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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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LANGDON HALL LAND, LLC,

Plaintiff/Appellant,

v.

LANGDON HALL, INC.; ALBERT RUMPH; JAMES McCLAIN  
AND JOHN FRANKENFELD,

Defendants/Respondents.

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AMICUS CURIAE BRIEF OF  
LAKESIDE TOWN CENTER ASSOCIATES, LLC

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ORIGINAL

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## **I. INTRODUCTION**

Lakeside Town Center Associates, LLC, a Washington Limited Liability Company ("Lakeside"), submits this Amicus Curiae Brief in support of respondent James McClain ("McClain"). This brief will address the following four specific issues: (1) whether McClain's motion to vacate was untimely under RCW 4.28.200 and CR 60(b); (2) whether confirmation of the Florida arbitration award by the King County Superior Court was proper under Washington state law; and (3) whether confirmation of the Florida arbitration award by the King County Superior Court was proper under the Federal Arbitration Act ("FAA").

## **II. THE ISSUES RESTATED**

1. Because RCW 4.28.200 and CR 60(b) do not concern subject matter jurisdiction, which can never be waived, McClain's motion to vacate the judgment was timely.

2. The trial court did not misconstrue Washington's Revised Uniform Arbitration Act, chapter 7.04A RCW (the "WRUAA") in vacating its prior judgment confirming the Florida arbitration award.

3. The Federal Arbitration Act ("FAA") does not preempt the WRUAA; therefore, the trial court did not err by failing to apply the FAA in vacating its prior judgment for lack of subject matter jurisdiction.

### III. STATEMENT OF THE CASE

Lakeside concurs with, and adopts, McClain's statement of the case. This Court should, however, be aware of certain misstatements of fact set forth in Langdon's statement of the case. Because they are not essential to deciding the issues on appeal, Lakeside has included them as Appendix 1 hereto, simply to call them to the Court's attention.

### IV. ARGUMENT

#### A. **McClain's Subject Matter Jurisdiction Challenge to the King County Superior Court Judgment Was Neither Untimely Nor Waived.**

1. RCW 4.28.200 and CR 60(b) Address Personal Jurisdiction, Not Subject Matter Jurisdiction.

Langdon argues that McClain's motion to vacate was untimely under RCW 4.28.200 (which imposes a one-year deadline for challenging a judgment when service of the summons is not made personally), as well as CR 60(b) (requiring that a motion for relief from judgment be brought within a "reasonable time"). Langdon's argument is without merit. CR 60(b)(5) allows for relief from judgment whenever "[t]he judgment is void". Langdon overlooks the well-settled law that, where a judgment is void for lack of subject matter jurisdiction, relief may be sought at any time, regardless of the passage of time.

In this Court's own words: "Because the absence of subject matter ju-

risdiction is a defense that *can never be waived*, judgments entered by courts acting without subject matter jurisdiction must be vacated even if neither party initially objected to the court's exercise of subject matter jurisdiction and *even if the controversy was settled years prior.*" *In re McDermott*, 175 Wn. App. 467, 479, 307 P.3d 717 (2013) (emphasis added). "***A judgment entered by a court which lacks jurisdiction is void and must be vacated whenever the lack of jurisdiction comes to light.*** A trial court has no discretion when dealing with a void judgment; the court must vacate it." *Allied Fidelity Ins. v. Ruth*, 57 Wn. App. 783, 790, P.2d 206 (Div. I 1990) (emphasis added). The United States Supreme Court has also made clear that, "[b]ecause it involves a court's power to hear a case [subject matter jurisdiction] can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 122 S. Ct. 1781 (2002).

Langdon's timeliness argument under RCW 4.28.200 likewise confuses the concepts of personal jurisdiction and subject matter jurisdiction. RCW 4.28.200 states, in relevant part: "If the summons *is not served personally* on the defendant . . . on application and sufficient cause shown . . . the defendant . . . [may] be able to defend after judgment, and within one year after the rendition of such judgment". (Italics added.) On its face, RCW 4.28.200 is plainly limited to challenging a judgment where personal jurisdiction was obtained by means other than personal service; it has nothing to do with a challenge based

on the lack of subject matter jurisdiction over the cause itself.

2. Not a Single Washington Case Cited by Langdon Supports its Argument That McClain's Motion to Vacate Was Untimely.

Langdon cites the following cases to support its argument that McClain's subject matter jurisdiction challenge was untimely under RCW 4.28.200: *Bruhn v. Pasco Land Co.*, 67 Wash. 490, 492, 121 P. 981, 982 (1912), and *Smith v. Stiles*, 68 Wash. 345, 350, 123 P. 448, 450 (1912). Both cases are over a century old and inapposite. *Bruhn* and *Stiles*, moreover, dealt with personal jurisdiction under RCW 4.28.200's predecessor statute; they never addressed the issue of subject matter jurisdiction. See, e.g., *Bruhn*, 67 Wash. at 492 (the time for bringing a motion to vacate a judgment for lack of personal service of a summons is one year after rendition of the judgment); *Stiles*, 68 Wash. at 348-49 (a motion to vacate a default judgment "for a mistake, omission, or irregularity in obtaining same" must be brought within one year; and where service of the summons was made by publication and a subsequent default judgment entered, the time for challenging the trial court's personal jurisdiction is also one year).

The *Bruhn* Court did, however, cite a principle of law that supports McClain: "To set aside a judgment on the ground of fraud after the statutory period has expired, where the fraud does not appear on the face of the record,

we think there must be an action in the nature of a suit in equity brought in the regular way in which the defendants shall have the opportunity to set up any and all such defenses as they may have." *Id.* at 495. McClain contends that, in obtaining the judgment confirming the award, Langdon misrepresented the basis of subject matter jurisdiction. *See* respondent's brief at 7-8. *Bruhn* thus supports McClain in this appeal, not Langdon.

Langdon's reliance on *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 76 P.3d 1184 (2003) is also misplaced. *Dougherty* did not address the timeliness of a motion to vacate a judgment under RCW 4.28.200. Instead, it addressed the issue of "whether RCW 51.52.110's designation of the proper county for filing workers' compensation appeals is a grant of jurisdiction, or whether it identifies venue." *Id.* at 313. The Court held the statute relates to venue, not subject matter jurisdiction. *Id.* at 320. Langdon thus obfuscates venue and subject matter jurisdiction in citing *Dougherty*.

Langdon also argues: "To the extent McClain cites a general common law rule allowing challenges based on subject matter jurisdiction at any time, RCW 4.28.200, which imposes a one year deadline specific to cases with service by publication, should control." The problem for Langdon, however, is that the more specific statute regarding subject matter jurisdiction to confirm an arbitration award is RCW 7.04A.260; it thus trumps RCW 4.28.200 on this is-

sue. See, e.g., *Muije v. Dep't of Soc. & Health Servs.*, 97 Wn.2d 451, 453, 645 P.2d 1086 (1982). Under RCW 7.04A.260, the King County Superior Court lacked subject matter jurisdiction to confirm the Florida arbitration award. See discussion, *infra*, at Sections IV.B and IV.C.1, 2.

3. Langdon's Authorities From Other States Are Inapposite.

Langdon's reply cites the following two Illinois cases to support the proposition that the failure to timely raise a subject matter jurisdiction challenge to confirm an arbitration award results in a waiver: *Costello v. Liberty Mut. Fire Ins. Co.*, 376 Ill. App.3d 235, N.E. 2d 115 (2007), and *DHR International, Inc. v. Winston & Strawn*, 347 Ill. App.3d 642, 807 N.E. 2d 1094 (2004). Both cases are readily distinguishable.

In *Costello*, the court rejected Liberty's argument that the Illinois courts did not have subject matter jurisdiction to confirm an arbitration award entered in that state. The court held: "[The parties' arbitration] clause permits the insured and insurer to agree to arbitrate in any state. In this case, Costello and Liberty Mutual both agreed to arbitrate the matter in Illinois. ***Because the policy therefore provided for arbitration in Illinois, it conferred jurisdiction on Illinois pursuant to section 16 [of the Uniform Arbitration Act].***" *Id.* at 239-40 (emphasis added).

The *Costello* Court went on to state:

Contrary to Liberty Mutual's assertion, the facts in this case differ significantly from the facts in *Chicago Southshore & South Bend R.R.* In that case, the arbitration agreement expressly stipulated that the arbitration was to be held in Indiana but the parties later agreed to proceed in Illinois. . . . ***Our Supreme Court held that the Illinois courts lacked jurisdiction because the parties expressly agreed to arbitrate in another state.*** *Chicago Southshore & South Bend R.R.*, 184 Ill.2d at 158, 703 N.E. 2d at 11. But, the insurance policy in this case does not contain that restrictive language and confers jurisdiction upon any county, and therefore any state, that both parties chose.

*Id.* at 240 (emphasis added).

The Illinois Court of Appeals' decision in *Costello*, when put in context, speaks for itself and supports McClain, not Langdon, on the issue of whether the King County Superior Court had subject matter jurisdiction to confirm the Florida arbitration award. Here, the parties' arbitration agreement was made in Florida; it required the parties to arbitrate in Florida under Florida law; the arbitration took place in Florida; and the parties consented to personal jurisdiction in Florida for all purposes, including confirmation of the arbitration award.<sup>1</sup> Under *Costello*, therefore, Florida was the only state in which the parties' Florida arbitration award could be confirmed under the facts of this case.

Turning to the Illinois Court's decision in *DHR*, the case is inapposite

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<sup>1</sup> A copy of the relevant provisions of the Agreement containing the arbitration clause is attached at Appendix 2 hereto, and found in the record at CP 363-72.

because it did not involve the confirmation of an arbitration award. Instead, the case involved an interlocutory appeal from the trial court's order denying plaintiff's motion for a preliminary injunction seeking to bar the defendant law firm from representing certain entities in an arbitration proceeding brought against DHR in New York City before the defendant American Arbitration Association ("AAA") based upon an alleged conflict of interest. *DHR*, 347 Illinois App.3d at 642-44. The initial issue addressed by the court was whether it had jurisdiction over the appeal under Illinois law. *Id.* at 644-45. The court held that the issue on appeal was moot, because the arbitration had gone forward to completion, except for determination of the amount of attorney fees to be awarded. *Id.* at 647, 649. Ultimately, the court dismissed the appeal "for lack of jurisdiction." *Id.* at 649.

However, the *DHR* Court reaffirmed the Illinois Supreme Court's holding in *Chicago Southshore & South Bend R.R.*: "Where the parties have expressly agreed to arbitrate in another state, Illinois courts lack subject matter jurisdiction over the judicial proceedings pertaining to the award, even where a party has acquiesced in holding the arbitration in Illinois." *Id.* at 648 (citing *Chicago Southshore & South Bend R.R. v. Northern Indiana Commuter Transportation District*, 184 Ill.2d 151, 703 N.E.2d 7 (1998)).

Langdon's argument - that *DHR* stands for the proposition that a party to

an arbitration agreement may waive subject matter jurisdiction by failing to timely assert the objection (Langdon's reply at 8-9) - is simply not supported by that case. Indeed, the *DHR* court itself stated that "subject matter jurisdiction cannot be waived". *Id.* at 649.

Langdon's argument rests on *dicta*, not the holdings in *Costello* and *DHR*, both of which relied on the Illinois Supreme Court's decision in *Chicago Southshore & South Bend R.R.* There, the Illinois Supreme Court stated:

We agree with the Indiana Supreme Court's analysis in view of all of the circumstances of this factually unusual case. ***There is no dispute that the parties' written agreement to conduct arbitration proceedings in Indiana had the legal effect of conferring jurisdiction upon the courts of Indiana. Although NICTD consented to arbitration in Illinois, the written arbitration agreement was never formerly modified in this regard,*** and NICTD could reasonably assume that its acquiescence to arbitration in Illinois would not have the effect of transferring jurisdiction to Illinois in contravention of the original arbitration agreement. Moreover, NICTD's conduct has been entirely consistent with the understanding that jurisdiction would remain in Indiana. NICTD initiated legal proceedings in Indiana pursuant to the written arbitration agreement, and has steadfastly opposed the exercise of subject matter jurisdiction by the Illinois trial court. ***Under these circumstances, the parties' deviation from the contractual provisions regarding the place of arbitration did not give rise to subject matter jurisdiction in Illinois.***

*Id.* at 158 (emphasis added.)

The Court thus held: "The judgment of the appellate court is reversed, and the judgment of the circuit court of Cooke County confirming the arbitra-

tion is vacated." *Id.*<sup>2</sup>

Had Langdon shepardized *Costello* and *DHR*, it would have discovered the limitations of those cases and their inapplicability to the case at hand. *See, e.g., Valent Biosciences Corp. v. Kim-CI*, 2011 Ill. App. (1<sup>st</sup>) 102073, 952 N.E.2d 657 (2011) ("[w]here the parties have expressly agreed to arbitrate in another state, Illinois courts lack *subject matter jurisdiction* over judicial proceedings pertaining to the award, even where a party has acquiesced in holding the arbitration in Illinois." *Id.* at 664 (quoting *DHR*, 347 Ill. App.3d at 648 (quoting *Chicago Southshore*, 184 Ill.2d at 152) (italics original)).

Moreover, the *Valent* Court expressly limited *DHR International* and *Costello* to instances where objections to subject matter jurisdiction were not raised in the trial court:

VBS's reliance upon our decisions in *DHR International* and *Costello* to support its conclusion that KIM waived its objec-

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<sup>2</sup> In *dicta*, the *Costello* court incorrectly cited *DHR* as holding "that an objection to subject matter jurisdiction was waived when a party failed to object to proceedings at the trial court where subject matter jurisdiction was based on section 16 of the Uniform Arbitration Act". *Id.* at 239. The court made this statement after first correctly noting that, "[u]sually subject matter jurisdiction cannot be waived". *Costello*, 376 Ill. App.3d at 238-39. And the court's finding of waiver appears to be based upon the following unique facts: (1) the parties' arbitration agreement permitted the parties "to agree to arbitrate in any state"; and (2) "[a]t Liberty Mutual's request, Costello agreed to hold the arbitration proceedings in Illinois". When Costello, an Indiana resident, attempted to confirm the Illinois arbitration award in the Illinois circuit court, Liberty Mutual raised subject matter jurisdiction for the first time on appeal. *Id.* at 236-37. Here, by contrast, McClain first raised the subject matter jurisdiction objection in the trial court; and the parties never agreed to jurisdiction in Washington for any purpose.

tions is misplaced as those cases are *easily distinguishable from the instant facts*. Contrary to the objecting parties in those cases, KIM filed a motion *in the trial court* challenging adjudication in Illinois under section 16 of the Act based on the parties' Licensing Agreement. *See Costello*, 376 Ill.App.3d at 237–38, 315 Ill.Dec. 115, 876 N.E.2d 115 (defendant objected under section 16 of the Act for *first time at appeal* after filing motions contesting vexatious delay claim and for jury trial of insurance policy claim in trial court); *DHR International*, 347 Ill.App.3d at 649, 283 Ill.Dec. 253, 807 N.E.2d 1094 (defendant *failed to object based upon section 16 in trial court proceedings* seeking to disqualify counsel from representing party at arbitration).

*Valent*, 952 N.E.2d at 668 (italics added). In contrast, McClain raised an objection to subject matter jurisdiction at the trial court via his Motion to Vacate, which was his first pleading to the trial court in this matter.

**B. Under Washington Law, the Trial Court Lacked Subject Matter Jurisdiction to Confirm the Florida Arbitration Award.**

"Private arbitration in Washington is governed exclusively by statute." *River House Dev. v. Integrus*, 167 Wn. App. 221, 230, 272 P.3d 289 (2012). The analysis thus begins with Washington's Revised Uniform Arbitration Act ("WRUAA"), codified at chapter 7.04A RCW. *Id.* at 232. And it ends with the conclusion that the King County Superior Court did not have subject matter jurisdiction to confirm the Florida arbitration award. Langdon's contrary argument is without merit; it ignores the cardinal rules of statutory and contract construction, and it relies upon inapposite cases.

1. Under the WRUAA, the King County Superior Court Lacked Subject Matter Jurisdiction to Confirm the Florida Arbitration Award.

"The fundamental purpose in construing statutes is to ascertain and carry out legislative intent." *City of Seattle v. Fuller*, 177 Wn.2d 263, 269, 300 P.3d 340 (2013). "The legislature's intent can be discovered from the plain meaning of the statute, which is determined `from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" *Id.* (quoting *Dep't of Ecology vs. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). "The court must not add words where the legislature has chosen not to include them, and the statute must be construed so that all language is given effect." *Id.* If the statute remains susceptible to more than one reasonable meaning, it is ambiguous and the legislative history and circumstances surrounding its enactment may be considered." *Id.* at 269-70. "Constructions that yield unlikely, absurd or strained consequences must be avoided." *Id.* at 270 (citation omitted).

"Our Supreme Court recently approved consulting the official comments to the UAA at the outset of construing its provisions, `because RCW 7.04A.901 requires that [i]n applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.'" *River House*, 167 Wn.

App. at 233 (quoting *Townsend v. Quadrant Corp.*, 173 Wn.2d 451, 456-57, 268 P.3d 917 (2012) (internal quotation marks and citations omitted).

Accordingly, assuming *arguendo* that RCW 7.04A.260 is ambiguous on the issue of whether a Washington court has subject matter jurisdiction to confirm an arbitration award entered in another state, pursuant to the parties' arbitration agreement, the official comments to the UAA provide valuable guidance in resolving the issue. Comment 3 to Section 26(b) of the Revised Uniform Arbitration Act ("RUAA"), which is consistent with Section 17 of the prior Act (the "UAA"), provides that, ***where the parties' arbitration agreement designates a place for the arbitration proceeding, then that state has exclusive jurisdiction to determine the validity of an arbitrator's award.***

Washington adopted the Revised Uniform Arbitration Act ("RUAA") effective as of January 1, 2006. RCW 7.04A.900; *River House*, 167 Wn. App. at 232. Both the RUAA and WRUAA contain virtually identical language regarding a court's subject matter jurisdiction to confirm an arbitration award. Section 26(b) states: "An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this [Act]." RCW 7.04A.260(2) states: "An agreement to arbitrate providing for arbitration in this states confers exclusive jurisdiction on the court to enter judgment on an award under this chapter."

Although there appears to be no Washington case squarely addressing the issue, courts in other states adopting the RUAA uniformly refuse to confirm an arbitration award entered in another state if the parties' agreement requires the arbitration proceeding to occur in that state. As stated in *State ex rel. Tri-City Const. Co. v. Marsh*, 668 S.W.2d 148 (Mo. App. W.D. 1984): "Every state that has considered the question of jurisdiction to confirm the [arbitration] award has focused on the place of arbitration and not the locus of the contract. On the principle of uniformity, the jurisdiction should lie in Missouri courts where the parties by common assent undertook to arbitrate." *Id.* at 152.<sup>3</sup>

This statement in *Marsh* was reiterated in *Teltech, Inc. vs. Teltech Comm., Inc.*, 115 S.W.3d 441 (Mo. App. W.D. 2004):

[T]he location of arbitration continues to determine whether a court has jurisdiction to **confirm** an arbitration award under the RUAA. Section 26(b) of the RUAA states that "[a]n agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this [Act]." *Id.* The Comment accompanying this provision explains that "Section 26(b) follows the almost unanimous holdings of courts under the present, same language of Section 17 of the UAA that if the parties in their agreement designate a place for the arbitration proceeding, then that State has exclusive jurisdiction to determine the validity of an arbitrator's award in accordance with Section 25. The rationale of these courts has been to prevent forum-

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<sup>3</sup> This policy is reflected in RCW 7.04A.901, which states: "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

shopping in confirmation proceedings and to allow party autonomy in the choice of the location of the arbitration and its subsequent confirmation proceeding.' *Id.* at Cmt. 3. The Comment then cites *Marsh, supra*, in support of this proposition. *Id.*

*Id.* at 446, n. 3 (emphasis original; underscoring added).

Thus, the official comments to the RUAA clarify the legislative intent that a Washington court cannot confirm a Florida arbitration award where the parties agreed to arbitrate their dispute in Florida, the arbitration occurred in Florida, and the parties further agreed to personal jurisdiction of the Florida courts to confirm the arbitration award. To accept Langdon's contrary argument requires reading into RCW 7.04A.260(b) words that do not exist and which run afoul of legislative intent.

Langdon's attempt to circumvent the legislative intent of those states adopting the RUAA, including Washington, myopically focuses on the words, "in this state", as used in RCW 7.04A.260(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 under this chapter." Langdon argues that the language, "in this state", "says nothing about agreements to hold the arbitration hearing in another state"; therefore, the Legislature did not intend for it to apply to an arbitration held out of state." *See* Langdon's opening brief at 13 (citing *Bour v. Johnson*, 122 Wn.2d 829, 836, 864 P.2d 380 (1993)). The

logic of Langdon's argument is fatally flawed, and not supported by *Bour*.

In *Bour*, the Court stated: "Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded." *Id.* at 836. As applied to RCW 7.04A.260(2), this proposition simply means that the Legislature did not intend that the courts of another state have jurisdiction to confirm an arbitration award entered "in this state."<sup>4</sup> Had the Legislature intended otherwise, it would have used the words "concurrent" jurisdiction instead of "exclusive" jurisdiction. The corollary proposition is that an agreement providing for arbitration in another state confers exclusive jurisdiction on the courts of that state to enter judgment on the arbitration award, especially where the arbitration is held in that state. *See, e.g.*, RUAA §26(b), Cmt. 3.

2. Langdon's Reliance on *Hidden* is Misplaced.

Langdon relies heavily on Division Two's decision in *Equity Group, Inc. v. Hidden*, 88 Wn. App. 148, 943 P.2d 1167 (1997) to support its argument that the King County Superior Court had subject matter jurisdiction to confirm the Florida arbitration award. Although the *Hidden* Court found that the Superior Court for Clark County had subject matter jurisdiction to confirm an arbitration award entered in Portland, Oregon, the case is inapposite and limited to

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<sup>4</sup> RCW 7.04A.010(4) states: "'Court'" means a court of competent jurisdiction in this state."

its specific facts. *Hidden* involved a Washington resident's breach of a contract to purchase property in Oregon (*id.* at 155); the contract was entered into in Clark County, Washington (*id.* at 152); the contract provided that any party had the right to demand arbitration through the AAA if a dispute arose (*id.*); a demand for arbitration under the AAA rules was sent to both *the Washington resident*, who breached the contract, *and to the AAA's regional office in Seattle*; and ***it was the AAA's Seattle office that notified the parties that the arbitration would take place in Portland, Oregon.*** *Id.* at 152-53.

It thus appears from the record that the parties agreed to arbitrate in Portland, Oregon. *Id.* at 153. Moreover, because the parties' contract provided for arbitration through the AAA, they granted the AAA authority to transfer the location of arbitration from Seattle to Portland. Once the parties agree to arbitrate under the AAA rules, those rules become part of their arbitration agreement. *See* Rule 1(a) of the AAA's Commercial Arbitration Rules; *Idea Nuova v. GM Licensing Group*, 617 F.3d 177, 181 (2d Cir. 2010). And under Rule 2 of the AAA's Commercial Arbitration Rules, "[t]he AAA may, in its discretion, assign the administration of an arbitration to any of its offices."

Accordingly, because nothing in the *Hidden* record demonstrates that the parties specified the place of arbitration or where the arbitration award could be confirmed; because the arbitration agreement was part of a contract

entered into in Washington; because the defendant resided in Washington; and because the demand for arbitration was sent to the AAA's Seattle office, the *Hidden* Court was able to hold that the arbitration award could be confirmed in Washington.

In reaching its decision, the *Hidden* Court focused primarily on the issue of personal jurisdiction, not subject matter jurisdiction. The court stated, "*personal* jurisdiction has been found in a case "where both parties to an in-state arbitration award confirmed in Washington resided in foreign states." *Hidden*, 88 Wn. App. at 154 (citing *Keen v. IFG Leasing Co.*, 28 Wn. App. 167, 622 P.2d 861 (1980) (italics original)). The court noted that, in *Keen*, an Oregon logger entered into an equipment lease with a Minnesota corporation, where "[t]he lease provided that any disputes relative to the lease *were to be arbitrated in Seattle.*" *Id.* (emphasis added).

Thus, as with the parties' agreement here, the parties' agreement in *Keen*, specified the place of arbitration. In contrast, the parties' agreement in *Hidden* **did not** specify the place of arbitration. The *Hidden* Court's reliance on *Keen*, therefore, actually supports McClain, not Langdon.

Finally, the *Hidden* Court expressly limited the scope of its decision: "Our acknowledgment that Equity could confirm an Oregon arbitration decision that imposes a payment obligation on a Washington resident, *Hidden*, is *not*

tantamount to allowing those prevailing in all arbitrations the freedom to confirm arbitration results in states where no party to the arbitration resides." *Id.* at 156 (italics original).

Langdon cites *Glass v. Stahl Specialty Company*, 97 Wn.2d 880, 652 P.2d 948 (1982) to support its argument that, in enacting its version of the RUAA, the Washington Legislature did not specifically overturn the *Hidden* decision. The argument is misplaced and of no consequence. The *Hidden* decision is simply inapposite and of no assistance in deciding this appeal. Simply stated, *Hidden* does not stand for the proposition that a Washington court has subject matter jurisdiction to confirm an arbitration award entered in another state, where the arbitration agreement specifies that arbitration is to occur in another state, and it in fact does. These were neither the facts nor the issue presented in *Hidden*.

3. Langdon's Reliance on the Law of Illinois is Misplaced.

In a futile attempt to distinguish the Illinois Supreme Court decision in *Chicago Southshore & South Bend R.R.*, Langdon disingenuously argues that, "[t]he Court's decision was based in part on the losing party's status as an Indiana municipal corporation, which, for obvious reasons, militates in favor of confirmation in that state where that governmental entity existed." See Langdon's reply brief at 13-14 (citing *Chicago Southshore*, 184 Ill.2d at 155). Lang-

don's assertion is simply wrong. The Court actually held:

Illinois is one of 35 states that have adopted the Uniform Arbitration Act. Section 1 of the Uniform Arbitration Act provides that a *written* agreement to submit any existing or future controversy to the arbitration is valid and enforceable. 710 LICS 5/1 (West 1996). Under section 16 of the Uniform Arbitration Act, '[t]he making of an agreement described in Section 1 providing for arbitration in this State confers jurisdiction on the [circuit] court to enforce the agreement under this Act and to enter judgment on an award thereunder.' 710 LICS 5/16 (West 1996). Accordingly, ***under the plain language of the statute, the parties' written agreement must provide for arbitration in Illinois in order for Illinois courts to exercise jurisdiction to confirm an arbitration award.***

*Id.* at 155-56 (emphasis added).

In short, the Illinois Supreme Court's holding had nothing whatsoever to do with the status of a party as a municipal corporation.

4. Langdon's Reliance on Florida Law is Also Misplaced.

Citing *Lewis & Peat Coffee, Inc. v. Condor Grp., Inc.*, 588 So.2d 316 (Fla. Dist. Ct. App. 1991), Langdon argues that Florida "continue[s] to allow interstate confirmations" of arbitration awards. *See* Langdon's reply brief at 12-13. Like Langdon's other authorities, the case is inapposite.

In *Lewis & Peat Coffee*, the parties' arbitration agreement *did not specify* where the arbitration could be held or where the award could be confirmed; instead, it provided only that New York law was to apply. *Id.* at 317. Under Florida law, had the parties agreed to the arbitration forum, only a court in that

forum would have subject matter jurisdiction to confirm the award. As stated by the Florida Supreme Court in *Damora v. Stresscon International, Inc.*, 324 So.2d 80 (Fla. 1975):

It is our opinion that under the contract terms of this specific case, the Florida Arbitration Code, Chapter 682, Florida Statutes, was rejected by the parties by reason of their agreement to arbitrate in New York City, New York. ***We hold the provision that arbitration was to take place in New York constituted a stipulation that the Florida Arbitration Code should not apply.*** See Section 682.02, Florida Statutes (1973).

***The Florida courts have no statutory authority under Chapter 682 to compel arbitration in another jurisdiction.*** Further, the agreement between the parties failed to specify either that Florida law shall govern or that Florida arbitration procedure shall apply. The inference from the wording of the agreement is that New York arbitration law shall govern and the American Institute of Architect's standard form of procedure shall apply." *Id.* at 82. ***The rights of the parties under this arbitration provision stand and fall upon the contract terms not the statutory arbitration procedure in this state.***

*Id.* at 81-82 (emphasis added).

Consistent with the holding in *Damora*, the Florida Court of Appeals stated, in *Smith Barney, Inc. v. Potter*, 725 So.2d 1223 (Fla. App. 4 Dist. 1999):

"When a civil action is to confirm or deny an arbitration award under Florida law, it may fairly be said that the cause of action to confirm or deny arises where the arbitration took place." *Id.* at 1227.

Simply stated, Florida law does not support Langdon's assertion that

the parties' Florida arbitration award can be confirmed in this state.

**C. The FAA Does Not Preempt the WRUAA to Allow the King County Superior Court to Confirm the Florida Arbitration Award.**

At page 16 of its reply brief, Langdon cites 9 U.S.C. §9 of the FAA to support its argument that "the parties did not restrict the venue of confirmation to Florida"; therefore, "the confirmation [of the Florida arbitration award by the King County Superior Court] was valid under controlling federal law." This misguided argument again confuses the issues of "venue" and "subject matter jurisdiction".

9 U.S.C. §9 provides, in pertinent part:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, ***and shall specify the court***, then 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 . . . ***If no court is specified in the agreement of the parties, then such application may be made to the United States Court in and for the district within which the award was made.*** (Bold type and italics added.)

9 U.S.C. §9 contains two unambiguous alternatives for confirming an arbitration award under the FAA: (1) in the court where the parties agreed to have the judgment confirming the award entered, or (2) if no court is specified in the agreement, in the federal district court in which the award was made. Assuming the parties did not specify the Florida courts for this purpose, 9

U.S.C. §9 makes clear that, because the arbitration award was made in Florida, subject matter jurisdiction to confirm the award is in the appropriate Florida federal district court. Nothing in the statute allows Langdon to confirm the award in a Washington state court.

Citing *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004), Langdon argues that the FAA preempts any state law to the contrary. The problem with Langdon's argument is two-fold: first, the parties' agreement required them to arbitrate in Florida, under the AAA's Commercial Arbitration Rules, not in Washington under the WRUAA; second, even if the WRUAA applied, Langdon's preemption argument fails, because the WRUAA and FAA are not inconsistent with each other. The first issue having already been thoroughly addressed, the focus will now turn to the preemption issue.

Under both the FAA and the WRUAA, subject matter jurisdiction must exist, as provided under the respective statutes, before a court can confirm an arbitration award. 9 U.S.C. makes clear that, under the facts of this case, only the appropriate federal district court in Florida could confirm the Florida arbitration award under the FAA. And the King County Superior Court correctly found it did not have subject matter jurisdiction to confirm the parties' Florida arbitration award under the WRUAA. There is, therefore, nothing facially inconsistent with the federal and state acts when applied to this case; nei-

ther allows confirmation of the Florida arbitration award in this state.

Contrary to Langdon's assertion, *Adler* does not support the proposition that the FAA trumps the WRUAA, thus allowing the King County Superior Court to confirm the Florida arbitration award. The *Adler* Court merely held, "where a valid individual employee-employer arbitration agreement exists, the FAA requires that employees arbitrate federal and state law discrimination claims"; therefore, the Court "reject[ed] Adler's claim that the WLAD [Washington Law Against Discrimination] entitles him to a judicial forum." *Id.* at 343-44. *Adler* did not address the issue of whether the FAA and the WRUAA are inconsistent regarding subject matter jurisdiction to confirm a particular arbitration award.<sup>5</sup>

Langdon cites *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75 (9<sup>th</sup> Cir. 1987) to support its argument that, because the parties' arbitration agreement stated that it could be confirmed "in any court having *in personam* and subject matter jurisdiction", the King County Superior Court had subject matter jurisdiction to enter judgment on the Florida arbitration award. In other words, Langdon argues that the parties' agreement did not make Florida the ex-

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<sup>5</sup> Langdon's reliance of *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 225 P.3d 213 (2009) is likewise misplaced for the same reason. The Court held that, because the RCW 64.34.100(2)'s judicial enforcement provision conflicted with the FAA, it was preempted by the FAA. *Id.* at 804-805.

clusive jurisdiction for confirming the award. Assuming *arguendo* Langdon's interpretation of the arbitration agreement is correct, this does not lead to the conclusion that the King County Superior Court had subject matter jurisdiction to confirm the arbitration award; and, for the reasons already stated, it did not, regardless of whether the issue is decided under the AAA's Commercial Arbitration Rules, the WRUAA, or the FAA.

*Hunt Wesson Foods* is readily distinguishable. The forum selection clause addressed "*personal jurisdiction* over the parties *in an action at law.*" *Id.* at 76 (italics added). It did not address a court's *subject matter jurisdiction* to confirm an arbitration award where the parties' agreement specified the place of arbitration and they arbitrated in that place.

Moreover, Langdon's argument depends upon reading one provision of the parties' arbitration agreement in isolation, rather than in context with all of its provisions. When all provisions are read together, they make clear the parties' intent that the arbitration award was to be confirmed by a Florida court. *See, e.g.,* Articles 10.1, 10.5, and 11.4 of the parties' Agreement, attached at Appendix 2 hereto.

When construing a contract, the role of the court is to ascertain the intent of the parties as manifested by the words used in all of its provisions. *Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980). The parties here

agreed to arbitrate in Florida under Florida law. Had they intended that any court could confirm the arbitration award, they would not have consented to personal jurisdiction in Florida for this purpose; and it goes without saying that any court confirming the arbitration award must have subject matter jurisdiction to do so. As established above, under the FAA, subject matter jurisdiction to confirm the award lay exclusively with the proper federal court in Florida.

Langdon indirectly concedes this point by stating: "When the FAA applies, it permits confirmation in any court provided for in the parties' agreement." *See* Langdon's reply brief a 20. The parties' agreed to submit to the jurisdiction of the Florida courts for this purpose; ***they did not agree that a court in the state of Washington could confirm the award.***

## V. CONCLUSION

For the above reasons, the trial court's order vacating its judgment for lack of subject matter jurisdiction should be upheld. Langdon's appeal relies upon legal arguments and analyses that can at best be described as illusory.

DATED this 28 day of January, 2014.

RESPECTFULLY SUBMITTED,

LATHROP, WINBAUER, HARREL,  
SLOTHOWER & DENISON, LLP

By: 

Douglas W. Nicholson, WSBA #24854  
Attorney for Amicus Curiae, Lakeside  
Town Center Associates, LLC

**CERTIFICATE OF SERVICE**

I certify that on the 29<sup>th</sup> day of January, 2014, I caused a true and correct copy of this Amicus Curiae Brief of Lakeside Town Center Associates, LLC, to be served on the following in the manner indicated below:

**Attorney for Langdon Hall Land, LLC:**

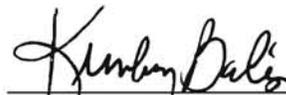
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\_\_\_\_\_  
Kimberly Bailes

## **Appendix 1**

### Langdon's Misstatements of the Case.

Langdon Hall asserts, without supporting citations to the record: "McClain was part of the conspiracy to embezzle nearly a million dollars invested by Langdon Hall in a Florida assisted living facility." Langdon's opening brief at 1. Langdon concedes, however, that the sole basis of McClain's liability in the Florida arbitration proceeding was his personal guarantee of the obligations of another Langdon entity (Langdon Hall, Inc.). *See* Langdon's opening brief at 4. Langdon continues its unsupported assertion of "McClain's embezzlement scheme" in its reply brief. *See* reply at 4. Langdon's unsupported assertions of purported fact are in direct violation of RAP 10.3(a)(5).<sup>1</sup>

Likewise violating RAP 10.3(a)(5) is Langdon's unsupported statement that McClain's "tactic has been to evade Langdon Hall's *attempts to collect on the judgment*, and then, after statutes of limitations had already been passed, assert this technical defense." *See* Langdon's opening brief at 3 (italics added). The fact is that ***Langdon has made no attempt to collect against*** McClain on the King County judgment. Instead, although McClain was named as a defendant, along with Lakeside and others, in the Kittitas County Superior Court action to satisfy the judgment against McClain under the Uniform Fraudulent Transfers Act ("UFTA"), Langdon brought a motion for summary judgment on its UFTA claim against defendants ***Lakeside and Martin only*** in that action, not McClain. *See* the following appendices attached to Lakeside's motion to file this Amicus Curiae Brief: Appendix 1 (Langdon's "Amended Complaint for

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<sup>1</sup>In a self-serving declaration dated June 5, 2015, filed in support of Langdon's opposition to McClain's motion to vacate the judgment, Langdon's principal, John Bredvik, merely states that Langdon "became aware that certain individuals had essentially embezzled a portion of the money Langdon Hall had invested." *See* Designation of Clerk's paper at Sub Number 17. Not only is this a far cry from a finding that McClain embezzled any funds, the record on appeal does not contain a finding that any embezzlement occurred at all. Langdon cites Bredvik's declaration (CP 336 at ¶5) to support the following unsubstantiated statement: "The managers of Langdon Hall, Inc., including McClain, embezzled Langdon Hall's investment." *See* Langdon Hall's opening brief at 5.

Fraudulent Transfers"); Appendix 2 (Langdon's "Amended Motion for Summary Judgment" in the Kittitas County action); Appendix 3 (The Kittitas County Superior Court's letter decision, dated January 2, 2013, granting *inter alia* Langdon's summary judgment motion against Lakeside and Martin). Nowhere in the record is there any evidence that Langdon ever attempted to collect on its now-vacated King County Superior Court judgment against McClain.

Langdon argues that "McClain was intentionally evading service of its King County Superior Court complaint to confirm the Florida arbitration award, thus requiring Langdon to serve McClain by mail." *See, e.g.,* Langdon's opening brief at 5-6. This statement is disingenuous because Langdon was in fact able to personally serve McClain in Washington with its Florida complaint to confirm the same arbitration award. *See* Declaration of Brent M. Hill in support of defendant James McClain's motion to vacate at ¶¶11-12 and Exs. I and J thereto. CP Sub Number 13. Exhibit J to the Hill declaration is the affidavit of service of the summons and complaint to confirm the Florida arbitration award, which states that it was personally served on McClain on August 23, 2008, in Issaquah, Washington, a mere fifteen (15) after Langdon filed its motion to serve McClain by mail in its King County Superior Court action to confirm the same award. *See* Hill decl. at Ex. M. This begs the obvious question: why did Langdon not have its process server concurrently serve McClain personally with both the Florida and King County complaints to confirm the same arbitration award?

Regarding the Kittitas County litigation, Langdon incorrectly states, as a fact, that "McClain also entered into a sham transaction with Derald Martin, an Ellensburg-area developer." Langdon's opening brief at 7 (citing CP 338 at ¶14). Langdon's citation to the record is again the self-serving declaration of its principal, Bredvik. The thrust of this statement, and similar others, is to create the illusory impression that the transaction between

Martin and McClain was an intentional act of fraud against Langdon. The fact is, however, that the Kittitas County Superior Court, in its decision granting summary judgment in favor of Langdon, did so based upon the theory of constructive fraud under the UFTA. *See* Appendix 2 to Lakeside's motion to file an amicus brief. Thus, there is no finding in the record of "intentional fraud", or that Martin and McClain "were clearly acting in concert" to defraud Langdon, as stated in Langdon's opening brief at 8.

Langdon also incorrectly asserts that it "did not misrepresent anything to the trial court." *See* Langdon's reply at 4. This statement is belied by the facts. As stated in McClain's respondent's brief, Langdon misrepresented to the trial court that the basis for subject matter jurisdiction to confirm the Florida arbitration award was the underlying Stock Purchase and Securities Agreement ("Agreement"), which Langdon claimed was made in Washington, when in fact it was made in Florida. *See* respondent McClain's brief at 7-8.

Langdon's reply does not dispute this fact, but instead disingenuously asserts that, "[a]s one basis *for venue*, Langdon's complaint stated that a guarantee, which was part and parcel of the investment transaction at issue, was signed by McClain in King County (as the notary's stamp confirms)." Langdon's reply at 4-5. This apparent attempt to obfuscate the primary issue on appeal (subject matter jurisdiction of the trial court to confirm the Florida arbitration award) is belied by the following facts: (1) it addresses the issue of venue, not subject matter jurisdiction; (2) although McClain may have signed the personal guarantee in Washington, the guarantee itself clearly states: "This Guarantee is delivered and made in, and shall be construed pursuant to and governed by the laws of the State of Florida" (CP 377-79). Moreover, it is the Agreement, not the Guarantee, that contains the arbitration clause; and it

was the Agreement, not the guarantee, upon which Langdon claimed that subject matter jurisdiction was proper in the King County Superior Court. CP 160-63, 237, 245. Furthermore, as Langdon concedes, "Venue is a non-jurisdictional issue that has no bearing on issues currently on appeal." *See* Langdon's reply at 5.

## **Appendix 2**

9.1.(d) General Releases. The General Releases referred to in Section 5.3, duly executed by the persons referred to in such Section.

9.1.(e) Amended and Restated Articles of Incorporation. The Amended and Restated Articles of Incorporation for the Company shall have been approved by all of the Principals and shall have been filed with the Florida Secretary of State.

9.1.(f) Mortgage. The Mortgage shall have been executed and delivered by the Company to the Title Agent for filing, and the Title Agent shall have issued a commitment for title insurance in the amount of \$630,000.

9.1.(g) Guaranties. The Company shall cause Rumph, McClain and FRANKENFIELD to execute and deliver to the Buyer a Guaranty in the form of Exhibit C (the "Guaranty").

9.1.(h) Negative Pledge. The Company execute and file of record a Negative Pledge in the form of Exhibit D (the "Negative Pledge").

9.1.(i) Other Documents. All other documents, instruments or writings required to be delivered to Buyer at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Buyer may reasonably request.

## 9.2 Documents to be Delivered by Buyer.

At the Closing, Buyer shall deliver to Company the following documents, in each case duly executed or otherwise in proper form:

9.2.(a) Cash Purchase Price. To Company, certified or bank cashier's checks (or wire transfer) as required by Section 2.1(b) hereof.

9.2.(b) Other Documents. All other documents, instruments or writings required to be delivered to Company at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Company may reasonably request.

## 10. RESOLUTION OF DISPUTES

### 10.1 Arbitration.

Any dispute, controversy or claim arising out of or relating to this Agreement or any contract or agreement entered into pursuant hereto or the performance by the parties of its or their terms shall be settled by binding arbitration held in Tampa, Florida in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, except as specifically otherwise provided in this Article 10.

10.2 Arbitrators.

If the matter in controversy (exclusive of attorney fees and expenses) shall appear, as at the time of the demand for arbitration, to exceed \$250,000, then the panel to be appointed shall consist of three neutral arbitrators; otherwise, one neutral arbitrator.

10.3 Procedures; No Appeal.

The arbitrator(s) shall allow such discovery as the arbitrator(s) determine appropriate under the circumstances and shall resolve the dispute as expeditiously as practicable, and if reasonably practicable, within 120 days after the selection of the arbitrator(s). The arbitrator(s) shall give the parties written notice of the decision, with the reasons therefor set out, and shall have 30 days thereafter to reconsider and modify such decision if any party so requests within 10 days after the decision. Thereafter, the decision of the arbitrator(s) shall be final, binding, and nonappealable with respect to all persons, including (without limitation) persons who have failed or refused to participate in the arbitration process.

10.4 Authority.

The arbitrator(s) shall have authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of the arbitration and to award recovery of attorneys fees and expenses in such manner as is determined to be appropriate by the arbitrator(s).

10.5 Entry of Judgment.

Judgment upon the award rendered by the arbitrator(s) may be entered in any court having *in personam* and subject matter jurisdiction. Buyer and each Shareholder hereby submit to the *in personam* jurisdiction of the Federal and State courts in Hillsborough County, for the purpose of confirming any such award and entering judgment thereon.

10.6 Confidentiality.

All proceedings under this Article 10, and all evidence given or discovered pursuant hereto, shall be maintained in confidence by all parties.

10.7 Continued Performance.

The fact that the dispute resolution procedures specified in this Article 10 shall have been or may be invoked shall not excuse any party from performing its obligations under this Agreement and during the pendency of any such procedure all parties shall continue to perform their respective obligations in good faith, subject to any rights to terminate this Agreement that may be available to any party and to the right of setoff provided in Section 8.4 hereof.

10.8 Tolling.

All applicable statutes of limitation shall be tolled while the procedures specified in this Article 10 are pending. The parties will take such action, if any, required to effectuate such tolling.

11. **MISCELLANEOUS**

11.1 Further Assurance.

From time to time, at Buyer's request and without further consideration, Company and Principals will execute and deliver to Buyer such documents and take such other action as Buyer may reasonably request in order to consummate more effectively the transactions contemplated hereby.

11.2 Disclosures and Announcements.

Announcements concerning the transactions provided for in this Agreement by Buyer, Company or Principals shall be subject to the approval of the other parties in all essential respects.

11.3 Assignment; Parties in Interest.

11.3.(a) Assignment. Except as expressly provided herein, the rights and obligations of a party hereunder may not be assigned, transferred or encumbered without the prior written consent of the other parties. Notwithstanding the foregoing, Buyer may, without consent of any other party, cause one or more subsidiaries of Buyer to carry out all or part of the transactions contemplated hereby; provided, however, that Buyer shall, nevertheless, remain liable for all of its obligations, and those of any such subsidiary, to Shareholders hereunder.

11.3.(b) Parties in Interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto. Nothing contained herein shall be deemed to confer upon any other person any right or remedy under or by reason of this Agreement.

11.4 Law Governing Agreement.

This Agreement may not be modified or terminated orally, and shall be construed and interpreted according to the internal laws of the State of Florida, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

11.5 Amendment and Modification.

Buyer Company and Principals may amend, modify and supplement this Agreement in such manner as may be agreed upon in writing between the parties hereto.

11.6 Notice.

All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Buyer, to:

5603 11<sup>th</sup> Avenue, NE  
Seattle, Washington 98105-2601  
Attention: John Bredvik  
Facsimile: (206) 325-2635

(with a copy to)

Akerman Senterfitt  
401 East Jackson Street, Suite 1700  
Tampa, Florida 33602  
Attn: Vitauts M. Gulbis  
Facsimile: (813) 223-2837

or to such other person or address as Buyer shall furnish to Shareholders' Agent in writing.

(b) If to Company or Principals:

1120 33<sup>rd</sup> Avenue West  
Bradenton, Florida 34205 85251  
Attention: Albert Rumph  
Facsimile: (941) 744-1924

(with a copy to)

Terence Matthews  
5190 26<sup>th</sup> Street West  
Bradenton, Florida 34207  
Facsimile: (941) 753-8479

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to

this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

#### 11.7 Expenses.

Regardless of whether or not the transactions contemplated hereby are consummated:

11.7.(a) Brokerage. Shareholders and Buyer each represent and warrant to each other that there is no broker involved or in any way connected with the transfer provided for herein on their behalf respectively (and Shareholders represent and warrant that there is no broker involved on behalf of Company) other than Innovative Real Estate Solutions, who shall be paid a commission of \$10,000.00 by the Company, and each agrees to hold the other harmless from and against all other claims for any other brokerage commissions or finder's fees in connection with the execution of this Agreement or the transactions provided for herein.

11.7.(b) Other. The Company shall bear the expenses of the Buyer and its counsel and other agents in connection with the transactions contemplated hereby.

11.7.(c) Costs of Litigation or Arbitration. The parties agree that (subject to the discretion, in an arbitration proceeding, of the arbitrator as set forth in Section 10.4) the prevailing party in any action brought with respect to or to enforce any right or remedy under this Agreement shall be entitled to recover from the other party or parties all reasonable costs and expenses of any nature whatsoever incurred by the prevailing party in connection with such action, including without limitation attorneys' fees and prejudgment interest..

#### 11.8 Entire Agreement.

This instrument embodies the entire agreement between the parties hereto with respect to the transactions contemplated herein, and there have been and are no agreements, representations or warranties between the parties other than those set forth or provided for herein.

#### 11.9 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### 11.10 Headings.

The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

11.11 Glossary of Terms.

The following sets forth the location of definitions of capitalized terms defined in the body of this Agreement:

“Affiliate” - Section 3.7.(k)

“Ancillary Instruments” - Section 3.2.(a)

“Buyer’s Affiliates” - Section 8.1

“Claim” - Section 8.1

“Closing” - Preamble to Article 9

“Closing Date” - Section 9

“Disclosure Schedule” - Article 11

“Employee Plans/Agreement(s)” - Section 0

“ERISA” - Section 3.15

“Government Entities” - Section 3.3

“Indemnified Party” - Section 8.3.(a)

“Indemnifying Party” - Section 8.3.(a)

“Laws” - Section 3.3

“Lien” - Section 3.11.(a)

“Litigation” - Section 3.9

“Orders” - Section 3.3

“Purchase Price” - Section 2.1

“Real Property” - Section 3.11.(c)

“Recent Balance Sheet” - Section 3.4

“Trade Rights” - Section 3.17

Where any group or category of items or matters is defined collectively in the plural number, any item or matter within such definition may be referred to using such defined term in the singular number.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

LANGDON HALL, INC., a Florida corporation (the "Company")

By: [Signature]  
Print Name: Albert Rumph  
Print Title: President

LANGDON HALL LAND, LLC, a Washington corporation (the "Buyer")

By: [Signature]  
Print Name: JOHN BREDUK  
Print Title: MANAGER -  
LANGDON HALL LAND LLC

[Signature]  
ALBERT RUMPH

STATE OF FLORIDA

COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 12th day of December, 2005 by ALBERT RUMPH, who is [] personally known to me or [] produced as identification.



Cheryl D Todt  
Cheryl D Todt  
Print Name  
Notary Public, State and County aforesaid  
Commission No.: \_\_\_\_\_  
Commission Expires: 8/25/09

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

LANGDON HALL, INC., a Florida corporation (the "Company")

By: [Signature]  
Print Name: Albert Rumph  
Print Title: President

LANGDON HALL LAND, LLC, a Washington corporation (the "Buyer")

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

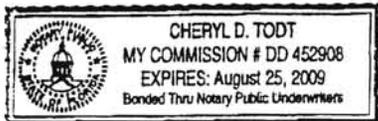
[Signature]  
ALBERT RUMPH

STATE OF FLORIDA

COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 22nd day of December, 2005 by ALBERT RUMPH, who is [] personally known to me or [] produced as identification.

[Signature]  
Cheryl D Todt  
Print Name  
Notary Public, State and County aforesaid  
Commission No.: \_\_\_\_\_  
Commission Expires: 8/25/09



*Dan Ozley*  
DAN OZLEY

STATE OF FLORIDA

COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 30th day of December, 2005 by DAN OZLEY, who is [ ] personally known to me or [ ] produced FLDL as identification.



*Cheryl D Todt*  
Cheryl D Todt  
Print Name  
Notary Public, State and County aforesaid  
Commission No.: 452908  
Commission Expires: 8/25/09

*John Frank*  
JOHN FRANKENFIELD

STATE OF FLORIDA

COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 11th day of ~~December~~ January 2006 by JOHN FRANKENFIELD, who is [ ] personally known to me or [ ] produced Oregon DL as identification.

8992054



*Cheryl D Todt*  
Cheryl D Todt  
Print Name  
Notary Public, State and County aforesaid  
Commission No.: 452908  
Commission Expires: 8/25/09

  
\_\_\_\_\_  
JAMES McCLAIN

STATE OF FLORIDA

COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of December, 2005 by JAMES McCLAIN, who is [ ] personally known to me or [ ] produced Washington D.C. as identification.

McCLAIN JA 483CD

Cheryl D Todt  
Cheryl D Todt  
\_\_\_\_\_  
Print Name  
Notary Public, State and County aforesaid  
Commission No.: \_\_\_\_\_  
Commission Expires: 8/25/09



## **Appendix 3**

Best Image Available

IN ARBITRATION BEFORE  
THE AMERICAN ARBITRATION ASSOCIATION  
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 33 180 Y 00150 07  
Langdon Hall Land, LLC, Claimant  
AND  
Langdon Hall, Inc., Albert Rumph, James McClain,  
John Frankenfeld, Respondents

ARBITRATION AWARD

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into by the above-named parties and dated December 30, 2005, and having been duly sworn, and oral hearings having been waived in accordance with the Rules, and having fully reviewed and considered the written documents submitted to us, do hereby, AWARD, as follows:

1. The Claimant's monetary advances to Respondents were, in substance, a loan.
2. The Claimant is, under the terms of the agreements, entitled to a Liquidation Preference which, in combination with other sums due combine to exceed the maximum legal rate of interest of 25% in accordance with F.S. §687.
3. The sums due to Claimant under the agreements are reduced to comply with the maximum interest allowable.
4. The Arbitrators accept the computations of Claimant under Scenario 2. Claimant is awarded the sum of Eight Hundred Ninety-Seven Thousand Four Hundred Eighty-Seven and 87/100 Dollars (\$897,487.87) plus the sum of Two Hundred Seventy and 50/100 Dollars (\$270.50) for each day after January 31, 2008 to the date of this Award. The Award shall bear interest at the rate of 11% a year after the date of this Award.
5. Claimant is entitled to a court ordered judgment of foreclosure.
6. The administrative fees and expenses of the American Arbitration Association totaling \$8,000.00 shall be borne equally, and the compensation and expenses of the arbitrators totaling \$13,353.50 shall be borne equally. Therefore, Respondents shall reimburse Claimant the sum of \$4,000.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimant.
7. The parties stipulated that the Arbitrators were to determine both entitlement to and amount of attorneys' fees to be awarded, if any. The panel has determined that each party shall bear its own attorneys' fees and costs.
8. This Award is in full settlement of all claims in this arbitration.
9. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

2/21/2008  
Date

02-21-08  
Date

The undersigned dissents from this award.  
Feb 21 2008  
Date

Marvin E. Barkin  
Marvin E. Barkin

Howard P. Ross  
Howard P. Ross

Steven M. Platau  
Steven M. Platau

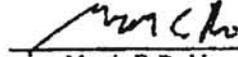
STATE OF FLORIDA COUNTY OF MANATEE  
I, \_\_\_\_\_, Clerk of Circuit Court, do hereby certify that the foregoing is a true and correct copy of page \_\_\_\_\_ contained in COMPLAINT and I press my hand and official seal this 21 day of February 2008.  
I. B. SHORE  
Clerk of Circuit Court

Exhibit A



I, Marvin E. Barkin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

2/21/2008  
Date

  
Marvin E. Barkin

I, Howard P. Ross, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

02-21-08  
Date

  
Howard P. Ross

I, Steven M. Platau, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

Feb 21 2008  
Date

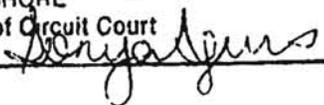
  
Steven M. Platau

STATE OF FLORIDA COUNTY OF MANATEE

This is to certify that the foregoing is a true and correct copy of page 5 contained in Complaint

Witness my hand and official seal this 21 day of April 2008

R. B. SHORE  
Clerk of Circuit Court

By:  D.C.