how sales proceeds were divided (starting at Opp. 6:14). The ruling on that dispute has not been challenged, and there is nothing to be done about it.

(7) To support his contention that the Arbitrator's Award here should not be partially vacated (and if for not that reason, then why is it mentioned), at Opp. 16:13 Bidsal is still complaining that Judge Haberfeld "deviated from the language of the" Operating Agreement. And

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Your Honor should not feel left out. At Opp. 17:8 Bidsal snipes that Your Honor's Judgment "created" ambiguity.

(8) At Opp. 18:3-25, Bidsal recites his victories in the arbitration. Except for Bidsal's taking Green Valley's income stream after the 30-days none are any relevant as the purchase price has already been paid, and the membership interest transferred.

(9) While Bidsal incorrectly argues (at Opp. 27:14 and 29:3) that CLA's claim is that the Arbitrator's irrational, arbitrary and/or capricious and/or that he disregarded the law stemmed from his reliance upon an expert or business records, that has never been CLA's contention. The issue raised by this petition is the Arbitrator's irrational, arbitrary and/or capricious or contract violating permission allowing Bidsal to drain Green Valley's income flow after September 2, 2017.

(10) At Opp. 20:10, Bidsal argues that there is nothing that says that the "sale would be treated as completed before CLA had actually paid the purchase price." CLA agrees. But completion of the sale is not the predicate for an entitlement for Bidsal to take Green Valley's cash while he refuses to sell, much less addresses that Section 4.2 says when the sale should have closed. Bidsal further argues that even if a buyer gets specific performance, he must still pay the purchase price. Yes, that is true, but that does not say the seller is entitled to drain the object of the sale of its value while he refuses to sell. Under *Eaton* and *Lagrange* it is clear that he does not.

XI.

JUDGMENT

Some consideration must be given to what the Judgment should provide assuming this Motion is granted. CLA believes that as to the $514,500, there is nothing to be returned to arbitration, and the Judgment should simply award that amount to CLA. That was precisely the result in *Comedy Club Inc. v. Improv. W. Assocs*., 553 F.3d 1277 (9th Cir. 2009) in which partial vacation was awarded.

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Seemingly, Bidsal acknowledges that there is no reason to return to arbitration with regard to the $514,500. In Opp. Section E on page 24 he discusses reasons for returning to arbitration to handle issues of interest on the purchase price and management fees. What stands out is that Bidsal does not suggest in any way that this matter should return to arbitration with regard to the determination that the effective date was not as found by the Arbitrator.

Bidsal contends the if the Award is so vacated, then he is entitled to return for further arbitration. CLA argues that if he is correct, then he merely needs to file another claim.

But Bidsal's claim that it would return to Arbitrator Wall errs. Just as Bidsal's counsel successfully opposed having the second arbitration heard by Arbitrator Haberfeld, CLA would object that any hearing of a third arbitration by Arbitrator Wall and anticipates a similar conclusion. In any event, to whom JAMS assigns arbitration would appear to be a matter for JAMS rather than this Court.

It must be kept in mind that as above noted, Arbitrator Wall has improperly pre-judged the issue of management fees despite the fact this matter was bifurcated, and no evidence was taken with regard to it. Arbitrator Wall's prejudgment was improper, and at least creates the appearance of favoritism and bias. Your Honor can determine any remaining issues arising from the Motion.

In a matter where Bidsal's side alone spent over a half-million dollars in fees and costs in this second arbitration, it would seem unwise to initiate more court proceedings by Your Honor's directing who should preside over any further arbitration. While not relevant to this Motion, CLA

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believes it has far more grounds for objecting to Judge Wall's again acting as arbitrator than Bidsal had for objecting to Judge Haberfeld's presiding over the second arbitration.

Dated this 7th day of October, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the 7th day of October 2022, a true and correct copy of **CLA PROPERTIES, LLC'S REPLY IN SUPPORT OF MOTION TO VACATE [PARTIALLY] ARBITRATION AWARD** was served to the following in the manner set forth below:

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___ Hand Delivery

_X_ Electronic Service via the Court's CM/ECF system

___ U.S. Mail, Postage Prepaid

___ Certified Mail, Receipt No. _____

___ Return Receipt Requested

/s/ Melanie Bruner
An employee of Reisman Sorokac

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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: November 9, 2022 Time: 8:30 a.m.

BIDSAL'S REPLY IN SUPPORT OF BIDSAL'S 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 Reply (the "***Reply***") in Support of Bidsal's Countermotion to Confirm Arbitration Award (the "***Countermotion***"). This Reply is made and based upon the pleadings and papers on file herein, the attached Memorandum of Points and Authorities, the attached declarations and exhibits, and any oral argument your Honor may wish to entertain in the premises.

Dated this 31st day of October, 2022

SMITH & SHAPIRO, PLLC

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I.

PREFATORY STATEMENT

After a very exhaustive and binding arbitration hearing lasting many weeks, at which every argument raised by Petitioner, CLA Properties, LLC's ("***CLA***") in its Opposition was thoroughly raised, argued, and ultimately rejected by the Arbitrator (Judge Wall), a very well-reasoned arbitration award was issued (the "***Award***"). The Award is binding on both parties and should be confirmed by this Court. CLA's Opposition is merely an attempt to reargue the same issues decided by Judge Wall against CLA in the Award. However, Nevada law makes it clear that CLA's attempt to re-litigate the Award through a petition to this Court is inappropriate. The high standard to vacate an award under binding arbitration is quite straightforward, and certainly not met by CLA. There are only a limited number of circumstances under which an arbitration award can be vacated. *See* Countermotion at 24:26 – 26:12. An Arbitrator's final award should not be vacated unless: (1) the award was procured by corruption, fraud, or undue means, (2) there was evident partiality or corruption by the arbitrator, (3) the arbitrator was guilty of specified misconduct, (4) the arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made, (5) the arbitrator's decision was completely irrational, and/or (6) the arbitrator manifestly disregard of the law.

CLA argues only the fourth provision - that the arbitrator exceeded his powers, the fifth provision - that the arbitrator's decision was completely irrational and the seventh provision - that the arbitrator manifestly disregarded the law. None of these assertions are valid as will be addressed below.

II.

PROCEDURAL HISTORY

A. THE ORIGINAL ARBITRATION.

On April 5, 2019, Judge Stephen E. Haberfeld issued a final award in favor of CLA (the "***Original Final Award***") in an arbitration initiated by CLA, brought to determine if CLA had a right, under the Green Valley Commerce, LLC ("***GVC***") Operating Agreement ("***OA***") to force Bidsal to sell his shares in GVC to CLA (the "***Original Arbitration***"). *See* Countermotion Exhibit

"17". Judge Haberfeld determined that CLA had a right to force Bidsal to sell his shares in GVC to CLA using the formula contained within the GVC OA and fixing a variable contained in the formula, "FMV" at $5,000,000.00 (the "***Forced Sale***"). *Id*. **Judge Haberfeld did not determine that the effective date of such a forced sale had already occurred, or that CLA could treat the sale as having already occurred despite never having paid the purchase price to Bidsal. Indeed, such issues were never a part of the Original Arbitration.**

On May 21, 2019, CLA petitioned this Court to confirm the Original Final Award. *See* Case No. A-19-795188-P [Doc ID #1]. On July 15, 2019, Bidsal filed an opposition to CLA's petition and counterpetition to vacate the Original Final Award. *See* Case No. A-19-795188-P [Doc ID #11]. On December 6, 2019, this Court entered an order granting CLA's petition to confirm and denying Bidsal's counterpetition to vacate (the "***Confirmation Order***"). *See* Case No. A-19-795188-P [Doc ID #31]. Within the Confirmation Order, the Court quoted the GVC OA, stating in pertinent part, "The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction." *Id*. at 4:21-23. The Court, pursuant to the Confirmation Order, stated "…[CLA] has met its burden to have the award affirmed and [Bidsal] has not met his burden to vacate the award. Thus, the Court must affirm the Arbitrator's award in its entirety." *Id*. at 8:3-6.

B. THE SECOND ARBITRATION

Realizing that the formula contained within the GVC OA had more than one variable and that the Original Arbitration did not decide these variables or decide the purchase price, Bidsal initiated the second arbitration to determine the sales price CLA was required to pay to complete forced sale, and to determine Bidsal's ongoing rights as a member of GVC since CLA had never taken any action to complete the forced sale (the "***Second Arbitration***"). *See* Countermotion Exhibit "18". The formula for determining the purchase price of the forced sale, referenced in the Original Final Award, was "(FMV – COP) x 0.5 plus capital contribution of [Bidsal] at the time of purchasing the property minus prorated liabilities." *See* Countermotion Exhibit "9" at BIDSAL000011. The remaining variables of the formula which needed to be determined so that a purchase price could be calculated were "COP," "capital contribution of [Bidsal] at the time of

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purchasing the property," and "prorated liabilities." On February 7, 2020, Bidsal initiated the Second Arbitration under the same GVC OA, as the Original Arbitration did not determine the remaining variables in the formula, and the parties to the GVC OA did not agree on how these variables were to be decided. *See* Countermotion Exhibit "18". The Second Arbitration was heard by Judge David Wall. Notably the Second Arbitration Demand listed the same dispute resolution provision referenced in the Confirmation Order, "The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction." *See* Case No. A-19-795188-P [Doc ID #31] at 4:21-23. *See also* Countermotion Exhibit "18" at pg. 4 of 7.

Based on the fact that both the Original Arbitration and the Second Arbitration fall under the same contract, the GVC OA, the same standard contractually agreed to by both Bidsal and CLA in the GVC OA must be applied to each Arbitration. The standard agreed to by CLA was that "[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* Confirmation Order Exhibit "9" at BIDSAL000008 (GVC OA page 8).

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III.

LEGAL AUTHORITY AND ANALYSIS

A. THE LEGAL STANDARD – CONFIRMATION v. VACATION.

As this Court stated in its Confirmation Order, the parties agreed that the Court had the authority to review the Original Final Award, within the limits imposed by NRS 38.244(2) and 9 U.S.C. § 9. According to 9 U.S.C. § 9, "…at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and ***thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.***" *See* 9 U.S.C. § 9. (emphasis added).

1. Standard to Vacate.

The standard to vacate an arbitration award is extremely high. 9 U.S.C. § 10 lays out only four circumstances under which a court may vacate an arbitration award.

a. where the award was procured by corruption, fraud, or undue means;

b. where there was evident partiality or corruption in the arbitrators, or either of them;

c. 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

d. 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.

See 9 U.S.C. § 10. If none of the above referenced factors are established by the party petitioning to vacate the award, then the court "must grant" a timely petition to confirm the arbitration order. *See* 9 U.S.C. § 9. CLA's request to vacate the Award arises under factor (d) referenced above, and that is the only basis for vacation presently before the Court. As will be shown below, Judge Wall did not exceed his powers, rather, CLA simply disagrees with Judge Wall's Final Award (the "***Award***"), which is not a valid basis for seeking to vacate the award under 9 U.S.C. § 10.

B. THE ARBITRATOR RECOGNIZED AND FOLLOWED THE LAW

It is undisputed that Judge Wall recognized the law pertaining to a court being unable to modify a contract that is not ambiguous on its face. Judge Wall's Final Award states "In interpreting an agreement a court may not modify it or create a new or different one." *See* Countermotion Exhibit "20" at pg. 7 *citing* Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107 (1967). However, where an agreement contains inherent ambiguities, it is the province of the arbitrator to interpret the agreement and to make a factual determination regarding what the parties intended (particularly when there is a dispute between the parties regarding the meaning of the contract and what was intended by the language selected). That is precisely what the parties agreed to have happen if a dispute arose regarding the interpretation of the GVC OA, which provides:

> In the event of any dispute or disagreement between the members as to the interpretation of any provision of this Agreement (or the performance of obligations hereunder), the matter, upon written request of either Party, shall be referred to representatives of the Parties for decision. The representatives shall promptly meet in a good faith effort to resolve the dispute. If the representatives do not agree upon

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> a decision within thirty (30) calendar days after reference of the matter to them, any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transactions arising hereunder shall be settled exclusively by arbitration in the City of Las Vegas, Nevada. Such arbitration shall be administered by JAMS in accordance with its then prevailing expedited rules, by one independent and impartial arbitrator selected in accordance with such rules. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 et. seq.

CLA has expressly agreed to have Judge Wall, as the arbitrator, decide "any dispute or disagreement . . . as to the interpretation of" the GVC OA "or the performance of obligations thereunder." That is exactly what Judge Wall did, and CLA's request to vacate the Award is merely CLA's attempt to continue litigating the same issues decided against CLA in the Second Arbitration.

CLA argues that Judge Wall disregarded the law as it pertains to the prohibition of modifying and/or creating a new contract when the language of the contract is not ambiguous. *See* Reply In Support of Motion to Vacate [Partially] Arbitration Award (the "***CLA Reply***")[1] at 6:11-18. However, Judge Wall did not change a single word of the pertinent contract, the GVC OA, nor has CLA pointed to any language actually changed by Judge Wall. What is quite obvious is that Judge Wall simply did not accept CLA's interpretation of the existing language in the GVC OA, which is completely different from Judge Wall adding new language (which never happened).

C. JUDGE WALL DID NOT MODIFY THE 30-DAY PROVISION.

The CLA Reply states no less than fifteen times that the GVC OA required that the sale of Bidsal's membership interest had to be closed within thirty days of CLA electing to purchase Bidsal's membership interest, and that this provision established the effective date of the forced sale (even if CLA never performed its obligations to complete the forced sale). Judge Wall recognized that these statements misquote the GVC OA and misrepresent the deadline to consummate the forced sale. Had Judge Wall adopted CLA's position he would have needed to

[1] Bidsal's Reply in Support of Bidsal's Countermotion to Confirm Arbitration Award responds to CLA's Reply In Support of Motion to Vacate [Partially] Arbitration Award based on CLA's statement that its opposition to Bidsal's Countermotion to Confirm are made on the same grounds as its Motion to Vacate Arbitration Award and CLA's Reply in Support of Motion to Vacate [Partially] Arbitration Award. [Doc ID#32 and 33].

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impermissibly add a definition of "effective date" where none existed and would have been required to disregard the actual language of the GVC OA.

The GVC OA set a thirty (30) day deadline at Section 4.2 only in the instance where one member accepts an offer to purchase submitted by the other member. *See* Countermotion Exhibit "9" at BIDSAL000010-11. The actual language that CLA refers to in the GVC OA (the "***30-day Provision***") is as follows:

> 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 acceptance."

Id. Judge Wall did not modify the 30-day Provision; he simply recognized that CLA had **never** performed by paying the purchase price for Bidsal's interest, whether it was required to be paid within 30 days or some other time period – CLA simply never performed by making payment. Judge Wall also rejected CLA's argument that it was somehow prevented from performing by Bidsal. CLA was free to open an escrow and deposit the purchase price or simply send the money to Bidsal. Bidsal never rejected any payment from CLA (because no payment was ever made), and he never stated he would reject any payment from CLA. The simple truth is that this was a cash sale which required payment of the purchase price by CLA in exchange for the transfer of Bidsal's membership interest. CLA never performed and thus was never entitled to Bidsal's membership interest. It has long been 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).

1. CLA's Argument Would Require Modifying the Language of the Contract.

The 30-day Provision sets the terms of a sale to include "all cash and close escrow within 30 days". *Id*. Clearly, the 30-day Provision required that cash would be deposited into escrow by its plain language. The written instrument on which CLA relied upon to effectuate the forced sale

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is the GVC OA, specifically CLA states that it relied on the Thirty-day Provision. *See* CLA Reply at 10:3-5.

Under CLA's argument, CLA was responsible for delivering the written instrument governing the transaction and the funds that CLA was required to pay under that instrument, to escrow within 30-days of acceptance. Taking CLA's own definition, "…'acceptance' refers [to]… 'acceptance' by the Remaining Member of the FMV stated in the offer." *See* CLA Reply at 9:1-2. After that delivery, the escrow agent would have been responsible for holding those items until the happening of a specified event, which would be Bidsal signing and delivering to the escrow agent a transfer of all of his membership interest in GVC. However, herein lies the problem, CLA never opened any escrow, never provided an escrow agent with the GVC OA, and never paid the purchase price (either to escrow or to Bidsal) within the requisite 30-day period. Of course, the actual 30-day Provision doesn't even apply to a situation where the Offering Member's offer is rejected and the Remaining Member elects to force the Offering Member to sell his interest. As a result, CLA demanded that Judge Wall modify the 30-day Provision as follows:

> 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 Remaining Member rejects the purchase offer and makes a counteroffer to purchase the interest of the Offering Member at the same price, the Offering Member is forced to accept the counteroffer and the terms for closing the transaction will be all cash and close escrow within 30 days of the counteroffer being made*.

Of course, none of the italicized language is in the GVC OA, and the 30-day closing applies by its express terms only to a transaction in which the Remaining Member accepts the offer made by the Offering Member. *Id.* Judge Wall declined to modify any of the terms of the 30-day Provision and stated the obvious - "The OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed." *See* Countermotion Exhibit "20" at pg. 23. Judge Wall recognized that whether CLA was required to perform within 30 days or some other period is irrelevant, what is relevant is that CLA **never performed**. Under Nevada law, CLA cannot expect to receive the benefit of a cash sale until it has paid the purchase price.

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2. CLA's Demand to Judge Wall to Modify the GVC OA, if Adopted, Would Have Allocated All of the Burden to Bidsal and All of the Benefit to CLA.

CLA argues that it would have been certifiably insane for CLA to open escrow within 30 days from cramming down the Forced Sale, but contends that Bidsal was still required to transfer his interest in 30 days, without having received any payment of the purchase price. *See* CLA Reply at 4:8-11. This of course makes no sense whatsoever. CLA cannot blame Bidsal for CLA's failure to open escrow and deposit the purchase price, or simply send payment of the purchase price to Bidsal. Both of these actions were completely within CLA's control. Instead, CLA's arguments are all based upon a legal fallacy, that CLA is entitled to all the benefits of owning Bidsal's interest without having ever paid the purchase price. CLA's demand for modification would have required Judge Wall to revise the language of the GVC OA to require one-sided compliance of the 30-day Provision, which Judge Wall declined to do.

D. NOTHING PREVENTED CLA FROM PERFORMING ITS OBLIGATION TO PAY THE PURCHASE PRICE.

CLA's often repeated argument that it was somehow prevented from performing its obligation to pay the purchase price, has no basis in reality. The GVC OA, at Section 4, makes it clear that this is a cash sale. It has long been 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, 52Wn.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.")

Thus, under the controlling law, CLA had no right to claim ownership of Bidsal's membership interest **until payment had been made**. Rather than acknowledge the fact that it never

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performed by making payment to Bidsal, CLA attempts to deflect its failure by arguing it could only close the sale if an escrow was first opened and that CLA was prevented from opening an escrow because Bidsal refused to participate.

1. CLA Could Have But Did Not Open Escrow.

Of course, there is no requirement that an escrow be opened to complete this transaction. CLA could have simply made payment to Bidsal at any time of the amount CLA considered the purchase price to be. Bidsal never refused any payment and Bidsal never stated that he would refuse any payment. In fact, Bidsal testified in the arbitration that he would not have refused to accept whatever payment was made by CLA, although he may have disputed it was the full amount due if it was for less than the amount Bidsal was owed. *See* Excerpt of Bidsal's Arbitration Testimony attached hereto as ***Exhibit "25"*** and incorporated herein by this reference at Day 3, 681:18 – 682-5. Importantly, CLA's argument is completely hypothetical because **CLA never paid the purchase price**, so its argument that it was somehow prevented from doing so is simply an attempt to misdirect the Court.

CLA also could certainly have opened an escrow on its own and deposited the purchase price along with the GVC OA, or later the First Arbitration Award. Again, CLA failed to open any escrow.

> An escrow involved the deposit of documents, money, or other items of value with a third party to be delivered on the occurrence of one or more conditions. In most real estate transactions these functions usually are handled by a neutral escrow holder. . . In such cases, neither party is entitled to compel performance by the other party without the performance or a tender of performance of its own obligations under the contract.

Miller & Starr, *California Real Estate* at § 6:1 (4th Ed. 2022).

The term "escrow" is defined by statute, specifically, NRS 645A.010(7), as follows:

> 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 a ***third person*** 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 instructions*** under which he or she is to act…"

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See NRS 645A.010(7) (emphasis added).

The term "escrow" is also defined in NRS 692A.024 as follows:

> "Escrow" means any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor or any agent or employee of any of them. The term includes the collection of payments and the performance of related services by a third person in connection with a loan secured by a lien on real property.

See NRS 692A.024.

Each of these statutory definitions make it clear that a single person can open an escrow and deposit money to be released upon a defined condition. *See* NRS 645A.010(7) & NRS 692A.024. There is nothing in Nevada law that prohibits one party to a transaction from unilaterally opening an escrow, depositing money, and providing instructions regarding the conditions upon which the money can be released. In fact, the very definition of escrow contemplates exactly this situation by making it clear that "one person" creates an escrow by depositing "money" with a third person, to be held until "the performance of a prescribed condition". *Id.* There is certainly no authority supporting CLA's argument that CLA could not open an escrow without Bidsal's participation. CLA argues that it would have been foolish, bordering on certifiable insanity for CLA to open escrow without Bidsal's participation because if it had done so the funds would have remained in escrow for almost five years. *See* CLA Reply at 4:8-13. However, this is precisely what CLA was required to do if it wished to later argue that it had performed its payment obligation at an earlier date giving it the right to claim ownership of Bidsal's membership interest at an earlier date.

CLA then cites the case of Allenbach v. Ridenour, 51 Nev. 437, 279 P.32 (Nev. 1929) to assert that the opening of escrow in the present case would be an "idle act." *See* CLA Reply at 4:12-14. Allenbach does not define what an "idle act" consists of, stating only, "[i]t would be an idle act to restore that which ultimately a party would be entitled to receive and retain." Allenbach v. Ridenour, 51 Nev. 437, 279 P.32 (Nev. 1929). It is interesting that CLA selected the Allenbach case to rely upon, given its underlying facts. In Allenbach, a father of four children stated in his will that he was deeding a ranch to one of his children and that the deed would be placed into escrow

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with instructions to be delivered to the son upon the father's death. *Id*. The father then signed the deed to the ranch *but failed to place it into escrow*. *Id*. Because of the failure to transfer the deed into escrow, the transfer was determined to be ineffective. *Id*. This outcome highlighted that performance is the predicate to claim ownership rights. There is no transfer of a real property deed until the deed is delivered. The Allenbach court stated, "[i]t is established by the great weight of authority that ***delivery*** of a deed to a third person for the use of the grantee will not be ***effectual***, unless made in such a manner as to show that the grantor ***has voluntarily relinquished all control over the instrument***." *Id*. (emphasis added). By the decision of the Allenbach court, CLA was required to relinquish all control over the purchase price for Bidsal's interest by either paying the money directly to Bidsal, depositing it with an escrow, or interpleading it with this Court. CLA did nothing and thus has no rights to Bidsal's interest until it had performed.

The decision in Judge Wall's Award, that the effective date did not occur until CLA had fully performed its obligation to pay the purchase price, fully comports with the Allenbach decision.

2. Undisputed Evidence Relied Upon by Judge Wall.

Judge Wall acknowledged that the modifications of the 30-day Provision requested by CLA were not legally permitted, and that in making his determination he was required to accept the facts as they actually occurred. A summary of the undisputed evidence relied upon by Judge Wall regarding performance is helpful to this analysis. The following facts cannot be disputed.

(a) CLA (a member) gave notice to Bidsal (a member) that it was forcing Bidsal to sell his shares. *See* Countermotion Exhibit "14".

(b) CLA's notice failed to identify a price (a requirement of the 30-day Provision). *See* Countermotion Exhibit "9" at BIDSAL000010-11.

(c) CLA failed to make any payment to Bidsal of what CLA considered the purchase price to be, until **after** Judge Wall's Award was issued.

(d) CLA also failed to open any escrow (despite CLA's argument that this was a requirement of the 30-day Provision). *Id*.

(e) CLA failed to make payment of the purchase price to Bidsal.

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(f) Bidsal clearly testified he would have accepted any payment from CLA if a payment had been made (which never happened). *See* Exhibit "25" at Day 3, 681:18 – 682-5.

(g) This led to Judge Wall's decision that: "[t]he OA provides for a procedure for completing a sale of a membership interest, which procedure has not yet been completed." *Id*. Judge Wall then acknowledged that although a procedure existed in the OA for completing a sale of a membership interest, Judge Haberfeld had modified the procedure by requiring a transfer to take place within ten days. *Id*.

(h) Under either the GVC OA or under the modification to the GVC OA imposed by Judge Haberfeld's decision (performance within 10 days), **CLA has never performed**.

E. JUDGE WALL DID NOT MODIFY THE HABERFELD PROVISION.

Judge Wall stated, "[s]hould the stay be lifted, Judge Haberfeld's award directing that the sale take place becomes effective and the instant Final Award has now used a reasonable interpretation of the formula in Section 4.2 to arrive at a purchase price." *See* Countermotion Exhibit "20" at pg. 23. In essence, where CLA elected to omit the material terms of the 30-day Provision, notably the price it would pay to Bidsal, Judge Wall ascertained (via the formula in the OA) what the price was and used Judge Haberfeld's final award, determining that the forced sale was valid (see italicized changes for Judge Haberfeld's modifications to the 30-day Provision) in completing the formula. Thus, the 30-day provision (if it applied at all), as modified by Judge Haberfeld at the time of the Final Award from Judge Wall read as follows:

> *CLA* ~~Any Member~~ ~~("Offering Member")~~ ~~may give~~ *gave* notice to ~~the Remaining Member(s)~~ *Bidsal* that ~~he or~~ it ~~is~~ *was* ready, willing and able to purchase ~~the Remaining Members'~~ *Bidsal's* Interests for a price ~~the Offering Member thinks~~ ~~is the~~ *computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00)* ~~fair market value~~. The terms to be all cash and close escrow within *ten (10)* ~~30~~ days of ~~acceptance~~ *issuance of this Final Award, free and clear of all liens and encumbrances*.

See Countermotion Exhibit "20" (the "***Haberfeld Provision***").

Notably, after Judge Haberfeld issued his award, CLA still did not open escrow and did not relinquish control over any amount of money for the purchase of Bidsal's interest in GVC. When CLA finally delivered the purchase price to Bidsal, he delivered a document transferring his

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membership interest. Interestingly, no formal escrow was used. Bidsal's counsel merely delivered the transfer document to CLA's counsel in exchange for a cashier's check in the amount of the purchase price. Again, this demonstrates that there was never any actual requirement for an escrow, and CLA could have paid the purchase price at any time it could have deposited the purchase price into an escrow at any time. CLA elected to do nothing, (so that it could hold onto and use the money over the last five years), and must now live with the consequences of its decision.

Judge Wall did not change the language of the GVC OA at all. The facts of the transfer created the effective date of the sale, and the facts show that the effective date of the transfer occurred on March 25, 2022, when CLA performed by finally making payment to Bidsal.

F. JUDGE WALL DID NOT MODIFY THE DISTRIBUTION PROVISION.

In a completely contradictory argument, CLA argues that Judge Wall FAILED to change the distribution provision to match up with the CLA's fictitious effective date (which assumes that CLA had actually performed when it obviously did not). The distribution provision of the GVC OA (the "***Distribution Provision***") states in relevant part,

> **Section 03 Qualifications and Conditions.**
>
> The profits of the Limited Liability Company ***shall be distributed***; to the Members, from time to time, as permitted under law and as determined by the Manager, provided however, that all distributions shall be in accordance with Exhibit B, attached hereto and incorporated by reference herein.
>
> **Section 04 Record Date.**
>
> The Record Date for determining Members entitled to receive payment of any distribution of profits shall be the day in which the Manager adopts the resolution for payment of a distribution of profits.

See Countermotion Exhibit "9" at BIDSAL000012 (emphasis added).

CLA argues that Judge Wall SHOULD have changed the Distribution Provision from "shall be distributed" to "shall NOT be distributed" because CLA "expressly told" Bidsal "not to distribute any funds…" *See* CLA Reply at fn. 9. Additionally, CLA argues that Judge Wall SHOULD have changed the Distribution Provision because "…Bidsal at all times refused to transfer his interest..." *See* CLA Reply at 5:12-19. Of course, CLA again tries to change the focus from its own failure to

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perform by never paying the purchase price, to an illogical argument that Bidsal was somehow required to transfer his membership interest despite having never received any payment. Bidsal had no obligation to transfer his interest **until payment of the purchase price was received.** *See* Ellis v. Nelson, 68 Nev. 410, 416, 233 P.2d 1072, 1075 (1951).

This attempt to deflect the Court's attention and suggest that Bidsal is somehow responsible for CLA's decision to never pay the purchase price, is at the heart of CLA's entire motion to set aside Judge Wall's Award. In CLA's twisted version of the facts, CLA merely had to give notice to Bidsal that it intended to force a sale of his interest, and this notice alone was sufficient to effectuate a transfer of Bidsal's membership interest to CLA and give CLA the right to control the Company and receive all future distributions from the Company. Judge Wall correctly determined that CLA's rights to assert control over Bidsal's interest was subject to one indisputable condition precedent – payment of the purchase price by CLA – which Judge Wall determined was never accomplished or even attempted.

CLA's argument would require the Distribution Provision to be modified to read as follows: "[t]he profits of the Limited Liability Company shall NOT be distributed to Members who don't transfer their shares under a forced sale election." Such a modification would be monumental, and an arbitrator certainly is not authorized to make such a revision under the controlling case law of Mohr Park Manor, Inc. v. Mohr, 83 Nev. 107 (1967). Every argument made by CLA would have required Judge Wall, and this Court, to read into the GVC OA language that simply does not exist, and that would be contrary to controlling Nevada law.

Judge Wall reviewed the distribution provisions and correctly applied the same, noting that Bidsal was a GVC Member and Manager, who distributed the profits of GVC based upon the membership of the record date. *See* Countermotion Exhibit "9" at pg. 23.

G. THE ARBITRATOR'S DECISION WAS NOT "COMPLETELY IRRATIONAL, CAPRICIOUS OR ARBITRARY".

In a series of arguments contained in the CLA Reply, CLA accuses Judge Wall of being irrational, capricious and/or arbitrary. These arguments are ironic, given that what CLA is really

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complaining about are the words contained in the GVC OA, a contract that it willingly entered into, and that Judge Wall had no hand in drafting.

1. Judge Wall Did Not Impose The Terms that Allowed Bidsal to Remain A Member and Receive Distributions Until the Forced Sale Transaction Closed.

CLA argues that "…allowing a seller to drain the business being sold by simply refusing to proceed with the sale is irrational, capricious and arbitrary…" *See* CLA Reply at 6:18-22. While Bidsal did not: (1) drain the business of cash, or (2) refuse to proceed with the sale once the purchase price was paid, neither of these events, had they occurred, changed the Distribution Provision language.

If CLA is referring to the distributions made by Bidsal (as Manager of GVC) to both record members at the time of each distribution, those were made pursuant and in accordance with the terms of the Distribution Provision of the GVC OA, language which Judge Wall was prohibited from modifying. If that language (or absence of language) was irrational, the parties to blame include CLA, but do not include Judge Wall.

What is truly irrational, is CLA's argument that it should have been treated as the sole member of the Company without ever paying the purchase price for Bidsal's membership interest. If CLA had paid the purchase price, and Bidsal rejected it, or if CLA had opened an escrow and deposited the purchase price into the escrow, CLA could make an argument that it should be a member from the date of its performance. However, none of these hypothetical situations ever happened. CLA kept its money, never paid anything to Bidsal, but wanted Judge Wall to treat CLA as if CLA had fully performed. Obviously, neither the GVC OA, nor Nevada law, permitted Judge Wall to treat CLA as having performed its condition precedent to assuming Bidsal's rights in the Company.

2. Judge Wall Did Not Make a Finding of Any Date the Sale Should Have Closed.

CLA next argues that it was irrational and capricious for Judge Wall to find "that the date the sale should have closed had not even arrived in face of the contract provision which called for the escrow to close in 30-days from 'acceptance" of the offered FMV. *See* CLA Reply at 1:9-17. Indeed, Judge Wall could not and did not change any of the provisions which CLA is now arguing

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he should have changed. Nowhere in the GVC OA or Judge Wall's Final Award is "the Date a Sale Should Have Closed" defined. As mentioned, several times above, the GVC OA sets, "[t]he terms to be all cash and close escrow within 30 days of the acceptance." *See* Countermotion Exhibit "9" at BIDSAL000011. The GVC OA does not mention anything about what happens if the escrow did not close within 30 days and Judge Wall didn't add language to the GVC OA to modify that language. Nor does the GVC OA specify if an escrow is to be used or the timing for closing a transfer of a membership interest if it is a forced sale.

If anyone is to blame for a lack of language within the GVC OA, the fault can only lie with the drafters, and not Judge Wall. The fact of the matter is whether or not the escrow "should have" closed in 30 days is irrelevant, as it clearly did not., based upon CLA's failure to ever pay the purchase price. CLA's failure to perform by making payment to Bidsal or into an escrow from 2017-2021 is a fact, a fact that can't be changed by CLA, Bidsal or Judge Wall.

Judge Wall in a logical statement found that "[t]he transaction has never been completed." *See* Countermotion Exhibit "9" at pg. 23. The logic of this statement can't be attacked by CLA, as CLA agreed with the statement. *See* CLA Reply at 11:20. Judge Wall, for all his skill, can't wave a magic wand and complete the transaction. CLA's decision not to complete the transaction is entirely the fault of CLA and has nothing to do with Judge Wall. As Judge Wall noted, "[t]he OA provides for a procedure ***for completing a sale of a membership interest***, which procedure has not yet been completed." *See* Countermotion Exhibit "9" at pg. 23 (emphasis added).

3. Judge Wall Did Not Make a Finding that Bidsal Could "Take From the Rental Stream" Until He Was Paid.

CLA argues that it was irrational, arbitrary and capricious for Judge Wall to hold that Bidsal could "take from the rental stream" until he was paid. *See* CLA Reply at 15:25 – 16:3. To be clear neither the GVC OA, nor Judge Wall's award even mentions "rental stream." Assuming that CLA is actually referring to distributions of profits, the controlling language for said distributions is the Distribution Provision. *See* Countermotion Exhibit 9" at BIDSAL000012. Not to beat a dead horse, but the Distribution Provision of the GVC OA controlled how, when, and to whom, distributions of profits could and must be made. Judge Wall simply followed the language of the Distribution

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Provision within the GVC OA. Judge Wall was not the drafter of this provision and whether the provision is logical or illogical, it is the provision that the parties agreed to control their business relationship with respect to GVC.

4. Judge Wall Did Not Change the Fair Market Value or the Distribution Provision.

Next CLA argues that "That [purchase] price…was based on Bidsal's FMV in August 2017…" and "…to maintain that purchase price while allowing the assets to be depleted…is utterly capricious and irrational." *See* CLA Reply at 18:12-16. Unwrapping CLA's argument shows its absurdity:

a. The purchase price was not determined until Judge Wall's Award was issued on March 12, 2022. CLA never advised Bidsal regarding what it considered the purchase price to be until the Second Arbitration was underway, and CLA never made payment of the amount it claimed to be the purchase price.

b. CLA cannot possibly be complaining that Judge Wall improperly used the "FMV" that it asserts was "based on Bidsal's FMV in August 2017" and was fixed by Judge Haberfeld's Award, because the FMV fixed by Judge Haberfeld was used by Judge Wall. If CLA is making such a complaint, it is a 180-degree turn, as they have vociferously advocated for the maintenance of that figure throughout the five-year dispute.

c. The real property assets of GVC were not modified from the onset of the present dispute and remained intact until the date of Bidsal's transfer of membership interest. Thus, none of the real property assets were depleted.

d. The fair market value of the company is the ONLY value that would have increased or decreased with the passage of time and acceptance of rents under leases and that was the one figure that CLA insisted could not be changed.

CLA is attempting to reap the benefit of a static FMV number (keeping the purchase price as low as possible) and reap the benefit of the increase in fair market value of GVC. CLA has doubled down on the FMV being a static number and cannot now state that Judge Wall should

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award CLA additional value to GVC made over the past five years, when CLA was not the complete owner of GVC because it never paid the purchase price for Bidsal's interest.

No matter how absurd the argument is, the bottom line is the GVC OA fixed the purchase price formula and the Distribution Provision addressed who was entitled to profits distributions and when they became entitled to the distributions. Judge Wall only followed the language of the GVC OA, language which CLA agreed to. The record on this matter is closed, and it demonstrates that CLA never performed until after Judge Wall's Award, and immediately upon performing by paying the purchase price, CLA received Bidsal's interest.

5. Judge Wall Did Not Deny CLA the Benefit of Its Bargain Under the GVC OA.

CLA argues that "…the Arbitrator's ruling effectively rewrote the agreement denying CLA the benefit of its bargain under the contract…and was irrational, arbitrary and capricious." *See* CLA Reply at 3:1-4. As was already covered above Judge Wall did not rewrite any of the GVC OA. Likewise, Judge Wall did not deny CLA any benefit of its bargain. CLA bargained for the language contained in the GVC OA. CLA then bargained for the Forced Sale of Bidsal's membership interest. CLA, in its first arbitration demand, succinctly stated the bargain it expected "Respondent [Bidsal] be ordered to transfer his interest in Green Valley Commerce, LLC ('Green Valley') to Claimant [CLA] ***upon payment of the price determined in accordance with Section 4 of the Operating Agreement*** using five million dollars as the fair market value of Green Valley." *See* Countermotion Exhibit "16" at APPENDIX0837.

These are CLA's words, written less than two months after it "accepted" the Forced Sale. This reveals that CLA was fully aware that it needed to perform by making payment of the purchase price to Bidsal as a prerequisite to receiving the benefit of the bargain by receiving Bidsal's membership interest through the Forced Sale. Payment of the purchase price was not made until March 25, 2022, the bargain never qualified for the benefit until that time.

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H. CLA "ASSISTS" THE COURT BY UNILATERALLY AND WRONGLY INTERPRETING THE OPERATING AGREEMENT.

In what can only be described as an ironic argument, CLA accuses Judge Wall of modifying the language of the GVC OA, but then attempts to justify its own unilateral changes to the GVC OA. However, neither the law nor the GVC OA allows for a unilateral change of the language.

1. Does the Operating Agreement Establish an Entitlement Transfer Date?

The simple answer to that question is no. In arguing that Judge Wall changed the language of the 30-day Provision, CLA complains that Bidsal didn't identify the value of one of the terms of the 30-day Provision, that being the term, "price." CLA complains, "…never once either before filing his arbitration demand or even after filing his arbitration demand did he ever set forth what he contended the amount of the other elements of the formula were or even what he conceded the amount was to be paid." *See* CLA Reply at 4:26 – 5:4. However, it was not a requirement of the GVC OA or of the Haberfeld Provision that Bidsal set forth a purchase price as the member selling his interest. The original 30-day Provision required the buyer of the membership interest to set the price he/it was willing to pay,

> 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 acceptance."

See Countermotion at Exhibit "9" at BIDSAL000010-11. (emphasis added).

The Haberfeld Provision was the controlling language at the time of the demand for the second arbitration. The Haberfeld Provision eliminated the underlined language above and replaced it with the following language:

> CLA gave notice to Bidsal that it was ready, willing and able to purchase Bidsal's Interests for a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00). The terms to be all cash and close escrow within ten (10) days of issuance of this Final Award, free and clear of all liens and encumbrances.

Nowhere in the Haberfeld Provision did the burden of computing the purchase price reside with Bidsal. In fact, when Bidsal proposed a purchase price in the Second Arbitration, CLA immediately

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disagreed with it. *See* Countermotion Exhibit "20" at pg. 21. However, that fact is irrelevant as the GVC OA did not require Bidsal to compute a purchase price, it did however, require that CLA make payment of what CLA considered the purchase price to be as a condition of claiming ownership of Bidsal's membership interest.

2. Does the Operating Agreement Establish an Entitlement Transfer Date?

The GVC OA does not establish an entitlement transfer date. For all of its talk regarding improperly changing the language of the GVC OA, CLA attempts several times to get the present Court to do just that by "assisting" the Court in how it should be reading the GVC OA. In one instance of this behavior CLA states "The provision in the contract (Operating Agreement) establishes that it was in 2017 when the entitlement to all the benefits of Bidsal's membership interest passed to CLA…" *See* CLA Reply at 7:8-12. However, they fail to cite any GVC OA provision for this assertion, obviously because it does not exist and Judge Wall did not add language to the GVC OA regarding the same, as he was not authorized to do so.

3. Does the Operating Agreement Define Offered Price?

The GVC OA does not define "offered price." Next CLA tries to add a definition of the term "offered price" into the GVC OA, where none exists. CLA states, "[t]here can be no doubt that '***offered price' means the fair market value stated by the Offering Member in his offer***." CLA Reply at 9:7-8 (emphasis added). CLA then states "[t]he first sentence of Section 4.2 refers to 'a price the Offering Member thinks is the fair market value,' thereby equating 'price' and 'fair market value.'" *Id*. Using the 30-day Provision in effect in 2017 and CLA's assertion that there can be no doubt that offered price means fair market value stated by the Offering Member in his offer, and applying CLA's definitions of "price", results in (1) an outcome that CLA does not want and (2) still does not arrive at an "effective date."

> 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 acceptance."

See Countermotion Exhibit "9" at BIDSAL000010-11.

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Bidsal's initial offer to CLA stated that "[t]he Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***")." *See* Countermotion Exhibit "23". If fair market value equals price, as CLA alleges, then the 30-day Provision would result in CLA giving notice to Bidsal that it was ready, willing and able to purchase Bidsal's interest at $5,000,000.00, the terms to be all cash and close escrow within 30 days, as no formula is ever mentioned in the 30-day Provision. CLA confirms this position by stating "[t]he FMV in his [Bidsal's] offer was the "'offered price" which CLA accepted in electing to buy instead of sell. *See* CLA Reply at 10:1-3. However, even if that is what CLA intended, it still did make payment to Bidsal or open escrow with $5,000,000.00 in order to complete the transfer.

Instead, CLA wants the Court (and wanted Judge Wall), not to give effect to every word in the GVC OA, but to add words to the GVC OA, changing it to,

> A~~ny~~ Member ~~("Offering Member")~~ *forcing the other member (the "Forced Member") to sell his interest* may give notice to ~~the Remaining~~ *the Forced* Member(s) that he or it is ready, willing and able to purchase *the Forced* ~~the Remaining~~ Members' Interests for a *purchase* price *the Forced Member identified as* ~~the Offering Member thinks is~~ the fair market value. The terms to be all cash and close escrow within 30 days of acceptance."

CLA was not authorized to make a unilateral change any more than Judge Wall could modify the language. However, Judge Haberfeld, supported by CLA, did make a change to the 30-day Provision, defining the "price" that Bidsal was to receive in exchange for the transfer of his membership interest as "a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the 'FMV' portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00)". *See* Countermotion at Exhibit "17" pg. 19.

While CLA supported Judge Haberfeld's modification of the GVC OA, Judge Wall, in compliance with Mohr did not make any changes to the Haberfeld Provision. Neither this Court nor CLA can unilaterally add language into the GVC OA.

After redefining the term "price" from that of the 30-day Provision and the Haberfeld Provision, CLA then tries to apply the unilaterally defined term, stating if its definition of "price" was not accepted, then the 30-day provision could never apply and would be meaningless." *See* CLA Reply at 9:15-17. However, nothing could be further from the truth. A plain reading of the

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30-day Provision allowed for an offering member (any offering member) to notify the other member that it was ready, willing and able to purchase the other's interest for a price that the offering member thought was the fair market value. No formula must be inserted, no definition of fair market value must be inserted, no other language must be inserted. The only thing that was required was for the future purchaser to name its price. A simple task that CLA did not do and did not rectify until well into the Second Arbitration. *See* Countermotion Exhibit "20" at pgs. 21-22. Judge Wall cannot and did not change the language of the 30-day Provision at all, despite CLA's insistence that he should have. Bidsal agrees with Musser v. Bank of Am, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998), "every word must be given effect if at all possible." In this instance Judge Wall did give words effect but didn't transform the word "price" into the words "fair market value" as is CLA's desire.

4. Did Judge Haberfeld Define "Offered Price"?

It wasn't until April 5, 2019 that the 30-day Provision was changed to the Haberfeld Provision, a change that was endorsed by CLA. In 2019, Haberfeld replaced "for a price the Offering Member thinks is the fair market value" to "a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the 'FMV' portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00)." *See* Countermotion Exhibit "17" at pg. 19. Based on the Haberfeld Provision, the "price" was defined as ($5,000,000.00 – COP) x 0.5 + $1,215,000.00 [Bidsal's Capital Contribution] – prorated liabilities. *See* Countermotion Exhibit "9" at BIDSAL000011. The Haberfeld Provision still required CLA to pay for Bidsal's interest. Judge Haberfeld changed the 30-day closing period to a 10-day closing period, redefined "price," and held that it was Bidsal's obligation to close escrow if payment was deposited into the escrow. Judge Haberfeld did not order that Bidsal was required to transfer his membership interest prior to receiving payment of the purchase price. The fact remains that CLA never paid the purchase price, not to Bidsal directly and not through an escrow, until a purchase price was identified by Judge Wall. So, while Judge Haberfeld certainly did redefine "price" from that originally found in the 30-day Provision, Judge Wall did not alter Judge Haberfeld's decision and CLA shouldn't be able to do so now.

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I. THE CONFIRMATION WAS NOT NULLIFIED BY JUDGE WALL.

CLA next argues that Judge Wall altered the Court's meaning regarding the purpose of a stay of execution. *See* CLA Reply at 26:12-13. CLA states, "[t]he classical, and CLA suggests the only known, purpose of a stay of execution is to achieve a retention of the status quo while an appeal is pending so that an appeal does not become meaningless." *See* CLA Reply at 26:10-13. CLA then accuses Judge Wall of making the Court's Judgement "a nullity." Nothing could be further from the truth.

The Order Granting Respondent's Motion for Stay Pending Appeal Case No. A-19-795188-P [Doc ID #54] states in pertinent part, "IT IS FURTHER ORDERED that, upon the posting of the Bond, the Court's ORDER CONFIRMING PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND ENTRY OF JUDGEMENT AND DENYING RESPONDENT'S OPPOSITION AND COUNTERPETITION TO VACATE THE ARBITRATOR'S AWARD entered on December 6, 2019 (the "***Confirmation Order***"), and **all enforcement thereof, is hereby STAYED, pending a final resolution of the pending appeal**, identified as Supreme Court case number 804727. *Id*. (emphasis added). In conformity with the Confirmation Order, Judge Wall stated, "As that award [Haberfeld's Final Award] (through Judge Kishner's denial of Bidsal's Motion to Vacate and Order Confirming Award) has been stayed pending the appeal to the Nevada Supreme Court, enforcement [of] Judge Haberfeld's award requiring the sale is effectively postponed." *See* Countermotion Exhibit "20" at pg. 23. Judge Wall did not in any way nullify the Court's Confirmation Order. In fact, he could not nullify the Confirmation Order even if he tried, as it had already been elevated to the Supreme Court. The Confirmation Order (that was subsequently stayed) ordered Bidsal to "Within fourteen (14) days of the Judgment, (A) transfer his fifty percent (50%) Membership Interest in Green Valley Commerce, LLC ("Green Valley"), free and clear of all liens and encumbrances, to CLA Properties, LLC, at a price computed in accordance with the contractual formula set forth in Section 4.2 of the Green Valley Operating Agreement, with the "FMV" portion of the formula fixed as Five Million Dollars and No Cents ($5,000,000.00) and, further, (B) execute any and all documents necessary to effectuate such sale and transfer." No. A-19-795188-P [Doc ID #31]. As the Court had already stayed that order pending the outcome on

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appeal, and Judge Wall simply determined a purchase price based on the formula in the GVC, using $5,000,000.00 as the fixed "FMV," it is difficult, if not impossible to see how Judge Wall's final award, did anything other than facilitate the actual transaction completion date upon the decision of the appeal.

IV.

CONCLUSION

In summary, the Wall Award was not arbitrary, capricious, or irrational and it did not ignore relevant law or rewrite the GVC OA. The standard set forth in 9 U.S.C. § 10 to vacate an arbitration award is extremely high, and CLA has certainly not met that standard. This Court must adopt and affirm Judge Wall's binding arbitration Award for the same reasons it previously affirmed and adopted the award made by Judge Haberfeld. This Court is not the place to simply reargue the issues decided against CLA by Judge Wall, but that is precisely what CLA is doing.

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 31st day of October, 2022.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq. (NV Bar #7097)
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 31st day of October, 2022, I served a true and correct copy of the foregoing **BIDSAL'S REPLY IN SUPPORT OF BIDSAL'S 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 25

EXHIBIT 25

JAMS

******

SHAWN BIDSAL, an individual,
Claimant/Counter-Respondent,
v.) JAMS Ref. No. 1260005736
CLA PROPERTIES, LLC, a California limited liability company,
Respondent/Counterclaimant.

DAY 3

ARBITRATION

BEFORE DAVID WALL, ESQ., ARBITRATOR

LAS VEGAS, NEVADA

FRIDAY, MARCH 19, 2021

Reported By Kele R. Smith, NV CCR No. 672, CA CSR No. 13405
Job No. 735327

ARBITRATION, DAY 3 - 03/19/2021

JAMS ARBITRATION,
taken at 3800 Howard Hughes Parkway, Eleventh Floor, Las Vegas, Nevada, on Friday, March 19, 2021, at 8:41 a.m., before Kele R. Smith, Certified Court Reporter, in and for the State of Nevada.

APPEARANCES:
For the Claimant/Counter-Respondent Shawn Bidsal:
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For the Respondent/Counterclaimant CLA Properties:
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Also Present:

SHAWN BIDSAL
BENJAMIN GOLSHANI

I N D E X

WITNESS: SHAWN BIDSAL

WITNESS: DANIEL GERETY, CPA

EXHIBITS

EXHIBITS

LAS VEGAS, NEVADA; FRIDAY, MARCH 19, 2021
8:41 A.M.
-oOo-

ARBITRATOR WALL: Okay. So Mr. Bidsal, I'm not going to re-swear you in. You've already begun your testimony. Do you realize you are still under oath?

THE WITNESS: Yes, Your Honor.

ARBITRATOR WALL: All right.

All right, Mr. Shapiro.

MR. SHAPIRO: Thank you.

CONTINUED EXAMINATION

BY MR. SHAPIRO:

Q. All right. Shawn, when we left off your testimony two days ago, we were talking about the Green Valley Center Owners Association. I'd like to have you take a quick look at Exhibit 7, and specifically I want you to go to Page 7 of that document, which is Bates stamped 1361.

A. Okay.

Q. What rights do these CC&Rs give each owner in the common areas of the property?

MR. LEWIN: Objection. The document speaks for itself.

ARBITRATOR WALL: You're asking for his understanding?

MR. SHAPIRO: Thank you.
BY MR. SHAPIRO:
Q. At any point in 2017, calendar year 2017, did Ben ever offer or identify the amount that he was willing to pay you for your membership interest?
A. No, he didn't.
Q. At any point in 2017 did Ben ever offer to pay you any specific sum of money?
A. No.
Q. And let me be clear: Did he offer to pay you any specific sum of money for your membership interest in Green Valley Commerce?
A. No, he did not.
Q. And again, to be clear: At any point on or after July of 2017, did you tell Ben you were not going to sell your membership interest in Green Valley Commerce?
A. No. I just demanded an appraisal.
Q. If Ben had delivered cash, a check, a wire transfer in any form -- if Ben had delivered money to you for the purpose of purchasing your membership interest in Green Valley Commerce, what would you have done?
MR. LEWIN: Objection. Calls for speculation. I'll withdraw.
ARBITRATOR WALL: Thanks.

A. Probably would put it in a accommodative escrow account and consider the -- well, if the amount was right -- I would calculate, and if it was correct, then I would accept it. If not, it would be a partial payment.
BY MR. SHAPIRO:
Q. You never told Ben that you would not sell your membership interest. Correct?
MR. LEWIN: Again, how many times are we going to ask the same question?
ARBITRATOR WALL: That's asked and answered. Sustained.
BY MR. SHAPIRO:
Q. Can you turn to Exhibit 40? What is this document?
A. It's a letter from Rod to you showing -- stating that the CLA has the funds.
Q. Is there any amount identified anywhere in Exhibit 40 that -- is there anything in Exhibit 40 that identifies the amount Ben is willing to pay you for your membership interest?
A. No.
Q. Is there anything in Exhibit 40 that identifies an escrow account that was opened or to be opened?
A. No.

Q. Is there anything in Exhibit 40 that identifies that these funds have been placed into an escrow account for the purpose of purchasing your membership interest?
A. No.
Q. Have you always been willing to sell your interest at a fair price?
A. Yes.
Q. According to your understanding of what was in dispute in the first arbitration, was the issue of how much the purchase price should be part of the initial arbitration process?
A. No.
MR. SHAPIRO: I'll pass the witness.
ARBITRATOR WALL: Do you want to take a break now?
MR. LEWIN: I would, yeah.
ARBITRATOR WALL: We'll take ten minutes. I have 10 o'clock on the button so we'll return in 10 minutes.
***
(RECESS TAKEN FROM 10:00 TO 10:18)
***
ARBITRATOR WALL: Okay. Mr. Bidsal, you realize you're still under oath?
THE WITNESS: I do, Your Honor.
ARBITRATOR WALL: All right. Mr. Lewin?

MR. LEWIN: Thank you, Your Honor. We have -- I think we have an extra copy of Mr. Bidsal's deposition for you.
MR. SHAPIRO: Going straight into his depo?
MR. LEWIN: Well, I just want it so we don't have to stop in the middle.
ARBITRATOR WALL: Thank you. No objection to this being published. Is that right?
MR. GERRARD: No objection.
ARBITRATOR WALL: All right.
(Unknown exhibit number was admitted into evidence.)
CROSS-EXAMINATION
BY MR. LEWIN:
Q. Good morning, Mr. Bidsal.
A. Morning.
Q. Do you recall that I took your deposition in this case?
A. Yes.
Q. And you were sworn to tell the truth. Do you remember that?
A. Yes.
Q. Did you tell the truth?
A. Yes.
Q. And you also testified in the arbitration that

FURTHER EXAMINATION

BY MR. LEWIN:

Q. In your business is there a concept of -- for -- of constructive receipt of funds?

A. There is.

Q. And what is that?

A. Well, if you have the rights to those funds, it's considered received. For instance, if you have -- even though you haven't received it, it's really a taxable income concept, but just because you didn't collect something or you didn't receive it by year-end, if you had constructive receipt, you could have taken it. It was sitting there waiting for it. Just because it's available to you, it's taxable to you as a constructive receipt concept.

Q. Such as money that's being held in escrow?

MR. GERRARD: Objection. Leading.

ARBITRATOR WALL: Sustained.

BY MR. LEWIN:

Q. Does money that is being held in escrow on a conveyance of property, is there a constructive receipt of that?

A. Not necessarily, until the terms of the escrow have been completed. If the terms of the escrow are completed, yes.

Q. When the deed is recorded -- when the deed is recorded?

A. The terms of escrow have been probably I assume complete. I didn't read the escrow agreements.

MR. GERRARD: I'm going to object. This goes well beyond anything he's given.

ARBITRATOR WALL: All right. Anything else?

MR. LEWIN: Nope, I'm done.

ARBITRATOR WALL: All right. Oh, you have another question.

MR. GERRARD: Just one. I'm sorry to even do it.

FURTHER EXAMINATION

BY MR. GERRARD:

Q. Sir, you still have the document in front of you. Right?

A. I do.

Q. Okay. The third-to-last line it says, "the money collected is actually received." Right?

A. It does.

Q. Okay. So that's different from constructive. Right? Actual and constructive are two different concepts. Right?

A. I agree.

MR. GERRARD: Okay. Thank you.

ARBITRATOR WALL: All right.

Mr. Gerety, thank you very much.

THE WITNESS: You're welcome. Glad to be part of all this fun.

ARBITRATOR WALL: We're done. We're off the record.

(The proceedings concluded at 6:21 p.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
SS:
COUNTY OF CLARK)

I, KELE R. SMITH, Certified Shorthand Reporter, do hereby certify that I took down in shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated; and that thereafter said shorthand notes were transcribed into typewriting at and under my direction and supervision and the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 29th day of March, 2021.

KELE R. SMITH, NV CCR #672, CA CSR #13405

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CLERK OF THE COURT

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Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

PROCEDURAL AND RELEVANT FACTUAL BACKGROUND

A. The First Arbitration

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

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

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

B. The Second Arbitration

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

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

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

C. Proceedings In This Action

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

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

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

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

ANALYSIS AND DECISION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, cause appearing,

IT IS HEREBY ORDERED:

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

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

Dated this 20th day of March, 2023

Joanna S Kishner

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

Prepared and Submitted by:

KENNEDY & COUVILLIER

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

Approved as to Form:

SMITH & SHAPIRO, PLLC

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

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 3/20/2023

James Shapiro	jshapiro@smithshapiro.com
Jennifer Bidwell	jbidwell@smithshapiro.com
Todd Kennedy	tkennedy@kclawnv.com
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Electronically Filed
3/21/2023 8:39 AM
Steven D. Grierson
CLERK OF THE COURT

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TODD E. KENNEDY, ESQ.
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Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

/s/ Todd E. Kennedy, Esq.
TODD E. KENNEDY, ESQ.
Nevada Bar No. 6014
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CERTIFICATE OF SERVICE

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

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

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

ORDR
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Attorneys for Movant CLA Properties, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

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PROCEDURAL AND RELEVANT FACTUAL BACKGROUND

A. The First Arbitration

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

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

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

B. The Second Arbitration

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

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

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

C. Proceedings In This Action

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

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

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

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

ANALYSIS AND DECISION

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

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

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

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

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

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

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

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

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

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

Accordingly, cause appearing,

IT IS HEREBY ORDERED:

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

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

Dated this 20th day of March, 2023

Joanna S Kishner

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

Prepared and Submitted by:

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Approved as to Form:

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

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