Case Nos. 80427 & 80831

In the Supreme Court of Nevada

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

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

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

APPELLANT'S APPENDIX
VOLUME 8
PAGES 1751–2000

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

JAMES E. SHAPIRO (SBN 7907)
AIMEE M. CANNON (SBN 11,780)
SMITH & SHAPIRO, PLLC
3333 E. Serene Avenue, Suite 130
Henderson, Nevada 89074
(702) 318-5033

Attorneys for Shawn Bidsal

Docket 80427 Document 2020-42930

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CERTIFICATE OF SERVICE

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

Louis E. Garfinkel
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy.
Suite 230
Henderson, Nevada 89102

Rodney T. Lewin
LAW OFFICES OF RODNEY T. LEWIN, APC
8665 Wilshire Blvd., Suite 210
Beverly Hills, California 90211

Robert L. Eisenberg
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street
Third Floor
Reno, Nevada 89519

Attorneys for CLA Properties LLC

/s/ Cynthia Kelley
An Employee of Lewis Roca Rothgerber Christie LLP

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

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

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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

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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

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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

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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

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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.

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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

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

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EXHIBIT B

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

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

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

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

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

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

Losses shall be allocated according to Capital Accounts.

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

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

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EXHIBIT 110

(Respondent's Responding Brief (RB II)

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EXHIBIT 110

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James E. Shapiro, ESQ.
Sheldon A. Herbert, Esq.
SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, Nevada 89074
O: (702) 318-5033

Daniel L. Goodkin, Esq.
GOODKIN & LYNCH, LLP
1800 Century Park East, 10th Fl.
Los Angeles, CA 90067
O:(310)552-3322

Attorneys for Respondent

JAMS

CLA PROPERTIES, LLC, a California limited liability company, Claimant, vs. SHAWN BIDSAL, Respondent.	**Reference #:1260004569** Arbitrator: Hon Stephen E. Haberfeld (Ret.)

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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RESPONDENT SHAWN BIDSAL'S RESPONDING BRIEF AND OPPOSITION TO CLAIMANT'S RULE 18 MOTION FOR SUMMARY DISPOSITION

COMES NOW Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys of record, SMITH & SHAPIRO, PLLC and GOODKIN & LYNCH, LLP, and files his Responding Brief and Opposition to Claimant's Rule 18 Motion for Summary Disposition (the "***CLAP's Opening Brief***"), as follows:

I.

PRELIMINARY STATEMENT

As is clear from the parties opening briefs, at issue is a proper interpretation and application of Section 4. While CLAP proffers an overly simplistic interpretation, CLAP never actually sets forth, references or addresses the actual language contained in Section 4. CLAP reference a couple of snippets from Section 4, but these snippets are taken out of context and twisted beyond recognition. The extent of CLAP's attempted manipulation becomes apparent when CLAP's proffered interpretation is tested and applied against all of the provisions set forth in Section 4.

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When interpreting a contract, the entire Section must be considered as a whole and interpreted in a manner than gives purpose and meaning to each portion thereof. CLAP cannot cherry pick certain provisions and turn a blind eye to all others. Any interpretation of Section 4 must be consistent with and give meaning to every provision in Section 4.

As evidenced by the fact that CLAP does not cite to nor reference the very provision at issue, CLAP's Opening Brief displays a fundamental misunderstanding of Section 4 and requires the Arbitrator to completely ignore the majority of the language contained therein. Yet CLAP's simplistic arguments fall apart when applied to and tested against all of the provisions of Section 4. In contrast, Bidsal's interpretation of the Operating Agreement discusses, applies and gives meaning and effect to every term contained in Section 4.2.

II.

STATEMENT OF FACTS

Bidsal refers to the Statement of Facts set forth in his Opening Brief and incorporates the same by this reference herein.

III.

STATEMENT OF AUTHORITIES

As is set forth next, CLAP's argument falls apart when tested and applied against all of the terms and provisions of Section 4.

A. CLAP'S RELIANCE UPON SECTION 4.2⑦ IS MISPLACED.

CLAP cites to and relies upon Section 4.2⑦ as a major component of its argument. However, as the opening line of Section 4.2⑦ makes clear, Section 4.2⑦ is not part of the buy-sell procedure, but is instead, simply a statement of intent and clarifying language. This is confirmed from the first five words "The specific intent of this provision is..." *See* Exhibit "B"; *See also* page 11 of Exhibit "E". Further, Section 4.2⑦ specifically invokes Sections 4.2① through 4.2⑥ by providing "according to the procedure set forth in Section 4." *See* Exhibit "B"; *See also* page 11 of Exhibit "E".

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SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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Thus, while Section 4.2⑦ provides a statement of intent that helps clarify the intent of the parties, Section 4.2⑦ does not replace any of the procedure set forth in Sections 4.2① through 4.2⑥, but is instead reliant upon those procedures to effectuate the purpose and intent outlined therein. Put another way, Section 4.2⑦'s inclusion of the phrase "according to the procedure set forth in Section 4" means that any result must comply with the provisions of Section 4.1, Sections 4.2① through 4.2⑥, as well as Section 4.3, all of which deal with the buy-sell procedure.

Section 4.2⑦ cannot be read independent of Sections 4.2① through 4.2⑥, but must be read in conjunction with Sections 4.2① through 4.2⑥.

B. <u>BIDSAL'S INITIAL OFFER DID NOT, INDEED CANNOT, MODIFY THE PROCEDURES OF SECTION 4</u>.

One of the arguments made by CLAP is that Bidsal's Initial Offer somehow modified the procedures of Section 4. Quoting and emphasizing one sentence from Bidsal's Initial Offer, CLAP argues that Bidsal somehow skipped the appraisal process identified in Section 4.2② and established the "FMV" by virtue of his Initial Offer. *See* pages 6:20-7:1 of CLAP's Opening Brief. However, this argument also falls apart under scrutiny.

When Bidsal propounded his Initial Offer on July 7, 2017, he clearly did so the one and only way he could, which was in compliance with the requirements of Section 4.2①. This is confirmed by the first sentence which says "The Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00" and which is entirely consistent with provisions of Section 4.2①. Clearly the initial offer was not intended as a modification to the provisions of Section 4. Rather, it was intended to ***execute*** those provisions by beginning the process with an initial offer, as described in Section 4.2①.

Further, Bidsal's use of the term "FMV" in the letter was not intended to modify or replace the meaning of the term "FMV" as set forth in Section 4, nor could it even if Bidsal had wanted it to. The term "FMV" as it is defined and set forth in Section 4.1④ can only be modified with a written amendment to the Operating Agreement, in accordance with Article VII, Section 2, and Article IX of the Operating Agreement. According to Article III of the Operating Agreement, such a written amendment could only be adopted by virtue of a meeting of the members, Bidsal and CLAP, or in

SMITH ~ SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

lieu of 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." That simply did not happen.

Instead, Bidsal clearly made an offer to purchase CLAP's membership interest in the Company in accordance with Section 4.2①. That is all. The term "FMV" as Bidsal used it in his July 7, 2017 letter, was clearly intended to mean Bidsal's "best estimate of the current fair market value of the Company" or "offered price" because that exact phrase is located in the July 7, 2017 letter immediately preceding the amount of the purchase offer and the term FMV in parentheticals. Finally, while the use of the term "FMV" was technically inappropriate in that it was not consistent with the definition of "FMV" as set forth in Section 4.1④, the inclusion of the term "FMV" in Bidsal's Initial Offer does not magically modify the provisions of Section 4.1④ or 4.2②, nor does it allow CLAP to somehow violate Section 4.2⑤(ii) and make a counteroffer at the offered price.

C. CLAP'S PROFFERED INTERPRETATION RUNS DIRECTLY CONTRARY TO AND IGNORES SECTION 4.1④, SECTION 4.2② AND SECTION 4.2⑦.

Focusing on the phrase in Section 4.2⑤(ii) which states: "...based upon the same fair market value (FMV)...", CLAP argues that the word "same" in front of "fair market value (FMV)" somehow changes the meaning of FMV from the definition found in Section 4.1④ to the "offered price." However, not only does this "same" argument require some pretty spectacular mental gymnastics, it creates numerous internal inconsistencies and requires the Arbitrator to completely ignore Section 4.1④ and Section 4.2②.

1. The Term "FMV" is a defined term.

The term "FMV" is a defined term. Section 4.1④. defines "FMV" as the "'fair market value' obtained as specified in section 4.2." Section 4.2② outlines a process of obtaining two appraisals, then states: "The medium of these 2 appraisals constitute the fair market value of the property ***which is called (FMV)***." (emphasis added). Thus, the term "FMV" is, according to the plain language of Section 4, defined to mean the medium of the two appraisals identified in Section 4.2②.

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SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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2. The Phrase "Offered Price" Is Consistently Used To Refer To The Amount Contained In The Initial Offer.

While not a defined term, the phrase "offered price" is consistently used in both Section 4.2② and Section 4.2⑦ as referencing the amount the Offering Member *thinks* is the fair market value contained in the Initial Offer as outlined in Section 4.2①[1]. Thus, anytime the phrase "offered price" is used, it is used to reference the amount identified in the Initial Offer, which is the amount the Offering Member *thinks* is the fair market value, as distinguished from the FMV, which is established through an appraisal process.

3. CLAP's "Same" Argument Requires The Arbitrator To Completely Ignore Section 4.1④ And Section 4.2②.

CLAP's "same" argument requires the Arbitrator to completely ignore Section 4.1④ and Section 4.2②.

As is set forth above, the term "FMV," by definition, can only mean "the medium of these 2 appraisals" as outlined in Section 4.2②. Thus, the term "FMV" cannot simultaneously, or even alternatively, mean the "offered price."

Because FMV is a defined term that, according to the plain language of Section 4, can only mean the medium of the 2 appraisals as outlined in Section 4.2②, interpreting the term FMV in Section 4.2⑤(ii) as meaning the "offered price" requires the Arbitrator to completely ignore the definition of FMV in Section 4.1④.

4. CLAP's "Same" Argument Creates Fatal Inconsistencies.

Aside from requiring the Arbitrator to ignore Section 4.1④, CLAP's "same" argument also creates fatal inconsistencies with Section 4.2⑦.

As CLAP points out in its Opening Brief, Section 4.2⑦ contains the following sentence in an effort to explain the purpose and intent of Section 4: "... the Remaining Member 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." (emphasis added).

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[1] "If the ***offered price*** is not acceptable to the Remaining Member(s)..." *See* Section 4.2② (emphasis added).
"...shall either sell or buy at the same ***offered price***..." *See* Section 4.2⑦ (emphasis added).

SMITH ~ SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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In this sentence, the drafter[2] of Section 4 makes reference to both the "offered price" and "FMV". Further, the "offered price" is clearly not the "FMV" as these two amounts are offered as alternatives to each other. Thus, Section 4.2⑦ use of the phrase "offered price" and FMV make it clear that the two are not synonymous, but have different meanings.

Notwithstanding Section 4.2⑦'s use of the phrases "offered price" right next to the term FMV, CLAP argues that the word "same" in Section 4.2⑤(ii) ("...based upon the *same* fair market value (FMV)...") "can mean only that which Bidsal thought was the fair market value and so used in his offer." *See* page 6:7-9 of CLAP's Opening Brief. However, CLAP fails to explain how the term "FMV" in Section 4.2⑤(ii) can mean the offered price, when FMV is a defined term and when Section 4.2⑦ makes it clear that the drafter[2] intended the phrase "offered price" to mean something other than the FMV.

Interpreting the term "FMV" in Section 4.2⑤(ii) to mean the "offered price" is completely inconsistent with the language of Section 4.2⑦ where the phrase "offered price" is clearly distinguished from and offered as an alternative to the FMV.

5. <u>By Its Own Language, Section 4.2⑤(ii) Is Specifically Limited To The FMV</u>.

The language at issue in Section 4.2⑤(ii) states: "...making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula." Not only is it important to note that Section 4.2⑤(ii) makes specific reference to the "FMV", but it is likewise important to note that Section 4.2⑤(ii) does <u>*not*</u> reference the "offered price."

While CLAP argues that the word "same" somehow turns the defined term "FMV" into the "offered price," this argument not only turns the meaning of the word "same" on its head, but as outlined above, it conflicts with Section 4.2⑦'s use of the phrase "offered price" and term "FMV", and requires the Court to completely ignore Section 4.1④.

Because Section 4.2⑤(ii) specifically references "FMV" and specifically does not reference the "offered price," the only interpretation of Section 4.2⑤(ii) that is consistent with Section 4.1④, Section 4.2②, and Section 4.2⑦ is that the term "FMV" should be interpreted consistent with the

[2] Which as demonstrated in Exhibit "F" was Benjamin Golshani, the owner of CLAP.

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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definition outlined in Section 4.1④ and Section 4.2②, which is different from the "offered price" contained in the Initial Offer made pursuant to Section 4.2①.

6. The Term "FMV" Cannot Be Interpreted As The "Offered Price".

CLAP is asking the Arbitrator to interpret the phrase "the same fair market value (FMV)" used in Section 4.2⑤(ii) as equaling the "offered price" as that phrase is used in Section 4.2② and Section 4.2⑦[3]. However, such an interpretation runs contrary to the definition of "FMV" in Section 4.1④ and conflicts with how Section 4.2⑦ uses the phrase "offered price" and "FMV".

If the intent of Section 4.2⑤(ii) had been to give the Remaining Member the right to purchase the Offering Member's membership interest at the "price the Offering Member thinks is the fair market value" (as argued by CLAP), then the phrase "offered price" would have been included in Section 4.2⑤(ii) as an alternative to the FMV, just like it was in Section 4.2⑦. Yet because Section 4.2⑤(ii) specifically uses the defined term "FMV" (which requires the appraisal process outlined in Section 4.2②) and does not include the phrase "offered price", the only interpretation of Section 4.2⑤(ii) which is consistent with the rest of Section 4 is that the counteroffer can only be made for the "FMV" as that term is defined in Section 4.1④. At best, any other interpretation will result in an inconsistent application of Section 4.1④ and Section 4.2②, and at worst, will simply ignore them altogether.

D. THE PROPER INTERPRETATION OF SECTION 4 MUST GIVE PURPOSE AND MEANING TO ALL PROVISIONS CONTAINED THEREIN.

When interpreting a contract, such as the Operating Agreement, the Arbitrator should ensure that the interpretation gives meaning to all provisions and should ensure that the provisions are consistent throughout. *See, Ouirrion v. Sherman* (1993) 109 Nev. 62, 846 P.2d 1051 (1993); *See also, Royal Indemnity Company v. Special Service Supply Company* (1966) 82 Nev. 148, 413 P.2d 500 (1966).

In this case, CLAP's proposed interpretation requires the Arbitrator to ignore the definition of FMV as set forth in Sections 4.1④ and Section 4.2②, and further requires the Arbitrator to apply a

[3] Ironically, in making its argument, CLAP is inconsistent in its own use and interpretation. In one breath, CLAP equates the estimated Company value in Bidsal's Initial Offer with the "fair market value" or "FMV" for the Company, and, in the next breath, CLAP calls Bidsal's offered price a "lowball" figure. *See* CLAP's Opening Brief at 7:26-28.

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

different meaning to the phrase "offered price" and term FMV in Section 4.2⑤(ii) than is applied in Section 4.2⑦. However, if all provisions of Section 4 are to be given purpose and meaning, then CLAP's proposed interpretation must be rejected.

IV.

CONCLUSION

Because CLAP's proffered interpretation is inconsistent with Section 4.1④ and Section 4.2② and requires the Arbitrator to ignore these sections, it must be rejected.

DATED this 19th day of January, 2018.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Sheldon A. Herbert, Esq.
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
Attorneys for Respondent

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 19th day of January, 2018, I served a true and correct copy of the foregoing **RESPONDENT SHAWN BIDSAL'S RESPONDING BRIEF AND OPPOSITION TO CLAIMANT'S RULE 18 MOTION FOR SUMMARY DISPOSITION**, by emailing a copy of the same, with Exhibits, to:

Individual:	**Email address:**	**Role:**
Louis Garfinkel, Esq.	LGarfinkel@lgealaw.com	Attorney for CLAP
Rodney T Lewin, Esq.	rod@rtlewin.com	Attorney for CLAP
Laura Rio	LRios@jamsadr.com	JAMS Case Coordinator
Dana Schuler	DSchuler@jamsadr.com	JAMS Senior Case Manager
Stephen Haberfeld, Esq.	judgehaberfeld@gmail.com	Arbitrator

/s/ Vanessa M. Cohen
An employee of Smith & Shapiro, PLLC

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EXHIBIT 111

(CLA Response to Bidsal's Opening Brief)

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EXHIBIT 111

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RODNEY T. LEWIN, ESQ. - SBN #71664
LAW OFFICES OF RODNEY T. LEWIN
A Professional Corporation
8665 Wilshire Boulevard, Suite 210
Beverly Hills, California 90211-2931
(310) 659-6771

LOUIS E. GARFINKEL, ESQ.
Nevada Bar No. 3416
LEVINE GARFINKEL & ECKERSLEY
8880 w. Sunset Road, Suite 390
Las Vegas, Nevada 89148
(702) 673-1612
Attorneys for Claimant

CLA PROPERTIES, LLC, a California limited liability company,

Claimant,

v.

SHAWN BIDSAL, an individual,

Respondent.

JAMS Ref. No. 1260004569

CLAIMANT'S RESPONSE TO RESPONDENT'S OPENING BRIEF AND DECLARATION OF BENJAMIN GOLSHANI

Date: January 29, 2018
Time: 8:00 A.M.

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1. INTRODUCTION.

1.1. Issue At Hand.

The request of Claimant ("CLA") to conduct discovery, and in particular to take the deposition of the attorney, David LeGrand, who drafted the agreement the interpretation of which is the subject of this arbitration. The Respondent ("Bidsal") opposed such deposition. That prompted a conference call on November 16, 2017 during which it appeared that a solution could lie in CLA's filing a "Comprehensive Rule 18 dispositive motion" leaving the scheduling thereof to the parties. That scheduling was set out in an e-mail later that day from Respondent's counsel, and as relevant to the January 8, 2018 date said: "Each side files their Opening Briefs by 5:00pm on Monday, January 8th." Neither the words "Rule 18" nor "dispositive motion" are recited therein, but the sole matter under discussion was such a motion.

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In fact on January 8th both sides filed such "Opening Briefs," that by CLA being within its Rule 18 dispositive motion. As is made clear by both such opening briefs the issue for determination arises from the following: Pursuant to Section 4 of the Operating Agreement for Green Valley Commerce, LLC" ("Green Valley) Bidsal, the "Offering Member" under the Green Valley Operating Agreement ("Operating Agreement"), offered to buy out CLA. As were its rights under Section 4 of Operating Agreement, CLA, the "Remaining Member" under Operating Agreement, instead of selling its membership interest to Bidsal, elected to buy out the Bidsal using the amount set by Bidsal in his offer, the "offered price" instead of seeking an appraisal. Thereafter Bidsal refused to sell based on the offered price, demanding that there had to an appraisal. The issue for this arbitration, is did Bidsal have the right to an appraisal that entitled him to refuse the sell to CLA based on his offered price.

1.2. **Bidsal's False Annotated Version**.

The critical portions of the Operating Agreement are Sections 4.1 though 4.3. While Sections 4.1 and 4.2 have several parts they are not separately numbered. Bidsal's Opening Brief (" BOB") attached as Exhibit "B" **an edited version** of those sections with encircled numbers applied to various portions of Sections 4.1 and 4.2, while at the same time **adding language** to those sections which Bidsal apparently believes aids his position but even which his attorney concedes are not in the operating agreement, but rather in some other agreement (the Mission Square operating agreement prepared twp (2) years later – BOB Exhibit F).

What is in some other agreement is totally irrelevant to interpreting Section 4 of the Green Valley Operating Agreement except to show that a different agreement was made in the two operating agreements, and especially so when Bidsal concedes that there are "many differences" between the two operating agreements! (BOB 3:2.)

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2. **ACTUAL DEAL MADE.**

Apparently anticipating that a time could come when one of the Members of Green Valley would want to remove the other, they agreed that one of them could do so by initiating a process set out in Section 4 of Operating Agreement. This is not uncommon. In drafting the Buy-Sell they provided a form of protection. They agreed that if one Member chose to initiate a process to buy out the other, he or it had to offer a price for the property which he at least thought was its fair market value. To avoid that Member's setting a low ball figure, they agreed that the recipient could instead use that figure and buy out the initiating Member, or, if he so choose, initiate an appraisal procedure. So an initiating Member who sets the amount low faced the risk that the recipient might in fact instead buy him out using the offered amount as the value of the property.

Bidsal took that risk, set the value low, probably believing that CLA did not have the ability to buy his interest; he was wrong because CLA had the will and ability to buy out him out instead. Having lost in his gamble, Bidsal now tries to remake their agreement to avoid his being bought out.

3. **HOW SECTION 4 WORKS.**

Bidsal's counsel created a flow chart supposedly representing what happens after the Offering Member makes his offer. (BOB, Exhibit A.) The chart misstates what happens. Rather than deluging the Arbitrator with more charts, what Section 4 says should happen is this:

It all starts with one Offering Member making an offer. What it actually says is:

> "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."

Notice that the word price is not the amount to be paid for the Member's interest. The actual purchase price includes several elements apart from the fair market value of the property. They are the cost of the property, the capital contribution of the seller at the time of purchase and the liabilities.

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And there can be no doubt but that Bidsal understood that when he made his offer. His offer in part reads:

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

In other words, using the language of the agreement, when the offer to buy a Member's interest is made the estimate of the current fair market value (which Bidsal himself defined as the "***FMV***") is the amount to be used to calculate the purchase price of the Membership Interest to be sold. [1]

After the offer is made, the Remaining Member (here CLA) has options:

(I) if the Remaining Member believes the offered price is not acceptable, then "the Remaining Members (or any of them) can request to establish FMV based on the following procedure" for appraisal. Nowhere in Section 4.2 is there any implication, much less, expression, that even if the Remaining Member does not so request, the Offering Member can demand it; or

(ii) the Remaining Member can decide to buy or sell.

Bidsal's claims that if the Remaining Member elects to buy, then he as the offering member is entitled to initiate the appraisal process.. For this Bidsal offers no support, because he cannot. First, according to Section 4.2, the only time an appraisal is needed is "if the offered price is not acceptable to the Remaining Member(s)." **CLA never asserted that the offering price was not acceptable.**

Second and finally in a belts and suspenders statement, the last portion of Section 4.2 says: "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)**. . ." (Emphasis

---

[1] The explanation for Bidsal's using the word "company" instead of "property" lies in the fact that is a one-asset company, so that its value and the property's value would be one and the same. The actual purchases of the other members "membership interest".

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added, especially of conjunction "or" and conditional application of appraisal, "if".)

Quoting the BOB and "A court should not interpret a contract so as to make its provisions meaningless." (BOB 6:25.) So then what is possible meaning to the words "same offered price" as contrasted with "or FMV if appraisal is invoked" ? Since the only party that can "invoke" an appraisal is the Remaining Member only one meaning can be derived: that the Remaining Member has the right to purchase at the "same offered price."

The actual words used are as follows with the formula shown in italics to highlight that it is the exact same regardless of which party sells, with only the identity of the seller changed:

> "The Offering Member has the option to purchase the Remaining Member's share at FMV as determined by Section 4.2 based on the following formula. (FMV - COP x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.
>
> "The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either (I) Accepting the Offering Member's purchase offer, or (ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula. *(FMV - COP x 0.5 plus capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities."*

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4. BIDSAL'S ERRONEOUS INTERPRETATION OF SECTION 4.2.

Bidsal twists himself into a pretzel to avoid the obvious interpretation that he has no right to demand an appraisal. Apart from the improper injection of parol evidence (discussed more fully in Section 6, below), which does not in any case change the result, Bidsal's only real argument is that if the Remaining Member chooses to buy instead of sell, he or it must do so using an appraised FMV and not the offered price. (BOB 8:15.) And the essential cog in Bidsal's argument is that the offered price is not an FMV.

First Bidsal argues that "the offered price is, by definition , not the fair market value, but instead only the price which the Offering Member *thinks* is the fair market value." (BOB 8:15.) That makes no sense at all. After reciting what an offer is Section 4.2 continues, "If the offered price is not acceptable to the Remaining Member(s) . . .then

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the Remaining Member(s) . . .can request to establish FMV" by appraisal. By necessity, if the Remaining Member does not so request, then the offered price is the FMV. Remember, as we above discussed, the FMV is an essential element to the formula to determine the Purchase Price, so there has to be some FMV when no appraisal is requested by the Remaining Member.

And removing all doubt we once again point to the final portion of the section stating "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).**" (Emphasis added.) To determine the Purchase Price requires an FMV. So if "same offered price" is used, then what is it other than FMV. Stated differently, if the "same offered price" is used, which element is it of the Purchase Price. There is nothing it can be other than FMV.

And once again Bidsal knows that. His offer, CLA Exhibit C defined $5 million as the FMV and said it was made pursuant to Section 4 of the Operating Agreement. That means the amount therein is the "offered price." In part it said, "The Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***"). That is the only amount in the offer so it must be the "offered price." Since **Bidsal equated his offered price with "FMV he is estopped to claim otherwise! And it should be noted that Bidsal's offer was communicated by his lawyer.**

Finally, Section 4.3 states that the Remaining Member's failure to respond to the Offering Member's notice "shall be deemed to constitute an acceptance." Now if it is accepted, and the Remaining Member does not request an appraisal, what is the FMV to be used in the formula to obtain the Purchase Price? It can only be the amount in the notice from the Offering Member, or the offered price, which is in this case $5 million.

Bidsal's contention that the offered price cannot be the FMV just does not hold water.

To avoid the unavoidable conclusion that no appraisal is required if the Remaining

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Member chooses to buy rather than sell Bidsal argues that if the Remaining Member accepts the offer the price is to be fair market value set forth in the offer, **but** that if the Remaining Member elects to buy then FMV must be established by appraisal. But the language says no such thing, and would in essence gut the specific intent of this Buy-Sell provision.[2]

The Remaining Member's two choices follow one another. The choice to accept reads: "(I) Accepting the Offering Member's purchase offer." Bidsal argues that "Section 4.2 (I) allows the Remaining Members to accept an offer either at the offered price or at the FMV." (BOB 9:21.) Therefore it is surely correct the Remaining Member can accept at the offered price. And note: If he does, then the FMV for application of the formula to determine the Purchase Price is the offered price.

The Remaining Member's choice to reject a sale and choose instead to buy reads: "(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." (Emphasis added) The reference to "**same** fair market value" can only mean the same as in the preceding sentence. Therefore, the counteroffer likewise covers both and absent an appraisal is at the offered price for the FMV.

Additional proof that the reference to "same" in the phrase "fair market value" must include the offered price is the sequence of events. The portion reciting the Remaining Member's options under (i) and (ii), begins "The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member." But that is the same 30 days that the Remaining Partner has to decide whether to seek an appraisal: "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. . ." So during the 30 day period, the Remaining Member has 2

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[2] In N. 4 of BOB, Bidsal argues that the Offering Member's offer is an offer to buy not an offer to sell. Untrue. It triggers the Remaining Member's right to force the Offering Member to sell just as Section 4.2 in stating the specific intent says.

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choices to make within that time frame:(I) either elect to buy or sell at the offered price or (ii) invoke the appraisal process.[3]

What Bidsal again argues in Section C.2.d. is that the offered price is different from and not covered by the term "FMV." He points to a portion of 4.2 stating "The medium of these 2 appraisals constitutes the fair market value of the property which is called (FMV)." But that sentence does not say that "FMV" is defined solely as the fair market value achieved from appraisal. Yet that is Bidsal's contention. What it says is that if there is an appraisal then that establishes the fair market value and that "the fair market value of the property is called (FMV)." We agree. Fair market value of the property is abbreviated "FMV." But the fair market value is the offered amount unless the Remaining Member requests an appraisal.

Bidsal's contention is impossible to square with what the section provides. If appraisal is not requested, there is no other possible FMV to be inserted into the formula (which uses the abbreviation "FMV") to determine the Purchase Price other than the offered price.

Finally, the final portion of Section 4.2 sets out the specific intent of this provision. It specifically says:

> "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)."

What more is needed?

One must go to 13:17 of BOB to find any attention given by Bidsal to the final portion of the final portion of Section 4.2. Bidsal argues that this last portion of the Section dealing with how a buyout works "is not part of the buy-sell procedure, but is

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[3] As noted above, Bidsal has attempted to mislead the arbitrator by trying to change Section 4.2 by inserting language not there found. But that portion does not deal with time limitations.

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instead, simply a statement of intent and clarifying language." (BOB13:19.) We struggle to find what Bidsal is attempting to say, but to claim it is not part of the buy-sell procedure is simply ridiculous.

While still ignoring all that is said above and especially the specific intent of the section, Bidsal's repetition of the same argument in Section E does not make it any better.

5. BIDSAL'S NEW ISSUES.

Commencing in Section D, Bidsal raises new claims not heretofore mentioned, to wit: he claims that CLA's response to the offer did not qualify for CLA's purchasing his interest.

First in Section E (BOB 10:18) he argues that CLA's August 3, 2017 letter (CLA, Exhibit D) does not qualify as a counteroffer because it uses the offered price and not an appraised FMV. But this is based on the same contention that a Remaining Member may only counteroffer on the basis of an appraised FMV, and we have just explained why that is just wrong.

But more than that analysis, Bidsal himself acknowledged that the counteroffer was valid. He responded to it in the August 5, 2017 letter from his counsel, CLA Exhibit E. In it he in part states:

> "This letter is in response to your August 3, 2017 letter relating to the Membership Interest in Green Vallee Commerce, LLC, a Nevada limited liability company (the '***Company***'). By this letter, and in accordance with Article V, Section 4 of the Company's Operating Agreement, SHAWN BIDSAL, OWNER OF Fifty Percent (50%) of the outstanding membership Interest in the Company, does hereby invoke his right to establish the FMV by appraisal. . . .Please provide my office with two MIA appraisers within two weeks."

Nowhere did Bidsal's counsel claim that CLA's August 3, 2017 letter was an improper response to Bidsal's offer. Indeed, he wrote that in accordance with Section 4 he was claiming the right to initiate the appraisal process which could not have occurred unless there was a proper response to Bidsal's notice. It was here, of course, where the issue of Bidsal's non-existent right to demand an appraisal was first raised.

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Bidsal next in Section E argues that even if CLA's response had been proper, still he is entitled to demand an appraisal because a counteroffer must be at an appraised FMV. But this is the same argument all over again that he raised in Section C to which we above have shown the be all but frivolous.

6. **BIDSAL'S IMPROPER USE OF PAROL.**

"You can't ride the same horse in two directions at the same time." But Bidsal now tries to convince the Arbitrator that he is entitled to do exactly that. CLA sought to take the deposition of the attorney who drafted the Operating Agreement, **David Le Grand.** To avoid its being taken Bidsal objected. The only possible grounds for the objection was that the agreement was unambiguous.

Further, citing two authorities at 6:15 of his BOB, Bidsal states, "When a document is clear and **unambiguous** on its face, the court must construe the document according to its language." (Emphasis added.) There can be no possible reason for inserting that principle, much less the supporting authorities unless Bidsal (like CLA) contends that the Operating Agreement is unambiguous, at least with regard to the issue at hand. And of course if the agreement is unambiguous, parol evidence is not permitted.

But contrary to an exclusion of parol evidence because the Operating Agreement is unambiguous, as Bidsal has contended, the BOB includes over a hundred of pages of parol evidence, and in particular double hearsay statements from the very same **LeGrand**[4] whose deposition he prevented. (Bidsal though his declaration claims what Ben Golshani told LeGrand not on the basis of what he, Bidsal heard, but rather based on what LeGrand allegedly told Bidsal what Golshani said, the classic example of double hearsay.)

Bidsal's counsel would not have been so patently inconsistent on the issue of parol evidence unless he recognized that he had no chance of success without injecting

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[4] To protect against the Arbitrator's consideration of Respondent's parol evidence Petitioner will file separately Objections based not only on the parol evidence rule, but other grounds as well, such as the hearsay rule just mentioned..

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obfuscation through parol evidence in the hopes of distracting the Arbitrator from the unavoidable conclusion that CLA is entitled to buy out Bidsal based on the fair market value ("FMV") Bidsal used in his offer and that Bidsal has no right to demand an appraisal.

So the threshold question must be: After Bidsal argued that the LeGrand deposition should not be permitted and on that basis obtained a stay of that deposition from the Arbitrator, will the Arbitrator now permit Bidsal to use parol evidence. Stated differently, will the Arbitrator after issuing the stay order allow Bidsal to avoid being estopped from this change of position on the application of the parol evidence rule's to this case, and in particular in applying Section 4 of the Operating Agreement.

If, as CLA urges the answer is "no," then the Arbitrator can avoid consideration of Bidsal's Opening Brief to the extent of parol evidence it raises. [5]

If on the other hand the Arbitrator is considering parol evidence, then of course CLA must show that even with the parol evidence, Bidsal's position is without merit. Since CLA has no way to know the answer to this threshold question, it responds to that parol evidence.

6.1. **Draftsman Not Relevant**.

Based on a June 19, 2013 e-mail from LeGrand (and remember he's the attorney to whose deposition Bidsal successfully objected) regarding Mission Square, not Green Valley, **and more than two years after Green Valley was formed**, Bidsal argues that Golshani of CLA, rather than the attorney Bidsal had selected to draft the Operating Agreement, drafted Section 4. The portion thereof emphasized by Bidsal reads, "This revised version is based upon the GVC OPAG that has Ben's language on buy sell."

First in article XIII of the Operating Agreement, on page 19 parties acknowledged that the agreement was prepared by LeGrand.

Second that it has "Ben's language on buy sell" could mean all sorts of things.

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[5] Both parties have submitted the Operating Agreement and using it rather than restatements thereof reveals they are the same so there is no dispute as to what it actually says.

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Does it refer to entire paragraph, a part of a paragraph or a word or more? Standing alone, it means nothing. The most natural is that Golshani wanted buy sell language from Green Valley Operating Agreement which was drafted 2 years earlier used in the Mission Square agreement. That does not mean that Golshani drafted the language. But of course it was Bidsal who prevented the taking of LeGrand's deposition from which one could learn what he meant.

Additionally, this is obviously hearsay at best for which there is no exception. But even more basic is the fact that consideration of who drafted something becomes relevant only it if is ambiguous, and more than ambiguous if the position of the other party makes any sense at all given the language chosen. (Bidsal's position does not.) Indeed the authorities cited by Bidsal at BOB 5:15 say just that. Once again, on the issue of whether under Section 4 the Offering Member Bidsal had the right to demand an appraisal is not ambiguous as it is clear that it is only the Remaining Member who can invoke that process. Thus, even were, Golshani the draftsman, which Bidsal concedes was La Grange, were it in admissible evidence and true, that fact would still be irrelevant.

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For each of the foregoing reasons, CLA refrains from countering with Golshani's declaration to refute Bidsal's mis-constuction; we do not want to allow Bidsal to succeed in his attempt to obfuscate the issue.

6.2. **Bidsal's Improper Insertion of Language**.

As above noted, starting at BOB 2:24 Bidsal argues that because Section 4.2 of the Operating Agreement is similar to that in Mission Square Operating Agreement asserting that it clarifies the intent two years' earlier. No it does not. It changes the intent. At BOB 7:16 Bidsal cites California Code of Civil Procedure, 1858 for the principle that "a party may not delete words in a contract and thereby alter the parties' obligations." Never mind that the section never uses the word "contract" or refers to conduct by a party. It is a proscription against "the Judge" and in part says the Judge is "not to insert what has been omitted." Therefore, all of BOB which is based on language from the Mission Square Operating Agreement – which was drafted 2 years after the fact, and is concededly

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different in many respects, must be ignored, except to the extent it shows how far Bidsal will go to attempt to avoid the natural reading of Section 4 of this Green Valley Operating Agreement.

Claimant's motion should be granted.

Dated: January 19, 2018.

RESPECTFULLY SUBMITTED,

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

By: _____
RODNEY T. LEWIN

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DECLARATION OF BENJAMIN GOLSHANI

DECLARATION OF BENJAMIN GOLSHANI

I, Benjamin Golshani, hereby declare the following:

1. I am the Manager of CLA Properties, LLC ("CLA), the Claimant in this arbitration.

2. I did not draft or provide the language contained in section 4 and in particular Section 4.2. That language was drafted by Attorney David LeGrand who was introduced to me and hired by Mr. Bidsal to prepare the that agreement. Both Mr. Bidsal and I commented on that Section 4 language. I did not know Mr. LeGrand before this. I did ask Mr. LeGrand to make sure we had a buy sell provision in the Mission Square Agreement which he also prepared in 2013.

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

Executed this 19th day of January, 2018.

BENJAMIN GOLSHANI

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EXHIBIT 112

(Respondent's Reply Brief (RB III)

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EXHIBIT 112

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RODNEY T. LEWIN, ESQ. - SBN #71664
LAW OFFICES OF RODNEY T. LEWIN
A Professional Corporation
8665 Wilshire Boulevard, Suite 210
Beverly Hills, California 90211-2931
(310) 659-6771

LOUIS E. GARFINKEL, ESQ.
Nevada Bar No. 3416
LEVINE GARFINKEL & ECKERSLEY
8880 w. Sunset Road, Suite 390
Las Vegas, Nevada 89148
(702) 673-1612
Attorneys for Claimant

CLA PROPERTIES, LLC, a California limited liability company,

Claimant,

v.

SHAWN BIDSAL, an individual,

Respondent.

JAMS Ref. No. 1260004569

REPLY IN SUPPORT OF CLAIMANT'S RULE 18 MOTION

Date: January 29, 2018
Time: 8:00 A.M.

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1. **INTRODUCTION.** Claimant's motion demonstrated why Respondent ("Bidsal") as the Offering Member had no right to demand an appraisal before selling his interest in accordance with the rejection of Bidsal's offer by Claimant ("CLA"). Stripped of its snarkiness Bidsal's sole argument in his Response to Claimant's Rule 18 motion ("Response" or "R") is that "FMV" or fair market value is defined as an amount that can only be determined though appraisal. Bidsal repeats the same claim at least eleven times[1], sometimes right after one another. It does not become better with repetition, and we below show that it is irreconcilable with the language of the agreement.

At 2:8 the Response argues, "When interpreting a contract, the entire Section must

[1] Response 3:25, 4:11, 4:17, 4:23, 4:25, 5:7, 5:13, 5:16, 6:27, 7:6 and 7:16.

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be considered as a whole and interpreted in a manner than [sic, should be "that"] gives purpose and meaning to each portion thereof." Claimant agrees. Bidsal then attempts to avoid admitting that it is he who fails to do so by falsely charging CLA who "cherry pick[s] certain provisions," (R 2:2) and then compounds the felony by incessant false charges and pejoratives,[2] all reminiscent of the adage that when the facts are favorable, bang on the facts, when the law is favorable, bang on the law, and when neither is favorable, bang on the table.

Ironically, given Bidsal's false charges, it was Mr. Bidsal who falsely represented in his Opening Brief that the Green Valley Operating Agreement and the Mission Square Operating Agreement were negotiated and signed at the same time when in fact, the Green Valley Operating Agreement was signed almost two years previously. (See Bidsal Opening Brief, Footnote 1, p. 4)

2. **WHAT IS SECTION 4 ALL ABOUT**. At 2:2 and 7:7:24 of Claimant's moving papers ("Motion") we said the following[3]:

> The Operating Agreement uses what could be rightly called a "put-call" option where the party deciding to end the relationship, who is under no time restraints and can conduct all the investigation he needs to determine a fair price, makes an offer to buy out the other. To encourage the offeror making a fair offer, the offeree then is given the right to either buy or sell at that price, but within a set time period (in this case 30 days), far different from the unlimited time the offeror has to decide what to do. If the offeree (here called "Remaining Member") was dissatisfied with the price, the Remaining Member was also given the option to demand a "procedure" to have an appraisal to determine fair market value ("FMV") to be used instead of the fair market value used by the offeror (here called "Offering Member").
>
> . . .
>
> And there is logic to the deal they struck. If one member wanted to

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[2] So what we find are these charges against CLA: "overly simplistic interpretation" (1:23), "snippets are taken out of context and twisted beyond recognition" (1:26), "manipulation" (1:27), "CLA does not cite to nor reference the very provision at issue" (2:5) [compare the motion], "simplistic arguments" (2:7) [Bidsal's characterization of clear language], and CLA's "argument require[s] some pretty spectacular mental gymnastics" (4:18).

[3] Block indented single space portions hereof are quotations, but are shown without quotation marks to avoid confusion with what are internal quotations.

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> end the marriage, in calculating the price to do so, he had to use what he thought was "the fair market value." To avoid his choosing too low a figure, his "partner" was given the right to buy him out at his low ball figure. That was the protection against one member setting too low a value.

The Response does not address, much less dispute those statements. Bearing them in mind helps understand the language of Section 4 chosen to accomplish those purposes.

3. **WHAT THE AGREEMENT SAYS**. Given the confusion Bidsal attempts to inject in his Response, and to avoid being accused of being cavalier, CLA sets out exactly what Section 4 provides.

3.1. **Preface.** The review of the exact provisions of Section 4 will disclose that it has two features the recognition of which in advance will, we believe, be helpful in that review. First, in two separate places the amount one member must pay another to buy out the latter's interest ("Buyout Amount") is stated as a formula in which there are four elements: (1) the fair market value or "FMV" of Green Valley's property[4] (2) less the cost of the purchase ("COP"), (3) less prorated liabilities, plus (4) the selling Member's capital contribution at the time of the purchase of the property. The process described in Section 4 deals wholly with just one element of that formula, the FMV; the rest are determined from Green Valley's books.

Second, while the word "price" twice appears in the Section, by its terms that is not the amount to be paid for the interest being purchased , and at no place is the word "price" attached to the formula. In fact, as shown by the provisions, it appears that the word "price" is truly the price for the property that would be paid by a willing buyer ("fair market value"). In effect when one Member is bought out by another the latter in effect buys the other half of the property.

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[4] The definition of FMV in § 4.1 cross-refers to section 4.2. So one needs to go the § 4.2 to see what is that of which the fair market value is taken. If requested by the Remaining Member one of the ways to determine FMV is by appraisal and § 4.2 in part states the appraisers "appraise the property." (Emphasis added.) That is the only time in the Operating Agreement where that of which the fair market value is taken is stated.

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3.2. **Step by Step**.

3.2.1. **Section 4.1**. Section 4.1 provides definitions, one of which cross-refers to a later Section.

> **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

In this case Bidsal was the Offering Member and CLA the Remaining Member. Because of its response CLA became the Seller.

3.2.2. **Section 4.2 Beginning**. Section 4.2 begins:

> **Section 4.2 Purchase or Sell Procedure**.
>
> Any Member ("Offering Member") may give notice to the Remaining Member(s) that he or it is ready, willing and able to purchase the Remaining Members' Interests for a price the Offering Member thinks is the fair market value. The terms to be all cash and close escrow within 30 days of the acceptance.

Both at R 4:8 and 5:3 Bidsal says that the amount included in the Offering Member's offer the "Offering member thinks is the fair market value" is later called "Offered Price." CLA concurs. Since, as we above have foretold, and below will show, that fair market value or FMV is merely one element of the Buyout Amount, the reference to "price" in this sentence, or "Offered Price" later, cannot mean the "price" for the Member's interest. In effect it is the value of the property from which the price is to be determined.

The critical fact from this very beginning of the process is that the amount stated in the Offering Member's notice is what he sets as "the fair market value." There can be no purpose for his stating what he "thinks" it is other than to set the FMV absent a request for appraisal by the Remaining Member. In R § II.B Bidsal argues that what Bidsal thought was the fair market value, or "offered price," can never be the fair market value

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or FMV (and as noted he makes that claim repeatedly). But at no place does Bidsal offer one suggestion of what purpose is served, or impact or meaning of Offering Member's stating what he thinks FMV is. And remember, Bidsal's Response starts out by saying that meaning must be given to all portions of the provisions.

Our Motion noted that Bidsal's notice in part read:

> The Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***"). Unless contested in accordance with the provisions of Section 4.2 of Article V of the Operating Agreement, the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold.
>
> Upon receipt of this notice, the Remaining Member has certain rights and obligations, as set forth in Section 4.2 of Article V of the Operating Agreement. This notice shall trigger the time periods and procedures set forth therein." (Emphasis in original.) (Motion 3:3.)

How does Bidsal square his Johnny-come-lately assertion that FMV can only be determined by appraisal, and that the offered price never the FMV? He claims that his "use of the term 'FMV' was technically inappropriate," R 4:8) as though layman, Mr. Bidsal, just did not understand the intricacies of the agreement. But it was not Mr. Bidsal who wrote the notice. **IT WAS WRITTEN BY HIS COUNSEL, MR. SHAPIRO!** (Exhibit C to CLA's Motion.) And its not as though his use of the term was inadvertent. He used it twice.

More than just using the term twice, he put it in bold italics and in quotation marks. (See emphasis above.) And to make certain that it was understood, he said that "**the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold.**" (Emphasis added.) Yet the entire premise of Mr. Shapiro's Response is that the offered price can never be the FMV "to calculate the purchase price of the Membership Interest to be sold."

In seeming recognition of the frivolity of claiming it was merely "technically inappropriate" and otherwise without significance, the Response turns to strawmen, here and elsewhere. At R 3:11 he claims that his statement was not intended to modify or replace the meaning of FMV in Section 4. CLA never contended that it did. What Mr.

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Shapiro's statements did show, however, was that everyone understood that FMV would be determined as the offered price absent the Remaining Member's requesting an appraisal.

While at R 6:2 Bidsal argues that the offered price can never be the FMV, he never suggests what function the offered price serves if it is never the FMV.

3.2.3. **Appraisal**. The next portion of § 4.2 deals with the Remaining Member's being unwilling to accept the offered price as the FMV. We once again call attention to the fact that the entire portion dealing with appraisal comes into play only if it is requested by the Remaining Member, and here CLA did not so request.

> 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.

As can be seen the entire procedure for appraisal is triggered only "if the offered price is not acceptable to the Remaining Member" and the Remaining Member "request[s] to establish FMV" by the appraisal procedure there set out. We repeatedly made this point in our Motion (e.g., see 6:13). Yet nowhere in the Response does Bidsal so much as attempt to avoid the unavoidable conclusion that the only time there is an appraisal is when "the offered price is not acceptable to the Remaining Member" and he requests an appraisal.

Since as we have noted CLA never made such a request the appraisal provisions

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above are inapplicable. Nonetheless Bidsal's entire argument focuses on one sentence of these inapplicable provisions to support his claim. After describing how the appraisal would be conducted the first paragraph concludes, "The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)."

What that obviously means is that assuming the appraisal procedure is invoked, then the medium of the two appraisals will determine "the fair market value of the property" (which then becomes that element of the formula to determine Buyout Amount) and that "the fair market value of the property" "is called (FMV)." We agree the "fair market value of the property" equals or is called "FMV." What it does not say, but what Bidsal is arguing, is that it is only when the fair market value is obtained from this "medium" can it be called "FMV" or is there any FMV at all. But that is not what it says.

Here the appraisal procedure was not invoked so of course that "medium" never existed, and what does not exist cannot be used to determine anything, much less FMV.

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Bidsal argues that this sentence provides the definition for FMV. (R 4:22.) It does not, and the sentence does not purport to be the definition of FMV. The definition of FMV is fair market value, and if there is an appraisal, then that fair market value is determined by the appraisal, but the definition of fair market value is not that achieved solely by appraisal. Absent an appraisal the FMV is the offered price.

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We note in passing that the formula to determine the Buyout Amount is here stated for the first time, and as we above has stated, it includes four elements: fair market value, cost of property, liabilities and capital account.

3.2.4. **Remaining Member's Response.** After concluding the discussion of appraisal Section 4.2 goes into the Remaining Member's reaction to the offer.

> 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.

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

The Remaining Member is given two choices. He can sell or he can buy "based upon the same fair market value according to the following formula." Once again that formula has the same four elements one of which is "FMV."

The Remaining Member's first option is to accept the offer. (i) But assume that the Remaining Member has chosen not to request an appraisal, as was here true. Bidsal argues that FMV is defined solely as that achieved through appraisal. But if that were true, then what is the amount to be inserted as FMV in this formula? To that Bidsal's Response offers no answer. The answer is it must be the offered price, or the amount set out in the initial Offering Member's notice as what he thinks the FMV is. Even Bidsal does not pretend that if there is no appraisal, there cannot be a purchase or sale.

Because it is so determinative, we repeat: Bidsal argues that the offered price can never be the FMV. Untrue. The first option for Remaining Member is to accept the Offering Member's offer. The formula to determine the Buyout Amount requires the insertion of FMV. If the Remaining Member does not request an appraisal, there is no appraisal. The formula requires an FMV to determine Buyout Amount. There are only two conceivable possibilities for FMV under this Agreement: the offered price and the appraised amount. If Bidsal's argument that the offered price cannot be the FMV were accepted, and if the Remaining Member did not request an appraisal, then that would mean the buy-sell procedures of Section 4 could never be applied, a position that cannot be correct. Bidsal never addresses this point repeatedly made in the Motion. It totally destroys his contention that appraisal is required to determine FMV.

The Remaining Member can reject the offer and instead choose to buy. (ii.) In part it states that if he does, then his purchase of Offering Member's interest is "based upon the same fair market value (FMV)." Following immediately after (i) the reference to "same" can only mean the same as would be used if the Remaining Member chose to

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accept (i). As we have just shown that amount has to be the offered price absent Remaining Member's request for appraisal. So too if the Remaining Member rejects sale and chooses to purchase, the offered price becomes the FMV absent his prior request for appraisal.

As we foretold, **THERE IS NO WAY FOR THE FORMULA TO WORK WITHOUT A DETERMINATION OF FMV AND IF THE REMAINING MEMBER DOES NOT REQUEST AN APPRAISAL, THE ONLY POSSIBLE FMV IS THE OFFERED PRICE.** This position is fully explored in the Motion, but Bidsal never responds to it.

Lacking any answer to this position, Bidsal again resorts to strawmen. At 4:8 he claims, "CLAP argues that the word 'same' in front of 'fair market value (FMV)' somehow changes the meaning of FMV . . .to the 'offered price.'" We never argued that the word "same" changed the meaning of FMV. What we did and do argue is that if there is no appraisal, then the reference to "same" has to be to the offered price because there is nothing else to which it could refer.

Bidsal at R 6:8 argues that in (ii) saying that the Remaining Member can purchase "based upon the same fair market value (FMV)" and not mentioning "offered price," that proves that the offered price cannot be the FMV. Not so. The reference to "same fair market value(FMV)" could mean the appraised FMV, but for sure it includes the "offered price" when there is no appraisal. And the answer to Bidsal's contention at R 7:8 that, if the offered price had been intended to be included in the reference to "same fair market value" it would have been stated, is that there was no reason to do so. The "same fair market value" by necessity includes the offered price. There is equally no mention of the "medium" of the appraisals, but that would not exclude the appraised amount had there been an appraisal requested. There are two possibilities to determine FMV: offered price or if requested appraisal. In saying "same fair market value" the parties covered both possibilities depending on whether or not there had been a request for appraisal.

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3.2.5. **Belts And Suspenders**. Just so there was no misunderstanding the parties concluded Section 4.2 with a statement of intent.

> 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).

It could hardly have been made more clear that the element of FMV in the formula to determine the Buyout amount was "the same offered price (or FMV if appraisal is invoked)." Bidsal argues (R 6:3) that this language shows that "offered price" can never be the FMV. But he never explains the possible meaning of selling or buying "at the same offered price" unless it is the FMV absent an appraisal.

While Bidsal ® 6:2) argues that since the offered price is stated as an alternative to FMV, it cannot be the FMV. But that is not what it says. What it says is that the offered price is used or "if appraisal is invoked" then the "FMV" determined by appraisal.

Apparently sensing that this conclusion all but ends the debate, Bidsal argues that this final portion "is not part of the buy-sell procedure, but is instead, simply a statement of intent and clarifying language." (R 2:21.) If it is a statement of intent other than the buy-sell procedure, Bidsal does not say. The caption to the Section of which it is a part reads, "Purchase or Sell Procedure."

Then Bidsal adds that this portion "provides a statement of intent that helps clarify the intent of the parties." (R 3:1.) CLA agrees. Then he adds it "does not replace any of the procedures set forth" in the Section "but is instead reliant upon those procedures to effectuate the purpose and intent outlined therein." (R 3:2.) Exactly. In case there were any doubt what the above portions means, this portion makes it clear. Bidsal concludes that this portion "cannot be read independent" of the rest of Section 4.2. (R 3:8.) Of course not, but it does attempt to make sure that an argument such as that made by Bidsal never succeeds.

3.2.6. **Section 4.3**. Section 4 concludes:

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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.

Here again testing Bidsal's contention proves it must fail. What if, as this section states, the Remaining Member does not reply. Then that is deemed to be an acceptance. But then one must know how much does the Offering Member pay. Well, that requires us to return to the formula earlier stated and it begins with setting out the "FMV." But if there is no response by the Remaining Member there cannot possibly be any "request" for an appraisal s what amount is left for the FMV? It can only be the offered price. And once again the Response never addresses that section or this point.

4. **CONCLUSION**. The intent of the buy-sell provisions could not be clearer. If a Member wanted to disassociate from the other, he could do so, but he had to make an offer based on a reasonable value for the property owned by Green Valley. If he tried to steal the other Member's interest, the other Member would be protected in two ways. First, he could request an appraisal instead of the amount offered, and second he could force the Offering Member to sell his interest based on the same valuation turn what he believed to be a low ball offer into an offer to sell. That is exactly what happened. Bidsal gambled that CLA lacked either the will or ability to buy him out so he set a low figure.[5] His gamble failed when CLA chose instead to buy. Now caught in the web of his own scheme, Bidsal claims that there always has to be an appraisal. The

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[5] In N. 3 Bidsal claims that CLA is inconsistent in referring to Bidsal's offered price as a low ball figure and still the FMV. It is not inconsistent at all. The FMV is the amount inserted into the formula to determine the Buyout Amount. It is fixed as the offered price if there is no appraisal or the appraised amount if the Remaining Member requests an appraisal. If there is no appraisal and the offered price is inserted into the formula it could be reasonable, it could be too high or it could be a low ball figure. That is what happened here.

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Operating Agreement says no such thing. Claimant's motion should be granted.

Dated: January 25, 2018.

RESPECTFULLY SUBMITTED,

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

By: _____
RODNEY T. LEWIN

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EXHIBIT 113

(CLA Reply Brief In Support of Rule 18 Motion)

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EXHIBIT 113

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RODNEY T. LEWIN, ESQ. - SBN #71664
LAW OFFICES OF RODNEY T. LEWIN
A Professional Corporation
8665 Wilshire Boulevard, Suite 210
Beverly Hills, California 90211-2931
(310) 659-6771

LOUIS E. GARFINKEL, ESQ.
Nevada Bar No. 3416
LEVINE GARFINKEL & ECKERSLEY
8880 w. Sunset Road, Suite 390
Las Vegas, Nevada 89148
(702) 673-1612
Attorneys for Claimant

CLA PROPERTIES, LLC, a California limited liability company,

Claimant,

v.

SHAWN BIDSAL, an individual,

Respondent.

JAMS Ref. No. 1260004569

REPLY IN SUPPORT OF CLAIMANT'S RULE 18 MOTION

Date: January 29, 2018
Time: 8:00 A.M.

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1. **INTRODUCTION.** Claimant's motion demonstrated why Respondent ("Bidsal") as the Offering Member had no right to demand an appraisal before selling his interest in accordance with the rejection of Bidsal's offer by Claimant ("CLA"). Stripped of its snarkiness Bidsal's sole argument in his Response to Claimant's Rule 18 motion ("Response" or "R") is that "FMV" or fair market value is defined as an amount that can only be determined though appraisal. Bidsal repeats the same claim at least eleven times[1], sometimes right after one another. It does not become better with repetition, and we below show that it is irreconcilable with the language of the agreement.

At 2:8 the Response argues, "When interpreting a contract, the entire Section must

[1] Response 3:25, 4:11, 4:17, 4:23, 4:25, 5:7, 5:13, 5:16, 6:27, 7:6 and 7:16.

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be considered as a whole and interpreted in a manner than [sic, should be "that"] gives purpose and meaning to each portion thereof." Claimant agrees. Bidsal then attempts to avoid admitting that it is he who fails to do so by falsely charging CLA who "cherry pick[s] certain provisions," (R 2:2) and then compounds the felony by incessant false charges and pejoratives,[2] all reminiscent of the adage that when the facts are favorable, bang on the facts, when the law is favorable, bang on the law, and when neither is favorable, bang on the table.

Ironically, given Bidsal's false charges, it was Mr. Bidsal who falsely represented in his Opening Brief that the Green Valley Operating Agreement and the Mission Square Operating Agreement were negotiated and signed at the same time when in fact, the Green Valley Operating Agreement was signed almost two years previously. (See Bidsal Opening Brief, Footnote 1, p. 4)

2. **WHAT IS SECTION 4 ALL ABOUT**. At 2:2 and 7:7:24 of Claimant's moving papers ("Motion") we said the following[3]:

> The Operating Agreement uses what could be rightly called a "put-call" option where the party deciding to end the relationship, who is under no time restraints and can conduct all the investigation he needs to determine a fair price, makes an offer to buy out the other. To encourage the offeror making a fair offer, the offeree then is given the right to either buy or sell at that price, but within a set time period (in this case 30 days), far different from the unlimited time the offeror has to decide what to do. If the offeree (here called "Remaining Member") was dissatisfied with the price, the Remaining Member was also given the option to demand a "procedure" to have an appraisal to determine fair market value ("FMV") to be used instead of the fair market value used by the offeror (here called "Offering Member").
>
> . . .
>
> And there is logic to the deal they struck. If one member wanted to

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[2] So what we find are these charges against CLA: "overly simplistic interpretation" (1:23), "snippets are taken out of context and twisted beyond recognition" (1:26), "manipulation" (1:27), "CLA does not cite to nor reference the very provision at issue" (2:5) [compare the motion], "simplistic arguments" (2:7) [Bidsal's characterization of clear language], and CLA's "argument require[s] some pretty spectacular mental gymnastics" (4:18).

[3] Block indented single space portions hereof are quotations, but are shown without quotation marks to avoid confusion with what are internal quotations.

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> end the marriage, in calculating the price to do so, he had to use what he thought was "the fair market value." To avoid his choosing too low a figure, his "partner" was given the right to buy him out at his low ball figure. That was the protection against one member setting too low a value.

The Response does not address, much less dispute those statements. Bearing them in mind helps understand the language of Section 4 chosen to accomplish those purposes.

3. **WHAT THE AGREEMENT SAYS**. Given the confusion Bidsal attempts to inject in his Response, and to avoid being accused of being cavalier, CLA sets out exactly what Section 4 provides.

3.1. **Preface.** The review of the exact provisions of Section 4 will disclose that it has two features the recognition of which in advance will, we believe, be helpful in that review. First, in two separate places the amount one member must pay another to buy out the latter's interest ("Buyout Amount") is stated as a formula in which there are four elements: (1) the fair market value or "FMV" of Green Valley's property[4] (2) less the cost of the purchase ("COP"), (3) less prorated liabilities, plus (4) the selling Member's capital contribution at the time of the purchase of the property. The process described in Section 4 deals wholly with just one element of that formula, the FMV; the rest are determined from Green Valley's books.

Second, while the word "price" twice appears in the Section, by its terms that is not the amount to be paid for the interest being purchased , and at no place is the word "price" attached to the formula. In fact, as shown by the provisions, it appears that the word "price" is truly the price for the property that would be paid by a willing buyer ("fair market value"). In effect when one Member is bought out by another the latter in effect buys the other half of the property.

---

[4] The definition of FMV in § 4.1 cross-refers to section 4.2. So one needs to go the § 4.2 to see what is that of which the fair market value is taken. If requested by the Remaining Member one of the ways to determine FMV is by appraisal and § 4.2 in part states the appraisers "appraise the property." (Emphasis added.) That is the only time in the Operating Agreement where that of which the fair market value is taken is stated.

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3.2. **Step by Step**.

3.2.1. **Section 4.1**. Section 4.1 provides definitions, one of which cross-refers to a later Section.

> **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

In this case Bidsal was the Offering Member and CLA the Remaining Member. Because of its response CLA became the Seller.

3.2.2. **Section 4.2 Beginning**. Section 4.2 begins:

> **Section 4.2 Purchase or Sell Procedure**.
>
> Any Member ("Offering Member") may give notice to the Remaining Member(s) that he or it is ready, willing and able to purchase the Remaining Members' Interests for a price the Offering Member thinks is the fair market value. The terms to be all cash and close escrow within 30 days of the acceptance.

Both at R 4:8 and 5:3 Bidsal says that the amount included in the Offering Member's offer the "Offering member thinks is the fair market value" is later called "Offered Price." CLA concurs. Since, as we above have foretold, and below will show, that fair market value or FMV is merely one element of the Buyout Amount, the reference to "price" in this sentence, or "Offered Price" later, cannot mean the "price" for the Member's interest. In effect it is the value of the property from which the price is to be determined.

The critical fact from this very beginning of the process is that the amount stated in the Offering Member's notice is what he sets as "the fair market value." There can be no purpose for his stating what he "thinks" it is other than to set the FMV absent a request for appraisal by the Remaining Member. In R § II.B Bidsal argues that what Bidsal thought was the fair market value, or "offered price," can never be the fair market value

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or FMV (and as noted he makes that claim repeatedly). But at no place does Bidsal offer one suggestion of what purpose is served, or impact or meaning of Offering Member's stating what he thinks FMV is. And remember, Bidsal's Response starts out by saying that meaning must be given to all portions of the provisions.

Our Motion noted that Bidsal's notice in part read:

> The Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***"). Unless contested in accordance with the provisions of Section 4.2 of Article V of the Operating Agreement, the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold.
>
> Upon receipt of this notice, the Remaining Member has certain rights and obligations, as set forth in Section 4.2 of Article V of the Operating Agreement. This notice shall trigger the time periods and procedures set forth therein." (Emphasis in original.) (Motion 3:3.)

How does Bidsal square his Johnny-come-lately assertion that FMV can only be determined by appraisal, and that the offered price never the FMV? He claims that his "use of the term 'FMV' was technically inappropriate," R 4:8) as though layman, Mr. Bidsal, just did not understand the intricacies of the agreement. But it was not Mr. Bidsal who wrote the notice. **IT WAS WRITTEN BY HIS COUNSEL, MR. SHAPIRO**! (Exhibit C to CLA's Motion.) And its not as though his use of the term was inadvertent. He used it twice.

More than just using the term twice, he put it in bold italics and in quotation marks. (See emphasis above.) And to make certain that it was understood, he said that "**the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold.**" (Emphasis added.) Yet the entire premise of Mr. Shapiro's Response is that the offered price can never be the FMV "to calculate the purchase price of the Membership Interest to be sold."

In seeming recognition of the frivolity of claiming it was merely "technically inappropriate" and otherwise without significance, the Response turns to strawmen, here and elsewhere. At R 3:11 he claims that his statement was not intended to modify or replace the meaning of FMV in Section 4. CLA never contended that it did. What Mr.

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Shapiro's statements did show, however, was that everyone understood that FMV would be determined as the offered price absent the Remaining Member's requesting an appraisal.

While at R 6:2 Bidsal argues that the offered price can never be the FMV, he never suggests what function the offered price serves if it is never the FMV.

3.2.3. **Appraisal**. The next portion of § 4.2 deals with the Remaining Member's being unwilling to accept the offered price as the FMV. We once again call attention to the fact that the entire portion dealing with appraisal comes into play only if it is requested by the Remaining Member, and here CLA did not so request.

> 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.

As can be seen the entire procedure for appraisal is triggered only "if the offered price is not acceptable to the Remaining Member" and the Remaining Member "request[s] to establish FMV" by the appraisal procedure there set out. We repeatedly made this point in our Motion (e.g., see 6:13). Yet nowhere in the Response does Bidsal so much as attempt to avoid the unavoidable conclusion that the only time there is an appraisal is when "the offered price is not acceptable to the Remaining Member" and he requests an appraisal.

Since as we have noted CLA never made such a request the appraisal provisions

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above are inapplicable. Nonetheless Bidsal's entire argument focuses on one sentence of these inapplicable provisions to support his claim. After describing how the appraisal would be conducted the first paragraph concludes, "The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)."

What that obviously means is that assuming the appraisal procedure is invoked, then the medium of the two appraisals will determine "the fair market value of the property" (which then becomes that element of the formula to determine Buyout Amount) and that "the fair market value of the property" "is called (FMV)." We agree the "fair market value of the property" equals or is called "FMV." What it does not say, but what Bidsal is arguing, is that it is only when the fair market value is obtained from this "medium" can it be called "FMV" or is there any FMV at all. But that is not what it says.

Here the appraisal procedure was not invoked so of course that "medium" never existed, and what does not exist cannot be used to determine anything, much less FMV.

Bidsal argues that this sentence provides the definition for FMV. (R 4:22.) It does not, and the sentence does not purport to be the definition of FMV. The definition of FMV is fair market value, and if there is an appraisal, then that fair market value is determined by the appraisal, but the definition of fair market value is not that achieved solely by appraisal. Absent an appraisal the FMV is the offered price.

We note in passing that the formula to determine the Buyout Amount is here stated for the first time, and as we above has stated, it includes four elements: fair market value, cost of property, liabilities and capital account.

3.2.4. **Remaining Member's Response.** After concluding the discussion of appraisal Section 4.2 goes into the Remaining Member's reaction to the offer.

> 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.

APPENDIX (PX)000474

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

The Remaining Member is given two choices. He can sell or he can buy "based upon the same fair market value according to the following formula." Once again that formula has the same four elements one of which is "FMV."

The Remaining Member's first option is to accept the offer. (i) But assume that the Remaining Member has chosen not to request an appraisal, as was here true. Bidsal argues that FMV is defined solely as that achieved through appraisal. But if that were true, then what is the amount to be inserted as FMV in this formula? To that Bidsal's Response offers no answer. The answer is it must be the offered price, or the amount set out in the initial Offering Member's notice as what he thinks the FMV is. Even Bidsal does not pretend that if there is no appraisal, there cannot be a purchase or sale.

Because it is so determinative, we repeat: Bidsal argues that the offered price can never be the FMV. Untrue. The first option for Remaining Member is to accept the Offering Member's offer. The formula to determine the Buyout Amount requires the insertion of FMV. If the Remaining Member does not request an appraisal, there is no appraisal. The formula requires an FMV to determine Buyout Amount. There are only two conceivable possibilities for FMV under this Agreement: the offered price and the appraised amount. If Bidsal's argument that the offered price cannot be the FMV were accepted, and if the Remaining Member did not request an appraisal, then that would mean the buy-sell procedures of Section 4 could never be applied, a position that cannot be correct. Bidsal never addresses this point repeatedly made in the Motion. It totally destroys his contention that appraisal is required to determine FMV.

The Remaining Member can reject the offer and instead choose to buy. (ii.) In part it states that if he does, then his purchase of Offering Member's interest is "based upon the same fair market value (FMV)." Following immediately after (i) the reference to "same" can only mean the same as would be used if the Remaining Member chose to

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APPENDIX (PX)000475

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accept (i). As we have just shown that amount has to be the offered price absent Remaining Member's request for appraisal. So too if the Remaining Member rejects sale and chooses to purchase, the offered price becomes the FMV absent his prior request for appraisal.

As we foretold, **THERE IS NO WAY FOR THE FORMULA TO WORK WITHOUT A DETERMINATION OF FMV AND IF THE REMAINING MEMBER DOES NOT REQUEST AN APPRAISAL, THE ONLY POSSIBLE FMV IS THE OFFERED PRICE.** This position is fully explored in the Motion, but Bidsal never responds to it.

Lacking any answer to this position, Bidsal again resorts to strawmen. At 4:8 he claims, "CLAP argues that the word 'same' in front of 'fair market value (FMV)' somehow changes the meaning of FMV . . .to the 'offered price.'" We never argued that the word "same" changed the meaning of FMV. What we did and do argue is that if there is no appraisal, then the reference to "same" has to be to the offered price because there is nothing else to which it could refer.

Bidsal at R 6:8 argues that in (ii) saying that the Remaining Member can purchase "based upon the same fair market value (FMV)" and not mentioning "offered price," that proves that the offered price cannot be the FMV. Not so. The reference to "same fair market value(FMV)" could mean the appraised FMV, but for sure it includes the "offered price" when there is no appraisal. And the answer to Bidsal's contention at R 7:8 that, if the offered price had been intended to be included in the reference to "same fair market value" it would have been stated, is that there was no reason to do so. The "same fair market value" by necessity includes the offered price. There is equally no mention of the "medium" of the appraisals, but that would not exclude the appraised amount had there been an appraisal requested. There are two possibilities to determine FMV: offered price or if requested appraisal. In saying "same fair market value" the parties covered both possibilities depending on whether or not there had been a request for appraisal.

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APPENDIX (PX)000476

3.2.5. **Belts And Suspenders**. Just so there was no misunderstanding the parties concluded Section 4.2 with a statement of intent.

> 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).

It could hardly have been made more clear that the element of FMV in the formula to determine the Buyout amount was "the same offered price (or FMV if appraisal is invoked)." Bidsal argues (R 6:3) that this language shows that "offered price" can never be the FMV. But he never explains the possible meaning of selling or buying "at the same offered price" unless it is the FMV absent an appraisal.

While Bidsal ® 6:2) argues that since the offered price is stated as an alternative to FMV, it cannot be the FMV. But that is not what it says. What it says is that the offered price is used or "if appraisal is invoked" then the "FMV" determined by appraisal.

Apparently sensing that this conclusion all but ends the debate, Bidsal argues that this final portion "is not part of the buy-sell procedure, but is instead, simply a statement of intent and clarifying language." (R 2:21.) If it is a statement of intent other than the buy-sell procedure, Bidsal does not say. The caption to the Section of which it is a part reads, "Purchase or Sell Procedure."

Then Bidsal adds that this portion "provides a statement of intent that helps clarify the intent of the parties." (R 3:1.) CLA agrees. Then he adds it "does not replace any of the procedures set forth" in the Section "but is instead reliant upon those procedures to effectuate the purpose and intent outlined therein." (R 3:2.) Exactly. In case there were any doubt what the above portions means, this portion makes it clear. Bidsal concludes that this portion "cannot be read independent" of the rest of Section 4.2. (R 3:8.) Of course not, but it does attempt to make sure that an argument such as that made by Bidsal never succeeds.

3.2.6. **Section 4.3**. Section 4 concludes:

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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.

Here again testing Bidsal's contention proves it must fail. What if, as this section states, the Remaining Member does not reply. Then that is deemed to be an acceptance. But then one must know how much does the Offering Member pay. Well, that requires us to return to the formula earlier stated and it begins with setting out the "FMV." But if there is no response by the Remaining Member there cannot possibly be any "request" for an appraisal s what amount is left for the FMV? It can only be the offered price. And once again the Response never addresses that section or this point.

4. **CONCLUSION**. The intent of the buy-sell provisions could not be clearer. If a Member wanted to disassociate from the other, he could do so, but he had to make an offer based on a reasonable value for the property owned by Green Valley. If he tried to steal the other Member's interest, the other Member would be protected in two ways. First, he could request an appraisal instead of the amount offered, and second he could force the Offering Member to sell his interest based on the same valuation turn what he believed to be a low ball offer into an offer to sell. That is exactly what happened. Bidsal gambled that CLA lacked either the will or ability to buy him out so he set a low figure.[5] His gamble failed when CLA chose instead to buy. Now caught in the web of his own scheme, Bidsal claims that there always has to be an appraisal. The

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[5] In N. 3 Bidsal claims that CLA is inconsistent in referring to Bidsal's offered price as a low ball figure and still the FMV. It is not inconsistent at all. The FMV is the amount inserted into the formula to determine the Buyout Amount. It is fixed as the offered price if there is no appraisal or the appraised amount if the Remaining Member requests an appraisal. If there is no appraisal and the offered price is inserted into the formula it could be reasonable, it could be too high or it could be a low ball figure. That is what happened here.

APPENDIX (PX)000478

Operating Agreement says no such thing. Claimant's motion should be granted.

Dated: January 25, 2018.

RESPECTFULLY SUBMITTED,

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

By: _____
RODNEY T. LEWIN

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EXHIBIT 114

(Bidsal's Exhibit 351)

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EXHIBIT 114

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Compose

Inbox 1
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Messages Photos Documents

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2011						
	benjamin gc	wire wire transfer B		horizon ridge		
	benjamin gc	Fw: HABIB fyi Benja		horizon ridge		6/3/2011
	Jeff, me, Ber	FW: 1770,177...	5	horizon ridge		6/4/2011
	Jeff, Ben, me	rent roll analy...	4	Sent		6/6/2011
	Ben	Contact Hi, this is th		active deals ...		6/7/2011
	Jeff, me .. be	non performi...	6	horizon ridge		6/15/2011
	me, Ben	Fw: service fu...	2	horizon ridge		6/18/2011
	benjamin gc	wire Good Morning		horizon ridge		7/13/2011
	ben, me	Fw: For Sale o...	2	Sent		7/29/2011
	me, ben, me	FW: Commerc...	3	Sent		8/1/2011
	Linda, me, b	Holland & Ha...	5	horizon ridge		8/8/2011
	David, me, b	Lease Guaranty	4	horizon ridge		8/9/2011
	Keith, me, b	RE: Appraisal i...	6	horizon ridge		8/9/2011
	ben	Fw: REO Retail Ce...		active deals ...		8/18/2011
	ben	Fw: 29 N. 28th St L...		active deals ...		8/28/2011
	bengol7@y	Property Detail Lin...		active deals ...		12/1/2011
	ben, me .. b	proof of funds	5	active deals ...		12/14/2011
	Ben	Re: Lebovitz Hi, I se		horizon ridge		12/23/2011
2012						
	ben, me	Fw: FW: 112 u...	2	Sent		1/4/2012
	me, Devin ..	(No Subject)	10	Sent		1/13/2012
	ben	fresno Fresno Shop		active deals ...		3/11/2012
	ben	Fw: Fresno Shoppi...		active deals ...		3/11/2012

Ben Gol
bengol7@yahoo.com

You and Ben Gol appeared together on messages between Jan 2015 and Dec 20 The first message was from Ben Gol to bryanm@LRAphx.com and you on Jan 2 2015, regarding 'Elegant Pet Grooming'.

Documents

CLA Properties wire TR sunset.do
wire

PortArthurSummary.doc
Fw: PortArthurSummary.doc

Wilminton_Ave_Swapmeet_Selec
Fw: Los Angeles Swapmeet

Open all doc

EXHIBIT 115

(Respondent's Hearing Brief (RB IV)

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EXHIBIT 115

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James E. Shapiro, Esq.
Sheldon A. Herbert, Esq.
SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, Nevada 89074
O: (702) 318-5033

Daniel L. Goodkin, Esq.
GOODKIN & LYNCH, LLP
1800 Century Park East, 10th Fl.
Los Angeles, CA 90067
O:(310)552-3322

Attorneys for Respondent

JAMS

CLA PROPERTIES, LLC, a California limited liability company, Claimant, vs. SHAWN BIDSAL, Respondent.	**Reference #:1260004569** Arbitrator: Hon Stephen E. Haberfeld (Ret.)

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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RESPONDENT SHAWN BIDSAL'S ARBITRATION BRIEF

COMES NOW Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys of record, SMITH & SHAPIRO, PLLC and GOODKIN & LYNCH, LLP, and files his Arbitration Brief, as follows:

I.

PRELIMINARY STATEMENT

At the Arbitration Hearing in this matter set for May 8-9, 2018, Bidsal will provide the Arbitrator with an opening statement that will illustrate the evidence which will support Bidsal's case. Among the matters which will be presented to the Arbitrator, Bidsal will demonstrate that the dispute boils down to who (Bidsal or CLA Properties, LLC ("***CLAP***")) is entitled to purchase the membership interest of the other party and for what amount. Both of these questions boil down to an interpretation of Section 4 of the Operating Agreement ("***OPAG***") of Green Valley Commerce, LLC, a Nevada limited liability company (the "***Company***" or "***Green Valley***"). CLAP's proposed interpretation not only ignores the actual language of Section 4.2 *[Ex 29/Ex 337]*, by also ignores

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and deviates from Bidsal's and Benjamin Golshani's ("***Golshani***") course of conduct. Moreover, while Bidsal believes that the language of the OPAG clearly supports his interpretation of the buy-sell provisions of the OPAG, CLAP vigorously argues an alternate theory. Yet in the event that the there is any ambiguity in the buy-sell provisions of the OPAG, Bidsal must prevail because CLAP and Golshani were the drafters of the language at issue.

II.

STATEMENT OF FACTS

A. THE FORMATION OF THE GREEN VALLEY.

* May 26, 2011, Bidsal formed Green Valley to own and manage commercial real property. *[Ex 1/Ex 301]*

* Commercial broker Jeff Chain ("***Chain***") provided Bidsal and Golshani ("***Golshani***"), the Manager of CLAP, with a form OPAG for Bidsal and Golshani to use. *[Ex 303]*

* David LeGrand ("***LeGrand***") made changes to the draft OPAG before providing it to Bidsal; however, neither the original form OPAG from Chain, nor LeGrand's revised OPAG, contained any buy-sell language. *[See Ex 303, and Ex 7/Ex 304]*

* Subsequently, Bidsal, Golshani, and LeGrand spent more than 6 months negotiating the terms of the proposed OPAG and produced at least seven different revisions before it was ultimately signed. *[See Ex's 7, 10-19, 21, 23, 25/Ex's 304-315, 317, 318, 320-323]*

B. THE HISTORY, PROPOSAL AND DRAFTING OF SECTION 4.

* LeGrand's first couple drafts of the OPAG did not contain any language even remotely similar to Section 4. *[See Ex's 7, 10, 11/Ex's 304, 305, 306]*

* The first buy-sell language appeared in LeGrand's July 22, 2011 draft in the form of right of first refusal ("***ROFR***") language, which was nothing like Section 4. *[See Ex 12/Ex 307, at DL00137 & 148-150]*

* August 18, 2011, LeGrand introduced new buy-sell language which LeGrand referred to as "Dutch Auction" language (the "***Dutch Auction language***")[1]. *[Ex 16/Ex 311, at*

[1] LeGrand readily admits that his use of the phrase "Dutch Auction" is different than how a "Dutch Auction" is currently defined. However, LeGrand repeatedly uses the phrase "Dutch Auction" to refer to his proposed buy-sell concept.

SMITH & SHAPIRO, PLLC
2520 St. P Parkway, Suite 220
Hen, on, NV 89074
O:(702)318-5033 F:(702)318-5034

DL00211-212] This is the first time that true buy-sell language was proposed and LeGrand's Dutch Auction buy-sell language specifically provided that an appraisal would be obtained to set the price at which the membership interest would be sold. *[See Ex 16/ Ex 311, at DL00211 (emphasis added)* The parties continued to negotiate the terms of proposed OPAG, and in LeGrand's September 16, 2011 draft of the OPAG (the 5th iteration), the Dutch Auction buy-sell language had been removed, leaving only the ROFR language. *[See Ex 17/Ex 313]*

* September 19, 2011, LeGrand sent an email expressing his opinion that "A simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price **does *not* appear sensible to me**." *[See Ex 18/Ex 314, at DL00288 (emphasis added)]* Consistent with the first buy-sell language that required an appraisal, LeGrand's email confirmed that the "Dutch Auction" concept was not sensible nor what the parties were looking for. *[Id.]* Attached to an email the next day was a new draft of the OPAG, which included some new buy-sell language, but which is not even close to what ultimately ended up in Section 4. *[See Ex 19/Ex 315, at DL00301 (emphasis added)]*

* Two days later, Golshani claims to have emailed Bidsal some buy-sell language that Golshani proposed and identified as a "ROUGH DRAFT", and which, after some modifications, ultimately ended up in Section 4. *[See Ex 20/Ex 316, page 5-7]* Bidsal never received it *[See Ex 351]*.

* October 26, 2011, Golshani claims to have emailed Bidsal a revised version of his earlier "ROUGH DRAFT", which Golshani identified as "ROUGH DRAFT 2". *[See Ex 22/Ex 319, page 7-9]* Bidsal never received it *[See Ex 351]*.

* A short time later, Golshani sent a fax to LeGrand containing his ROUGH DRAFT 2 buy-sell language. *[See Ex 23/Ex 320]* LeGrand took Golshani's ROUGH DRAFT 2 and made minor revisions to it. *[See Ex 22/Ex 319 and Ex 321]*. Rather, LeGrand simply took Golshani's language and inserted it almost untouched into the Operating Agreement. *[See Ex 22/Ex 319, Ex 23/Ex 320, Ex 321, and Ex 29/Ex 337]*

* By August 3, 2012, the OPAG had been signed by Bidsal and Golshani. *[Ex's 332 & 337]* Section 4 in the final OPAG is almost identical to Golshani's ROUGH DRAFT 2. *[See Ex's*

SMITH & SHAPIRO, PLLC
2520 St. P Parkway, Suite 220
Hen. on, NV 89074
O:(702)318-5033 F:(702)318-5034

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319, 321 & 337] The intent of the parties that the initial offer ***not be*** an offer to buy or sell, but solely an offer to buy, remained untouched. Golshani explained the meaning to Bidsal and acknowledged that this was the case.

C. MISSION SQUARE.

* In April 2013, Golshani[2] and Bidsal formed another company, Mission Square, LLC ("***Mission Square***"), using the Green Valley OPAG as the starting point, which, according to LeGrand "**is based upon the GVC OPAG *that has Ben's language on buy sell*.**" *[Ex 343, at BIDSAL000127 (emphasis added)]*

* However, LeGrand added a new Section 7 to Article 5, which added some additional buy-sell language applicable to the death of a partner, where the other Member had an option "**to purchase at FMV (determined in accordance with Section 4.2)".** *[Ex 345, at BIDSAL00047]* LeGrand testified that the term "FMV" in this Section meant **"fair market value . . . the medium of two appraisals**" which definition was contained in the last sentence of Section 4.2②[3] *[See Transcript from Deposition of David LeGrand at 143:17-144:24]*

D. GREEN VALLEY PROPERTIES.

* September 22, 2011, Green Valley obtained title to certain real property located at 3 Sunset Way, Bldgs. A-H, Las Vegas, Nevada 89014 (APN 161-32-810-001 and -002) (the "***Sunset Way Properties***"). *[Ex 355]*

* Green Valley also owns certain real property located at 3342 E. Greenway Road, Suite 107, Phoenix, AZ 85032 (APN 214-35-232)(the "***Greenway Property***"), which it acquired on March 8, 2013, and which Green Valley received an LOI from an interested buyer on or about July 31, 2017 to purchase the Greenway Property for a purchase price of $1,650,000.00.

* Throughout the ownership of the Sunset Way Properties, Bidsal handled all operations of the Sunset Way Properties. When Green Valley sold off individual units of the Sunset Way Properties, Golshani and Bidsal sought brokers opinions of value and shared that information between themselves and all transactions were based on full disclosure of all information regarding

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[2] Unlike with Green Valley, Golshani, individually, was a member of Mission Square with Bidsal.

[3] For ease of reference, each paragraph of Section 4 has been numbered, as set forth below.

SMITH & SHAPIRO, PLLC
2520 St. P Parkway, Suite 220
Hen, on, NV 89074
O:(702)318-5033 F:(702)318-5034

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value. *See [Ex's 326-336, 356, 357].* During the time that Green Valley Commerce owned the Sunset Way Properties, Bidsal, alone, oversaw the management of the buildings and expended considerable effort and time managing and maintaining the buildings, thus increasing their values and generating profits for Golshani and himself. Golshani, on the other hand, sat by as a passive investor, while Bidsal provided the additional "sweat equity" to make Green Valley Commerce profitable.

E. THE INITIATING BUY-OUT OFFER.

* July 7, 2017, Bidsal made written Offer ***to purchase*** CLAP's Membership Interest in the Company pursuant to Section 4, at a price based upon an estimate of the Company's total value of $5,000,000.00, which Bidsal *thought* was the fair market value, derived without the benefit of a formal appraisal (the "***Initial Offer***"). *[Ex 30/Ex 346]*

* August 3, 2017, CLAP provided a response, inappropriately attempting to convert Bidsal's Initial Offer to purchase into an offer by Bidsal to sell Bidsal's membership interests in the Company without the benefit of an appraisal. *[Ex 31/Ex 347]*

* August 5, 2017, Bidsal sent a letter back to CLAP, requesting that the appraisal process contemplated from the beginning be utilized. *[Ex 32/Ex 348]*

SMITH & SHAPIRO, PLLC
2520 St. P Parkway, Suite 220
Hen, on, NV 89074
O:(702)318-5033 F:(702)318-5034

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III.

STATEMENT OF AUTHORITIES

A. LEGAL STANDARD ON CONTRACT INTERPRETATION.

In interpreting an agreement, the court may not modify it, nor create a new contract. *See,* Mohr Park Manner, Inc. v. Mohr, 83 Nev. 107, 424 P.2d 101 (1967) (*appeal after remand*, 87 Nev. 520, 490 P.2d 217 (1967)); Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 623 P.2d 981 (1981).

If logically and legally permissible, a contract should be construed give effect to valid contractual relations rather than rendering agreement invalid or rendering performance impossible. *See,* Mohr Park Manner, Inc. v. Mohr, *supra*, 83 Nev. 107. A court should not interpret a contract so as to make its provisions meaningless. *See,* Phillips v. Mercer, 94 Nev. 279, 579 P.2d 174 (1978). Contractual provisions should be harmonized whenever possible and construed to reach a reasonable

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solution. *See,* Eversole v. Sunrise Villas VIII Homeowners Association , 112 Nev. 1255, 925 P.2d 505 (1996).

California law[4] provides that terms may be added by inference under Civil Code §§1655 and 1656 only upon consideration of all the surrounding facts. *See e.g.* Worthington v. Kaiser Foundation Health Plan, Inc., 87 Cal. Rptr. 272 (Ct. App. 1970). Terms which can be inferred from a consideration of the entire instrument or which are implied by law are as much a part of the contract as if expressly set forth. *See* Forde v. Venbro, 218 Cal.App.2d 405, 408 (1963) ("Many a gap in terms can be filled, and should be, with a result that is consistent with what the parties said and that is more just to both than would be a refusal of enforcement"); *See also* Waters v. Waters, 197 Cal.App.2d 1, 5 (1961) ("A series of writings is to be construed together in arriving at the total understanding of the contracting parties"); Denver D. Darling, Inc. v. Controlled Environments Construction, Inc., 108 Cal. Rptr. 2d 213 (Ct. App. 2001) ("Neither law nor equity requires that every term and condition of an agreement be set forth in the contract.").

Further, where the meaning of a contract is ambiguous, resort to extrinsic evidence is required to ascertain the intention of the parties. Margrave v. Dermody Properties, 878 P.2d 291 (Nev. 1994); Mullis v. Nevada Nat'l Bank, 98 Nev. 510, 513, 654 P.2d 533, 536 (1982). Parol evidence is admissible for ascertaining the true intentions and agreement of the parties when the written instrument is ambiguous. MC Multi-Family Dev., LLC v. Crestdale Assocs., Ltd., 124 Nev. 901, 193 P.3d 536 (2008). Moreover, contract terms need not be found to be ambiguous before evidence of the custom and usage of terms in the parties' trade or practice can be considered. Galardi v. Naples Polaris, LLC, 301 P.3d 364, 129 Nev. Adv. Op. 33 (May 16, 2013)(*quoting with approval* Intersport, Inc. v. NCAA, 885 N.E.2d 532, 538 (Ill. App. Ct. 2008)).

B. SECTION 4.2 OF THE OPERATING AGREEMENT.

Article V Section 4 of the OPAG contains a buy-sell provision designed to allow an orderly buy-out of one or more Member's membership interest, containing a provision which, once triggered, will result in one of the members selling their membership interest to the other member.

[4] Although Nevada law controls, Nevada courts do consider California cases if they assist with the interpretation.

SMITH & SHAPIRO, PLLC
2520 St. R... Parkway, Suite 220
Hend...son, NV 89074
O:(702)318-5033 F:(702)318-5034

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Once Section 4 has been properly triggered, there are four different ways that the transaction can go. *[See Ex 29/Ex 337]*. Article V, Section 4 states as follows:

Section 4.1 Definitions

① 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.

② "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.

③ "Seller" means the Member that accepts the offer to sell his or its Membership Interest.

④ "FMV" means "fair market value" obtained as specified in section 4.2

Section 4.2 Purchase or Sell Procedure.

① 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.

② 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).

③ 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.

④ (FMV - COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities.

⑤ 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.

⑥ (FMV - COP) x 0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities.

⑦ 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

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Hen. .on, NV 89074
O:(702)318-5033 F:(702)318-5034

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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) [sic] period shall be deemed to constitute an acceptance of the Offering Member.

1. **Step 1: Initial Offer.**

The one and only way for a party to initiate the process contemplated by Section 4 is by making an offer to purchase the other member's interest. The Offering Member offers to buy the membership interest at "a price the Offering member *thinks* is the fair market value."

2. **Step 2: The Remaining Member's Options.**

Once Section 4 has been triggered by an Initial Offer, the Remaining Member has four choices set forth below.

a. **Option 1: Do Nothing.**

If the Remaining Member does nothing, then under Section 4.3, after thirty (30) days the Remaining Member is deemed to have accepted the Offering Member's Initial Offer, and the Offering Member will buy out the Remaining Member's membership interest at a figure based upon the estimated value of the Company in the Initial Offer.

b. **Option 2: Accept the Initial Offer.**

Under OPAG Sections 4.2⑤(i) and ⑥, the Remaining Member can accept the Offering Member's purchase offer and sell its membership interests to the Offering Member based upon a price determined by using the amount in the Initial Offer.

c. **Option 3: Request an Appraisal.**

Under OPAG Section 4.2②, the Remaining Member(s) may request to establish FMV by appraisal, at which time the Remaining Member may sell its membership interests to the Offering Member at a figure based upon an appraised value of the Company.

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SMITH & SHAPIRO, PLLC
2520 St. P Parkway, Suite 220
Hen on, NV 89074
O:(702)318-5033 F:(702)318-5034

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d. Option 4: Make a Counteroffer at FMV as Defined in the OPAG as the Medium of Two Appraisals.

Under OPAG Sections 4.2⑤ (ii), and ⑥, the Remaining Member may make a counteroffer to purchase the Offering Member's interests at a figure based upon "FMV" for the Company, established as the medium of two appraisals, as defined in Section 4.2②.

C. BIDSAL'S INITIATING OFFER AND CLAP'S COUNTEROFFER.

On July 7, 2017, Bidsal sent a letter to CLAP with the Initial Offer ***to purchase CLAP's membership interests*** in order to trigger a buy/sell event, under Section 4.1① and 4.2①. On August 3, 2017, CLAP sent a responding letter, specifically setting forth a counteroffer ***to purchase Bidsal's membership interests*** based upon the initial offered price.

However, the evidence will show that the only counteroffer which CLAP was entitled to make under the OPAG was a counteroffer at "FMV" (the "medium of . . . 2 appraisals") pursuant to Section 4.2⑤(ii), as that term is defined in Sections 4.1④ and 4.2②. Section 4 simply did not give CLAP the option of purchasing Bidsal's membership interest for a price based upon the estimate in the Initial Offer.

D. CLAP MISINTERPRETS ARTICLE V, SECTION 4.

In spite of the proper operation of Section 4 of Article V of the OPAG, CLAP takes the position that the August 3, 2017 letter constitutes a counteroffer to purchase Bidsal's membership interest at a price based upon the initial $5,000,000 estimated value for Green Valley. However, the evidence will show that CLAP's interpretation is based upon certain false premises: (1) that an offer to purchase equal an offer to sell, (2) that if the Remaining Member did not invoke the appraisal process then the offered price equals the FMV, and (3) that the Offering Party that initiates the buy-sell process can never invoke the appraisal process.

1. CLAP's First Premise Runs Contrary to the Plain Meaning of Section 4.

The Initial Offer is only an offer to purchase, not to sell. After the Initial Offer, the Remaining Member is permitted to make a counteroffer, but any counteroffer is based upon FMV as determined by the appraisal process. The evidence will show that nothing in Section 4 allows the Remaining Member to twist the Initial Offer to purchase at a given price into an offer to sell at the

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Hen on, NV 89074
O:(702)318-5033 F:(702)318-5034

same price. The last paragraph of Section 4.2 does not allow a Remaining Member to circumvent the rest of the language in Section 4.2.

2. CLAP's Second Premise Runs Contrary to the Plain Meaning of Section 4.

a. CLAP's argument runs contrary to LeGrand's testimony. The Mission Square Operating Agreement and LeGrand's testimony demonstrate that the appraisal process can be invoked without Remaining Member's election.

b. CLAP continues to ignore Section 4.1④. Section 4.1 and 4.2 define FMV as "the medium of these 2 appraisals."

c. The "Same" FMV Means What It Says. The phrase "same fair market value (FMV)" in 4.2 clearly refers to the formula to determine FMV by appraisal.

3. CLAP's Third Premise Is Flawed and Misleading.

The evidence will show that the intent of the parties was always that a formal appraisal process would be used unless the parties could agree on a price. The Remaining Member can only make a counteroffer at FMV, which necessarily triggers the appraisal process. Bidsal's August 5 letter to CLAP is consistent with this interpretation.

4. Under CLAP's Interpretation, no Buy-sell would ever occur.

A party would never make an initial offer to buy if that offer could be transformed into an offer to sell. From the beginning, the parties intended to set the sales price using a formal appraisal unless a price was otherwise agreed to. Bidsal's Initial Offer was merely meant to start the process.

E. IF THE ARBITRATOR CONCLUDES THAT ARTICLE V SECTION 4 OF THE OPAG IS AMBIGUOUS, IT SHOULD BE CONSTRUED AGAINST ITS AUTHOR, GOLSHANI.

While Bidsal maintains that the buy-sell provisions of the OPAG clearly support his interpretation, in the event that the buy-sell provisions of the OPAG are ambiguous, Bidsal must still prevail. The Nevada Supreme Court has made it clear that: "An ambiguous contract is susceptible to more than one reasonable interpretation, and '[a]ny ambiguity, moreover, should be construed against the drafter.'" Am. First Fed. Credit Union v. Soro, 131 Nev. Adv. Op. 73, 359 P.3d 105, 106 (Nev. 2015) citing to Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215–16, 163 P.3d 405, 407

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Henc on, NV 89074
O:(702)318-5033 F:(702)318-5034

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(Nev. 2007). Further, in construing contracts, every word must be given effect if at all possible. *See* Royal Indemnity Company v. Special Service Supply Company, 82 Nev. 148, 413 P.2d 500 (1966).

Throughout this case, CLAP has made the assertion or suggestion that the buy-sell language in the OPAG was drafted by David LeGrand; however, during his deposition, Mr. LeGrand flatly denied CLAP's false assertions, admitting that "Draft 2" of the buy-sell language is something he created from what Golshani sent to him, and that, in the final version of the OPAG, everything within Article V, Section 4 of the OPAG from the definition paragraph (i.e. Section 4.1, formerly Section 7.1) to the paragraph immediately prior to the paragraph that begins with the phrase "the specific intent" (i.e. Section 4.2⑦) more likely came from Golshani. [*See Transcript from deposition of David LeGrand* at 125:1-7]

Thus, any ambiguity in Section 4 is to be construed against Golshani and in favor of Bidsal.

F. THE PROCESS BY WHICH THE OPERATING AGREEMENT WAS DRAFTED AND MODIFIED SUPPORTS BIDSAL'S PROFFERED INTERPRETATION.

It is fundamental that the language in a contract is intended to mean something, and that if the language changes through negotiation, the changes were intended. This is amply demonstrated in Mirpad, LLC v. California Ins. Guar. Ass'n, 34 Cal. Rptr. 3d 136 (Ct. App. 2005). In Mirpad, an insurance policy contained a sentence which provided coverage to "person and organization" and in the subsequent sentence it provided coverage to "person" in a wrongful eviction. The court ruled that the omission of the word "organization" from the wrongful eviction clause was significant, where the word had been used in a prior sentence, and refused to construe the wrong eviction clause as covering an organization. Id. at 146-47.

Likewise, in Burnett v. Chimney Sweep, 20 Cal. Rptr. 3d 562 (Ct. App. 2004), a lease agreement contained an indemnity clause that applied to "Lessor and its agents" while an exculpatory clause only applied to "Lessor". The court concluded that deletion of the phrase "and its agents" from the exculpatory phrase was significant, and the property manager (i.e. the Lessor's agents) were not protected by the exculpatory phrase. Id. at 573.

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Hen. son, NV 89074
O:(702)318-5033 F:(702)318-5034

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Similarly, in the very recent matter of Walt Disney Parks and Resorts U.S., Inc. v. Superior Court of Los Angeles County, (Mar. 25, 2018)(copy attached), the court recited the near-identical analysis that applies to the interpretation of a statute. As with contracts, when different words are used as part of the same scheme, those words are presumed to have different meanings. Id. (*citing* Romano v. Mercury Ins. Co., 27 Cal. Rptr. 3d 784 (Ct. App. 2005)). Further, where one term is employed in one place and has been excluded in another, it should not be implied where it is excluded. Id. (*citing* Regents of University of California v. Superior Court, 220 Cal. App. 4th 549, 558 (2013)). Thus, where one part of the statute [or contract] contains a term or provision, the omission of that term from another part of the statute [or contract] indicates the drafting party intended to convey a different meaning. Id. (*citing* Cornette v. Dept. of Transportation, 109 Cal. Rptr. 2d 1 (2001)).

In the instant case, when the "Dutch auction" language was first drafted (entitled "ROUGH DRAFT" by Golshani), it was written so that a buy-sell transaction between the members would be triggered upon "the event that a Member ***is willing to sell*** his or its Member's Interests in the Company to the other Members, . . ." *See* Article V, Section 7 of the Operating Agreement *[Ex. 20/Ex 316]*. However, it was revised as "ROUGH DRAFT 2" by Golshani and changed the triggering event to "the event that a Member ***is willing to purchase*** the Remaining Member's Interest in the Company . . ." *[Ex 22/Ex 319]*.

Thus, the phrase "is willing to purchase" must be interpreted to mean just that, an offer to purchase, and not a simultaneous offer to sell as argued by CLAP.

G. THE PRIOR CONDUCT OF THE PARTIES SUPPORTS BIDSAL'S CASE.

In the State of Nevada, in its interpretation of a contract, a trial court may examine both words and action of parties. *See,* Fox v. First Western Savings & Loan Association, 86 Nev. 469, 472, 470 P.2d 424, 426 (1970). Courts properly consider interpretation which parties themselves, by words or actions, have placed upon contracts. Reno Club, Inc. v. Young Investment Co., 64 Nev. 312, 328, 182 P.2d 1011 (1947). *See also* Smith v. Rahas, 73 Nev. 301, 318 P.2d 655 (1957)(*citing* Flyge v. Flynn, 63 Nev. 201, 209, 166 P.2d 539(1946)(applying the rule of "interpretation by the parties" to the conduct of the parties, especially when that conduct is at a time when "they are in

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Henc on, NV 89074
O:(702)318-5033 F:(702)318-5034

harmony and before they have had to resort to law."); Radaker v. Scott, 109 Nev. 653, 855 P.2d 1037 (1993)(intent to form a joint venture determined by ordinary rules regarding interpretation and construction of contracts as well as consideration of the actions and conduct of the parties).

This is in accord with the law in the State of California where Civil Code Section 1636 provides that a contract must be interpreted to give effect to the intentions of the parties at the time of contracting. The conduct of the parties after execution of the contract and before any controversy has arisen as to its effect affords the **most reliable** evidence of the parties' intentions. (*See, e.g.*, United California Bank v. Maltzman, 118 Cal.Rptr. 299 (1974); Spott Electrical Co. v. Industrial Indem. Co., 106 Cal.Rptr. 710 (1973); Salton Bay Marina, Inc. v. Imperial Irrigation Dist. 218 Cal.Rptr. 839 (1985)(a court "is required to give **'great weight'** to the conduct of the parties in interpreting the instrument before any controversy arose"].)" (emphasis added) Kennecott Corp. v. Union Oil Company, 196 Cal.App.3rd 1179, 1189 (1987). *See, also* Universal Sales Corp. v. Cal. Press Mfg. Co., 20 Cal.2d 751, 761-62 (1942) ("a practical construction placed by the parties upon the instrument is the best evidence of the intention")

As stated artfully by the Union court, "Union admits relinquishment of the 280 acres when it appeared to carry substantial liability. Now that the storm has subsided and the sea is calm, Union seeks to sail the sea even though it canceled its ticket. While "heads I win, tails you lose" may be useful in Las Vegas, we decline to let Union play that game." Id. at 196 Cal.App.3d 1191.

In the instant case, the prior course of dealing between Bidsal and CLAP when it comes to buying and selling assets of Green Valley speaks volumes. For instance, when Green Valley was selling some of the individual buildings at the Sunset Way Properties in 2012, Bidsal and Golshani sought formal Brokers Opinions of Value from Jeff Chain, Amy Ogden, and Danielle Steffen, and Bidsal was open and honest with Golshani about Green Valley's finances so as not to disadvantage one other. *[Ex. 326-36, 356, 357]*

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SMITH & SHAPIRO, PLLC
2520 St. P Parkway, Suite 220
Hen. on, NV 89074
O:(702)318-5033 F:(702)318-5034

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H. THE CONCEPT OF ROUGH JUSTICE PREVIOUSLY DISCUSSED DOES NOT APPLY TO THIS CASE.

1. Rough Justice.

During the JAMS Rule 18 Motion hearing on January 29, 2018, the concept of "rough justice" was discussed. However, rough justice is not a recognized nor established legal theory or defense and the evidence will show that it was also not the intent of the parties. Rather, "rough justice" is a bare notion used to justify recognition of an equitable doctrine or claim where the law does not provide a remedy, which ironically, is typically used exactly opposite what was being discussed at the hearing.

For example, courts have observed that promissory estoppel was developed "to do rough justice when a party lacking contractual protection relief on another's promise to its detriment." Kajima/Ray Wilson v. Los Angeles County Metro. Trans. Auth'y, 96 Cal. Rptr. 2d 747, 753 (2000). Similarly, the dissent in Nevada Supreme Court observed that a family court "made a meaningful attempt to do rough justice under the circumstances" in reducing child support payments, but concluded that the family court ran afoul of clearly defined legal standards set forth in NRS 125B.080(9), and was, thus, in error. Garrett v. Garrett, 899 P.2d 1112, 1115 (Nev. 1995).

In Degen v. U.S., the United States Supreme Court considered the issue of whether a District Court's "inherent authority" allowed it to strike the filings of a defendant in a forfeiture action and grant summary judgment against him in a criminal proceeding. 517 U.S. 820 (1996). In ruling against such exercise of the "inherent authority," the U.S. Supreme Court stated that there would be a "measure of rough justice in saying [the defendant] must take the bitter with the sweet, and participate in the District Court either for all purposes or none. But justice would be too rough. A court's inherent power is limited by the necessity giving rise to its exercise." 517 U.S. at 829.

Moreover, the California Supreme Court ruled that the court of appeal erred when it "strayed away from the contractual/quasi-contractual analysis" in the direction of "vague 'fairness' and rough 'justice'." 17 Cal. 4th 38, 73 (1997).

"Rough Justice" is not a recognized legal theory or defense, but is used to recognize an equitable doctrine where the law does not provide a remedy. "Rough Justice" is not applicable

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Hen ..on, NV 89074
O:(702)318-5033 F:(702)318-5034

when parties seek the interpretation and enforcement of a contract, which involves clearly-defined contract law.

2. **Inapplicable Sayings and Parables**.

Also during the JAMS Rule 18 Motion hearing on January 29, 2018, there was discussion about a proverb and a parable. The proverb was expressed as: "one gets to cut the deck and the other deals and gets to buy the property." The parable stated that during a Friday night over dinner, two brothers own a property. One brother makes an offer with a price. The other gets to buy or sell at that price. However, the evidence will show that was not the intent of the parties and that the sayings and parables previously raised by CLAP cannot be found in any controlling legal authority and should not be considered or applied in determining the outcome of the present dispute.

I. THE OPERATING AGREEMENT BETWEEN THE PARTIES CONTAINS AN IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING THAT CLAP VIOLATED BY TRYING TO TAKE ADVANTAGE OF BIDSAL.

Even if for the sake of argument, CLAP was able to prevail on its contract interpretation, CLAP would be guilty of breaching the implied covenant of good faith and fair dealing it owed to Bidsal. Here, the evidence will show that CLAP's attempt to make Bidsal sell his interests at a price below the actual FMV is in violation of the implied covenant. Bidsal's initial offer was a good-faith estimate, and Bidsal always recognized that CLAP had the right to an appraisal if CLAP so desired.

In every contract, there is an implied covenant of good faith and fair dealing and essentially forbids arbitrary, unfair acts by one party that disadvantage the other. Frantz v. Johnson, 116 Nev. 455, 465 n.4, 999 P.2d 351, 358 n.4 (2000). That duty arose from the premise that an implied covenant of good faith and fair dealing exists in every contract,that ***neither party should be permitted to do anything which will injure the right of the other to receive the benefits of the agreement.*** Aluevich v. Harrah's, 99 Nev. 215, 220, 660 P.2d 986, 988 (1983)(emphasis added).

Where the terms of a contract are "literally complied with but one party to the contract deliberately countervenes [sic] the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing." Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991). Thus, whether a breach of the letter of the contract exists or not, the implied covenant of good faith is an obligation independent of the

SMITH & SHAPIRO, PLLC
2520 St. R Parkway, Suite 220
Henc on, NV 89074
O:(702)318-5033 F:(702)318-5034

consensual contractual covenants. Morris v. Bank of America Nevada, 110 Nev. 1274, 886 P.2d 454, fn. 2 (1994).

IV.

CONCLUSION

The evidence will show that the intent of the parties under their operating agreement is that CLAP's August 3, 2017 letter can only constitute a counteroffer as provided for in Section 4.2⑤(ii), which means CLAP is entitled to purchase Bidsal's membership interest for FMV, which is defined as the medium of two appraisals, and Bidsal will request the Arbitrator to order CLAP and Bidsal to complete the appraisal process identified in Section 4.2②.

Being drafted by Golshani, the buy-sell provisions at issue should be construed against him and CLAP. CLAP's opposing interpretation of the OPAG will not be borne out by the evidence, and not supported by the notions or concepts of "rough justice," "Dutch auctions," or quaint sayings or parables not grounded in law. Moreover, when all is said and done, CLAP is attempting to violate the implied covenant of good faith and fair dealing by not affording Bidsal equal protection, and CLAP should not be rewarded for doing so.

DATED this 3rd day of May, 2018.

SMITH & SHAPIRO, PLLC

/s/ James E. Shapiro
James E. Shapiro, Esq.
Sheldon A. Herbert, Esq.
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
Attorneys for Respondent

SMITH & SHAPIRO, PLLC
2520 St. Rose Parkway, Suite 220
Henderson, NV 89074
O:(702)318-5033 F:(702)318-5034

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 3rd day of May, 2018, I served a true and correct copy of the forgoing **RESPONDENT SHAWN BIDSAL'S ARBITRATION BRIEF**, by emailing a copy of the same, with Exhibits, to:

Individual:	Email address:	Role:
Louis Garfinkel, Esq.	LGarfinkel@lgealaw.com	Attorney for CLAP
Rodney T Lewin, Esq.	rod@rtlewin.com	Attorney for CLAP
Roslynn Hinton	RHinton@jamsadr.com	JAMS Case Manager
Bryan Winter	BWinter@jamsadr.com	JAMS Case Coordinator
Stephen Haberfeld, Esq.	judgehaberfeld@gmail.com	Arbitrator

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

SMITH & SHAPIRO, PLLC
2520 St. F Parkway, Suite 220
Hend...son, NV 89074
O:(702)318-5033 F:(702)318-5034

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EXHIBIT A

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EXHIBIT A

Filed 2/28/18; Certified for Publication 3/26/18 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

WALT DISNEY PARKS AND RESORTS U.S., INC., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent. JOHNNY GALVAN et al., Real Parties in Interest.	B284261 (Los Angeles County Super. Ct. No. BC595235)

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ORIGINAL PROCEEDING. Petition for writ of mandate, Rita Miller, Judge. Petition for writ of mandate granted.

McDermott Will & Emery, A. Marisa Chun and Gregory R. Jones for Petitioners.

No appearance for Respondent.

Law Offices of Scott E. Schutzman and Scott E. Schutzman for Real Parties in Interest.

Petitioner Walt Disney Parks and Resorts U.S., Inc. petitioned this court for relief from an order of the Los Angeles Superior Court denying Disney's motion to transfer venue as untimely. Because we conclude that the court erred in determining the motion was time-barred, we grant the petition for a writ of mandate and direct Respondent court to consider the motion on the merits.

FACTUAL AND PROCEDURAL SUMMARY

Plaintiffs and real parties in interest Johnny Galvan, Sandy Mumma, and Stavros Patsalos (real parties) filed their complaint for damages in Los Angeles County Superior Court on December 6, 2016. Real parties asserted breach of contract claims, as well as claims for negligent and intentional infliction of emotional distress, arising out of visits to Disneyland Park in Anaheim in 2015. The contracts alleged annual passes and daily admission tickets contain venue selection clauses establishing Orange County, California as the proper venue for any litigation.

Disney answered the complaint on January 12, 2017 and removed the action to federal court the next day, asserting diversity jurisdiction. The federal court remanded the matter in March 2017; Disney filed its motion to transfer venue on April 17, 2017, citing as grounds Code of Civil Procedure sections 396b subdivision (a) and 397 subdivision (a).[1] Plaintiffs opposed the motion, arguing that it was untimely, and, in any event, that

[1] Further statutory citations are to the Code of Civil Procedure.

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APPENDIX (PX)000502

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Disney's county of residence was Los Angeles. The court heard and denied the motion on July 20, 2017.

The Trial Court's Ruling

In a hearing at which no court reporter was present, the court considered the arguments of counsel[2] and adopted its tentative ruling. The court denied the motion without prejudice to defendant filing a different motion, which the court did not identify.

Disney had argued: First, that its removal of the action to federal court served to extend its time to file the motion until after the remand; and second, that section 397, the alternative ground for the motion, is not subject to the timing requirements of section 396b, but instead grants the court discretion to change venue where the matter was not filed in the proper court. The court rejected Disney's arguments, concluding that the motion would have been untimely even before the removal to federal court. The court also found that a defendant waives its right to ask the court to exercise its discretion under 397 if it fails to comply with the time requirements of 396b, and denied the motion.

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[2] Both petitioner and real parties attempted to provide information concerning the oral proceedings, but failed to provide either a transcript or a settled statement. While California Rules of Court, rule 8.486(b)(3) permits declarations where a transcript of the proceedings is not available, that rule requires a fair summary of the proceedings "including the parties' arguments and any statement by the court supporting its ruling." Neither declaration met the requirements of the rule. Accordingly, our review is solely based on the pleadings and the court's order.

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Disney filed a petition for writ of mandate, and this Court, after real parties filed preliminary opposition, issued an Order to Show Cause on September 14, 2017.

DISCUSSION

A. We Review The Trial Court's Ruling De Novo

Disney's motion to change venue was explicitly based on both sections 396b and 397. The court ruled, as a matter of law, that the motion was untimely; the facts were not disputed and the court did not resolve any issues of fact in making its decision. Accordingly, we review that decision de novo. See *Kennedy/Jenks Consultants, Inc. v. Superior Court* (2000) 80 Cal.App.4th 948, 959 ["Questions of law relate to the selection of a rule" and are reviewed de novo]; *Dow AgroSciences LLC v. Superior Court* (2017) 16 Cal.App.5th 1067, 1076 [in case involving power to transfer where action filed in improper court, de novo review is appropriate where the statute is applied to undisputed facts].

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B. The Strict Time Requirements of Section 396a Did Not Bar Disney's Motion under Section 397

1. The Statutory Scheme

Section 396b, which requires the court to grant a timely motion, provides:

"(a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced,

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unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court."

Section 397, which gives discretion to the court, provides, in relevant part,

"The court may, on motion, change the place of trial in the following cases:

(a) When the court designated in the complaint is not the proper court."

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2. Failure To Comply With 396b Does Not Automatically Waive A Party's Rights

Disney argues that, reading the two provisions together, and harmonizing their provisions, the mandatory provision embodied in section 396b is time-limited, while the discretionary provision in section 397 is not. Opposing the petition, real parties assert that Disney did not argue it was entitled to relief under section 397 at the trial court, and that the denial of the motion without prejudice specifically permitted Disney to file a motion under that section. Real parties appear to make these

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arguments without a basis in the record.[3] Real parties do not provide any legal authority supporting the respondent court's ruling.

The authority on which respondent court relied was *Willingham v. Pecora* (1941) 44 Cal.App.2d 289, 295. In that case, defendants filed a motion for change of venue, based on the convenience of witnesses, one month before trial. The trial court denied the motions. On appeal, the court found no abuse of discretion, concluding that "[t]he determination of motions for change of venue upon grounds specified in subdivision 3 of section 397 of the Code of Civil Procedure rests largely in the sound discretion of the trial judge". (*Id.* at p. 293.) With respect to the timing issue, the court concluded that the motions, made so close in time to the trial date, had not been made within a reasonable time. (*Id.* at p. 295.)

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Citing *Willingham*, the trial court here reasoned that the rule allowing motions to be filed within a reasonable time applied only to motions based on the convenience of witnesses. While sections 396b subdivision (a) and 397 subdivision (a) both refer to "wrong court" filings, only section 397 addresses the convenience of witnesses. Recognizing that section 397 expressly grants discretion to the court to consider "wrong court" filings, the court held that the timing limitations in section 396b for mandatory

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[3] First, Disney's motion for change of venue specifically argued, citing relevant authority, that both provisions supported granting its motion for change of venue. Second, the record before this Court demonstrates both that the court found the motion untimely under both provisions, and that the court did not explain under what provision it believed Disney could file an additional motion.

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relief in such cases did not limit the discretion section 397 gives to the court. Instead, the court concluded, the time requirements limit the moving defendant; by failing to comply with the requirements of section 396b, Disney waived its right to move for a change of venue. The case law concerning waiver does not support the conclusion of the trial court, and real parties cite no authority in support of that conclusion.[4] The court erred in finding waiver as a matter of law.

In *Lyons v. Brunswick-Balke-Collender Co.*, (1942) 20 Cal.2d 579, 582, the Supreme Court considered the issue of waiver in motions to change venue. The defendant in that case moved to change venue to his county of residence, pursuant to sections 396b and 397; he filed the motion after filing the demurrer, but prior to the hearing. Plaintiffs moved to strike the filing, arguing defendant had waived his right to seek the change of venue by not complying with the time limitations of section 396b; the trial court denied the motion to strike and granted the motion to change venue. (*Id.* at p. 581.)

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The Supreme Court affirmed the order, beginning its discussion by commenting: "Section 396b of the Code of Civil Procedure permitting the defendant to have certain actions tried in the county where he resides is remedial in nature and should

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[4] Real parties have waived the argument that the respondent court properly interpreted the statute by failing to provide argument or authority on this point. *(Utility Consumers' Action Network v. Public Utilities Com.* (2010) 187 Cal.App.4th 688, 697 ["If a party fails to support a claim of error with argument, or support an argument with the necessary citations to the record, we may deem the argument waived. *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830, 79 Cal.Rptr.3d 588; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246, 19 Cal.Rptr.3d 416].)"

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be liberally construed to the end that a defendant may not be unjustly deprived of that right. (*Lundy v. Lettunich* (1920) 50 Cal.App. 451, 195, P. 451; Code Civ. Proc. § 4.) Therefore in considering this appeal we must be guided by that principle." (*Id.* at p. 582.)

The Court examined the cases applying waiver to failure to comply with section 396b, and concluded that those cases did not require as a matter of law that waiver be found in every case. "Waiver is ordinarily a question of fact. (25 Cal. Jur. 932.) While it may be true that the failure to institute proceedings for change of venue on the ground of residence at the time of filing a demurrer or answer, *standing alone*, requires as a matter of law that relief be denied when an attempt to obtain it is made by later proceedings, there is nothing in section 396b or the cases heretofore cited, which compels a holding that such waiver occurs as a matter of law where, as in this case, there is a sufficient showing that there was no intent to waive the right or to invoke the jurisdiction of the court in which the action is commenced, and the defendant has acted in good faith and with diligence. To blind one's self to the realities by a slavish adherence to technicalities is not consonant with justice or the liberal tendencies with respect to rules of procedure and practice. To give the construction to section 396b contended for by plaintiffs would be unreasonable and out of line with the rules pertaining to waiver. Furthermore, it would require a strict and literal, rather than a liberal interpretation of that section.

The right of the defendant to have certain actions tried in the county of his residence 'is an ancient and valuable right, which has always been safeguarded by statute and is supported by a long line of judicial decisions. "The right of a plaintiff to

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have an action tried in another county than that in which the defendant has his residence is exceptional, and, if the plaintiff would claim such right, he must bring himself within the terms of the exception" [citations omitted.]'" (*Lyons, supra,* 20 Cal.2d at p. 584; see also *Van Gaalen v. Superior Court* (1978) 80 Cal.App.3d 371, 378, fn. omitted ["[T]he time limit for filing a notice of motion for change of venue prescribed by section 396b is not jurisdictional in the sense that a trial court is without power to entertain an untimely [filed] motion."].)

The *Lyons* court found no waiver under the circumstances of that case. Here too, the record reflects no evidence of an intent to waive. Disney sought promptly to comply with federal rules on removal (28 U.S.C. § 1441), and made its venue motion shortly after the federal court remanded the case. This, like the actions of the defendant in *Lyons*, does not demonstrate consent for the case to be tried in state court in Los Angeles County; to the contrary, every action taken by Disney demonstrated its assertion that the case was not properly venued there. This record does not support a finding of waiver as a matter of law.

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C. Principles of Statutory Construction Support Disney's Motion

Respondent court, in determining that Disney's motion was barred, construed sections 396b and 397 to arrive at its conclusion. That result was not, however, compelled by application of the rules of statutory construction.

When confronted with two statutes, one of which contains a term, and one of which does not, we do not import the term used in the first to limit the second. Instead, it is our obligation to interpret different terms used by the Legislature in the same

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statutory scheme to have different meanings. (*Roy v. Superior Court* (2011) 198 Cal.App.4th 1337, 1352, 131 Cal.Rptr.3d 536 ["[w]hen the Legislature uses different words as part of the same statutory scheme, those words are presumed to have different meanings"]; *Romano v. Mercury Ins. Co.* (2005) 128 Cal.App.4th 1333, 1343, 27 Cal.Rptr.3d 784 [same], see *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725, 257 Cal.Rptr. 708, 771 P.2d 406 [""when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.""] (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 558.)

Where, as here, the Legislature has chosen to include a phrase in one provision of the statutory scheme, but to omit it in the another provision, we presume that the Legislature did not intend the language omitted from the first to be read into the second. (*Cornette v. Department of Transportation* (2001) 26 Cal.4th 63, 73 ["When one part of a statute contains a term or provision, the omission of that term or provision from another part of the statute indicates the Legislature intended to convey a different meaning."]; see also *Craven v. Crout* (1985) 163 Cal.App.3d 779, 783 ["Where a statute referring to one subject contains a critical word or phrase, omission of that word or phrase from a similar statute on the same subject generally shows a different legislative intent."]; *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497 ["Ordinarily, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning."])

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In arriving at the conclusion that a defendant moving for a change of venue under section 397 is barred if the motion was not made in compliance with the timing requirements of section 396b, respondent court violated these principles of statutory construction. The issue is not bar, despite the court's conclusion that "defendant cannot bring the motion if it is not brought timely." Instead, the court must determine if the record demonstrates waiver. This the trial court failed to do; had it done so, it could only have concluded, on the undisputed facts in this record, that Disney did not waive its right to seek a change of venue.

DISPOSITION

The petition is granted and the superior court is ordered to vacate its order denying the motion for change of venue and to hold a new hearing at which it will consider Disney's motion for change of venue on its merits. Petitioner shall recover its costs.

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ZELON, Acting P. J.

We concur:

SEGAL, J. BENSINGER, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Filed 3/26/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

WALT DISNEY PARKS AND RESORTS U.S., INC., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent. JOHNNY GALVAN et al., Real Parties in Interest.	B284261 (Los Angeles County Super. Ct. No. BC595235) **ORDER CERTIFYING OPINION FOR PUBLICATION**

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THE COURT:

The opinion in this case filed February 28, 2018 was not certified for publication. It appearing the opinion meets the standards for publication specified in California Rules of Court, rule 8.1105(c), the request by petitioner pursuant to California Rules of Court, rule 8.1120(a) for publication is granted.

IT IS HEREBY CERTIFIED that the opinion meets the standards for publication specified in California Rules of Court, rule 8.1105(c); and

ORDERED that the words "Not to be Published in the Official Reports" appearing on page 1 of said opinion be deleted and the opinion herein be published in the Official Reports.

ZELON, Acting P. J., SEGAL, J., BENSINGER, J. (Assigned)

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EXHIBIT 116

(Claimant's Hearing Brief)

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EXHIBIT 116

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RODNEY T. LEWIN, ESQ. - SBN #71664
LAW OFFICES OF RODNEY T. LEWIN
A Professional Corporation
8665 Wilshire Boulevard, Suite 210
Beverly Hills, California 90211-2931
(310) 659-6771

LOUIS E. GARFINKEL, ESQ.
Nevada Bar No. 3416
LEVINE GARFINKEL & ECKERSLEY
8880 w. Sunset Road, Suite 390
Las Vegas, Nevada 89148
(702) 673-1612
Attorneys for Claimant

CLA PROPERTIES, LLC, a California limited liability company,

Claimant,

v.

SHAWN BIDSAL, an individual,

Respondent.

JAMS Ref. No. 1260004569

CLAIMANT'S HEARING BRIEF

Hearing Date: May 8, 2018

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TABLE OF AUTHORITIES

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APPENDIX (PX)000517

CODES

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1. INTRODUCTION.

The Operating Agreement for Green Valley Commerce, LLC ("Green Valley") includes a provision whereby one of the members (called "Offering Member") can offer to buy out the interest of the other (called "Remaining Member") for an amount determined by a formula ("Buy Out Amount"). One element of the formula is the fair market value ("FMV") of Green Valley's property, and the offer must include the Offering Member's assertion of that FMV. The Remaining Member is then given the option to buy or sell using the same FMV to calculate the Buy Out Amount.

Respondent ("Bidsal") sent Claimant ("CLA") an such an offer setting the FMV at Five Million Dollars ($5,000,000.00) ("Offered Price"). CLA chose to buy rather than sell. Bidsal then refused to sell his interest for a Buy Out Amount based on his Offered Price, and instead insisted that the FMV be determined by appraisal.

Let there be no doubt about what happened. Bidsal thought that CLA lacked the will or ability to turn the tables on him and choose to buy rather than sell. Based on that assumption Bidsal thought he could "steal" the property by setting a low ball figure for the FMV. He guessed wrong, but having been hoisted by his own petard, he now demands an appraisal, a demand for which he has no right to make.

The Operating Agreement which is the subject of this Arbitration is the antithesis of the paragon of draftsmanship.[1] And while we believe Section 4 of Article V could have been better drafted (its easy to be a Monday morning quarterback), what is remarkable is that with respect to the issue in this Arbitration, that Section is a clear reflection of what the parties intended. That is set out in a September 16, 2011 e-mail to them from the attorney who drafted the Operating Agreement, David LeGrand. He then

[1] By way of example only, Article VIII is followed by Article X–no Article IX. Under Article V Section "02" on page 10 is followed not by Section "03" but rather by Section "3" without an "0" before it. Following Section 6 of that Article on page 12 there is a centered caption (otherwise used strictly for new Articles) reading "DISTRIBUTION OF PROFITS" following which is "Section 03." So Article V ends up with these section numbers in sequence: 01, 02, 3, 4, 5, 6, 03, 04, 05, 06 and finally 07.

APPENDIX (PX)000519

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wrote, "We discussed that you want to be able to name a price and either get bought or buy at the offer price."

As above stated the Operating Agreement, and in particular Article V, Section 4 provides that when because of a disagreement or for any reason or no reason at all, one of the two members of Green Valley no longer wants to be in business with the other, he or it[2] can get a "divorce." And to settle their affairs upon such divorce, the parties entered in what amounts to a pre-nuptial agreement. It provides that the Offering Member can make an offer to buy out the other and include in the offer what he thinks is the FMV. Unless the Remaining Member requests an appraisal (and here there was no such request) that offer becomes the FMV, and their relationship must end either by the Remaining Member accepting the offer and selling his interest, or turning it around so that he buys out the Offering Member. In either case the FMV to determine Buy Out Amount is the same, the amount in the Offering Member's offer[3].

What they agreed to could be rightly called a "put-call" option (although Bidsal's attorney, David LeGrand called it "forced buy sell" and "Dutch Auction"): the member deciding to end the relationship, who is under no time restraints and can conduct all the investigation he needs to determine the FMV, makes an offer to buy out the other. But to encourage the offeror's making a fair offer, the offeree then is given the right to either buy or sell using that FMV to determine the Buy Out Amount. However, the responding party (Remaining Member) must decide within a set time period 30 days whether to sell or buy, far different from the unlimited time the offeror has to decide whether to offer.

Perhaps in self-recognition of his difficulties in drafting, the draftsman, LeGrand,

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[2] Hereinafter the reference to Offering Member and Remaining Member(s) shall be in the masculine singular.

[3] The Section provides that if the Remaining Member requests an appraisal, then after it is made, the Offering Member can then choose whether to make an offer based thereon; if he does not, then that is the end of the matter. So, whether or not such request is made, if there is an offer, it is the Offering Member who sets the FMV which is the appraised amount if the Remaining Member requests appraisal and the Offered Price if the Remaining Member does not request an appraisal.

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provided in Section 4, as a belts and suspenders "the specific intent of this provision" confirming what the parties had told him as reflected in his September 16, 2011 e-mail. Yet Bidsal after making a low ball offer has refused to sell his interest based on his stated value after CLA chose to buy out Bidsal using Bidsal's Offered Price to determine the Buy Out Amount.

Bidsal claims that when CLA did not seek an appraisal, and instead chose to buy rather than sell, then Bidsal could then insist on an appraisal, when the Agreement gives that right solely to the Remaining Member, here CLA. The Operating Agreement is not susceptible to the meaning Bidsal argues.

Only if the Remaining Member requests an appraisal does Section 4 even mention appraisal, and as stated CLA did not request an appraisal. How then could Bidsal support such position? CLA can anticipate that because as is so often true in a summary judgment motion in California, the papers filed in the Rule 18 motion here were in effect a dress rehearsal for this hearing. As a result, CLA is able to anticipate what Bidsal will argue. He will attempt to inject confusion by introducing what would ordinarily be considered inadmissible evidence: irrelevancies such as who drafted the provision that has only one possible interpretation, and using irrelevant and wrong characterizations relating to an operating agreement for a different company some one and one half to three and one half four years after this Agreement was signed.

Here, Bidsal's contentions would render critical words in Section 4 meaningless in violation of long standing principles of interpretation. Where the provisions of the Agreement have only one possible meaning, who drafted it, and some undisclosed belief as to the meaning, are irrelevant.

2. **CHRONOLOGY**.

CLA believed that the wording in Section 4 was so clear that no elaborate story of how it came to be was relevant, much less un-communicated intentions of one of the parties or legal opinions of interpretations. The denial of its Rule 18 motion forces CLA

no longer to be so sanguine, and therefore we here provide a synopsis of the history of what led up to the execution of the Green Valley Operating Agreement, but with rare exception based solely on what is revealed in writing.[4]

Bidsal formed Green Valley Commerce LLC ("Green Valley") on May 26, 2011. (Exhibit 1) Although there is no mention of either CLA Properties, LLC or its principal, Ben Golshani, as a managing member, by then Mr. Bidsal had already spoken with Golshani about being co-owners and managers of Green Valley. For sure, CLA's money for the purchase of property by Green Valley had been deposited before the close of escrow for that purchase, one week after Green Valley's formation. (Exhibits 2-4)

David LeGrand created drafts of the Operating Agreement for Green Valley. That Mr. LeGrand was Bidsal's attorney is demonstrated by the writings at the time. In at least one draft, neither Mr. Golshani nor CLA Properties was even mentioned as a member, but rather the anticipated person's name was left blank. (Exhibit 5) Later, LeGrand created a version where Mr. Golshani's first name only appears with a blank line for his last name. (Exhibit 6) As late as June 17, 2011, LeGrand still did not know Mr. Golshani's last name. (Exhibit 7) And notwithstanding that LeGrand had so apprised Bidsal, LeGrand's lack of knowing even the last name of one of the managing members remained unknown to him on June 23, 2011 (Exhibit 9) and June 27, 2011 (Exhibit 10) when further drafts were sent to Bidsal, but not to Mr. Golshani. In fact, as late as July 22, 2011, LeGrand communicated solely with Bidsal regarding an operating agreement (Exhibit 11). The only one for whom LeGrand was then acting was Bidsal.

By then, the insertion of a provision for resolving any possible future deadlock between these two managing members of Green Valley had already been discussed by Bidsal and Golshani with LeGrand. More than that, the possible solution of allowing one

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[4] We are aware that there are versions of the Operating Agreement which Bidsal's attorney prepared that are not here discussed because they have seemingly no use at all other than to attempt to confuse the issue, and especially so since the date or sequence of their preparation cannot be determined.

party to force the other to buy or sell at fair market value had likewise been discussed by them both not limited to the context of deadlock (Exhibits 12 and 13).

LeGrand prepared another draft which was sent on August 10, 2011. (Exhibit 14) While it contained extensive provisions regarding right of first refusal if one of them wanted to transfer his interest to an outsider, it did not provide for the forced buy or sale between members as had been previously discussed. Mr. Golshani complained (Exhibit 15) and LeGrand then drafted the first provision in any draft in which there was a forced buy or sell (Exhibit 16)[5]. In it he distinguished a right of first refusal for sales to third parties from what he called a "Dutch Auction" provision for a forced buy or sell applicable whenever one Member wanted a separation from the other for whatever reason or for no reason at all.

That draft, in Article V, Section 7 ("§7"), for the first time incorporated the previously discussed forced buy or sell. It provided that one member (called "Offering Member") give notice to the other that he wants to sell at an appraised value he had obtained. The other members could either accept or instead force the Offering Member to buy their interests based on the same value used in the offer. This is what LeGrand previously referred to as forced buy-sell or Dutch Auction. (Actually there has never been more than two members so reference to other members in the plural was never applicable here.) The concept that the "other" member could turn an offer on its head and make the Offering Member do the opposite of what he offered was true then and remained true in the signed Agreement.[6]

Additionally, just like the signed Agreement, LeGrand included the following:

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[5] As previously presented by Bidsal as Exhibit "D" to his January 8, 2018 "Opening Brief," that August 18, 2011 e-mail had two attachments. A red-line version comparing two versions and a "clean" version. The provisions here discussed do not appear at all in the red-line version and what it purports to compare cannot be ascertained from the e-mail, or anything else of which CLA is aware.

[6] Section 4 of the Agreement ultimately signed reverses the process so that the Offering Member offers to buy rather than sell, and then the responding member can choose either to accept or force the Offering Member to sell. The result is identical.

"The specific intent of this provision is that the Offering Member shall be obligated to either sell his or its Member Interests [sic] to the remaining Member(s) or purchase the Member Interest of the remaining Member(s) . . ."

We pause to note, that the language of this draft which creates the concept of forced buy-sell or Dutch Auction and the recitation of "the specific intent," was drafted solely and wholly by LeGrand. Other modifications later may be the work of the parties here, but of these crucial underlying portions, LeGrand was the sole draftsman. In this initial Dutch Auction version, the value of the property was to be determined by an appraiser selected solely by the Offering Member.

But either because LeGrand misunderstood what the parties had told him or because they changed their mind, as reflected in the September 16, 2011 e-mail, the parties wanted to have the offeror state the Offered Price in the first instance. In addition, LeGrand questioned whether his formulation in August adequately accounted for the differing amounts the two Members had contributed. On September 16, 2011 he wrote to Bidsal and Golshani,

> "I do not how [sic] to address the concept of the 'Dutch Auction' after much thought. **We discussed that you want to be able to name a price and either get bought or buy at the offer price.** I can write that provision, but I am not sure it makes sense because Ben has put in more than double the capital of Shawn. So I[sic]f Ben names a price to bought out, that price has to reflect getting his capital back. But if Shawn can say, 'You can buy my units at that price,' Ben might be severely overpaying. Maybe we could take a few minutes to discuss how you want to resolve. Another approach would be to have an appraiser value your respective interests and capital and establish a price for each of you. . ." (Exhibit 17, emphasis added.)

The emphasized portion above demonstrates that the parties had told LeGrand that they wanted to be able to "name a price" and the other then could either buy or sell at that price.

As LeGrand noted, the price for buying the interest of CLA (Golshani) could not reasonably be the same as that for buying the interest of Bidsal because CLA had put up more than twice what Bidsal had. For some reason LeGrand did not believe his §7 adequately addressed the difference in the capital contributions of the parties. So rather

than trying to solve the problem and write something that "makes sense," LeGrand simply eliminated §7 and with it the Dutch Auction in the version sent with that e-mail.

Three days later (Exhibit 18), LeGrand repeated the issue of differing capital contributions and concluded, " you should consider a formula or other approach to valuing your interests. A simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price does not appear sensible to me." And of course, he was right. What he described as a "simple Dutch Auction" that the parties had discussed with him, would fail to take into account the much greater contribution by CLA and would not be "sensible." Here, then, the concept of an actual formula was first introduced, and introduced not by the parties, but by LeGrand.

LeGrand then concluded, "But you are the clients and I will write it up as you jointly instruct. I know Ben wants to get this finished." And he was right about that also. Here, they were almost four months after "Ben" (CLA) had invested millions of dollars and had no writing regarding their relationship, an operating agreement for a limited liability company.

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But the next day, September 20, 2011, LeGrand sent out another draft "with a new Article 5 [sic] Section 5 which sets forth the 'Dutch Auction.'" (Exhibit 19) Even as late as then, LeGrand said he did not know how to spell "Ben's last name." Here for the first time, the parties request to have the member initiating the process set the value of the property was first put in writing. Unfortunately, an examination of that Article V, Section 5.2, shows it is anything but a "Dutch Auction." Instead it provided that the responder can choose neither to buy nor sell, the exact opposite of a forced buy or sell, a "Dutch Auction."

By this time the discussions of Dutch Auction were no longer limited to deadlocks. Indeed here LeGrand separately provided for deadlocks in Section 14 of Article III in language that was either exactly or close to exactly that which appears in the signed Operating Agreement.

So, with LeGrand going in reverse after his expressing doubts about a "simple"

Dutch Auction or how to resolve the differing capital contributions, Mr. Golshani took a stab at it, and using the section numbering LeGrand had used on August 18, 2011. Mr. Golshani sent a proposed revision of "§7" as a rough draft to Bidsal saying "Comments are appreciated." (Exhibit 20) In it he used what LeGrand had written regarding the value being set in the offer by the Offering Member. That draft retained LeGrand's format of having the offer be one to sell as contrasted with offer to buy. It adopted LeGrand's suggestion to use a formula. It repeated LeGrand's provision regarding the specific intent of the provision being that the Offering Member must buy or sell based on the FMV in his offer, but added a twist. The Remaining Member could instead seek an appraisal, but unlike LeGrand's §7 the appraiser would not be chosen by solely by the Offering Member.[7]

While some of the language found in this rough draft is retained in Section 4 of the signed Operating Agreement, much of the rough draft was the same as, or based on, what was previously drafted or proposed by LeGrand, and much of the rest was later changed by Bidsal and/or LeGrand before execution. We note all that because we anticipate Bidsal will attempt to introduce statements by LeGrand years later that Section 4 uses "Ben's language." Only if that means that it was "Ben" who first set up a differing format and added to what LeGrand had stated in prior drafts or e-mails was the Section "Ben's language." Otherwise, as will become even clearer below, the draftsman was LeGrand and LeGrand alone, just as the parties recited and agreed in Article XIII of the executed Operating Agreement. "This Agreement has been prepared by David G. LeGrand. . . representing the Company and not any individual members." "The following presumptions, and no others, are conclusive: The truth of the fact recited, from the recital in a written instrument between the parties thereto . . ." NRS 47.240(2). That is the same rule as in California. "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto. . . " California Evidence Code, § 622.

[7] Whether that change was initiated by Golshani or Bidsal may be in dispute, but who initiated it is hardly significant.

In the ensuing month there were discussions between Bidsal and Golshani. LeGrand spent little time on this issue. (Exhibit 21) Notwithstanding everyone knowing that Golshani wanted the process to be completed, discussions with Bidsal to resolve this issue took over a month more. Finally, on October 26, 2011, Golshani sent Bidsal a "rough draft 2" as "we discussed." (Exhibit 22) Of the many changes made as a result of Bidsal's response to the "rough draft" the wording of the initial offer was changed from one to sell to an offer to buy. Like the rest of the changes, the only logical conclusion is that they were prompted by Bidsal during discussions during that month. There will be no evidence that Golshani decided to redraft without being prompted to do so by Bidsal.

This revision was then sent on to LeGrand who wrote to Bidsal (not Golshani) and said "I received fax from Ben and am rewriting it to be more detailed and complete." (Exhibit 23, emphasis added.) Using tennis terms, that made it point, game, set and match that it was LeGrand who drafted the final "Dutch Auction" provision. From then until the Operating Agreement was signed there was never another writing from Golshani proposing wording, whether his or Bidsal's–none.

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The next day LeGrand sent out as a new Section 7 "a revised version of what Ben sent me" (Exhibit 24, emphasis added), re-emphasizing it was LeGrand who was the draftsman. On November 29, 2011, LeGrand incorporated into the Operating Agreement as Section 4, what he had previously sent as Section 7 and sent it out to Bidsal and Golshani (still misspelling Golshani's last name). (Exhibit 26) In it he distinguishes what Golshani had sent him from the "buy-sell at FMV on a death or dissolution of a Member." (From LeGrand invoices there were ongoing discussions regarding "buy-sell.")

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But apparently Bidsal had some further revisions. On December 10, 2011, LeGrand wrote to him asking, "did you ever finish the revisions? Ben really wants to get this finished." (Exhibit 27) Obviously if anyone in addition to LeGrand was the draftsman, then the draftsman of the "revisions" must have been Bidsal, not Golshani.

Soon thereafter (Exhibit 37) the Operating Agreement (Exhibit 29) was signed.

That ought to be the end of consideration of facts outside the four corners of the Operating Agreement in order to interpret its meaning. CLA can anticipate that Bidsal will attempt to introduce comments by David LeGrand made between one and one half and three and one half years after the Green Valley Operating Agreement was signed in regard to an operating agreement for a different limited liability company, Mission Square, LLC, an agreement which Bidsal has previously acknowledged differs from the Green Valley Operating Agreement.

CLA will object to the introduction of such comments, not because they support Bidsal's contention that he has the right to refuse to sell his interest based on the FMV set out in his offer, and instead demand an appraisal. In fact, on total examination such comments do not truly evidence anything. Nonetheless, CLA will object not only because they are irrelevant, but also because its counsel would like this Arbitration completed sometime before the next July 4th. There can be no assurance of such completion if these irrelevant, hearsay statements made one and one-half to three and one half years after the Green Valley Operating Agreement was signed, are admitted. Not only will there be the time for such introduction, but also the time to then explain their true meaning, and to some extent demonstrate how they are in part just not true.

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3. **SECTION 4–HOW THE DIVORCE ("DUTCH AUCTION") PROVISION WORKS**.

This Arbitration revolves around the operation of the provisions of Article V, Section 4 of the Operating Agreement. An enlarged photocopy of portions of pages 10 and 11 on which it appears is affixed as Exhibit "A" to this Brief. It is the provision by which if one of the Members of Green Valley no longer wanted to be associated with the other, he could make an offer to buy out the other, and that offer forces the Remaining Member to choose either to be bought out or buy out the Offering Member at a price based on a formula, and forces the Offering Member to accept the Remaining Member's choice.

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The formula is the same regardless of whether the Remaining Member buys or sells. It is the excess of the fair market value of the property over cost ("FMV-COP") multiplied by the one-half interest in profits each of the Members has ("x 0.5") "plus the capital contribution of the [Selling[8]] Member(s) at the time of purchasing the property minus prorated liabilities." The only item not determinable from the books and records of Green Valley is the fair market value of Green Valley's property. FMV is determined by what the Offering Member set out in the offer, or if the Remaining Member requests an appraisal, then the appraised amount. This procedure puts an Offering Member at risk in setting too low an amount in an effort to "steal" Green Valley's assets, because the Remaining Member could choose to buy at the amount stated in the offer rather than sell. That is what happened here.

Seemingly, the parties tried to anticipate various possibilities and provide protections under each scenario. Perhaps the Remaining Member would not have the resources to choose to buy and would have to accept a "low ball" figure from the Offering Member. Perhaps the Remaining Member might just not know what was fair, and he or it has to decide in a short period of time, as contrasted with the Offering Member who has no time limits on when he or it makes an offer.

To solve those scenarios the parties further provided that the Remaining Member had an option, that instead of using the value set out in the offer, the Remaining Member could elect to have the fair market value determined by appraisal, and a procedure for same was set out as an option to the Remaining Member. (The Remaining Member does not have to request an appraisal; he can accept what the Offering Member provides in his offer.)

But then, that appraised value might be more than the Offering Member could afford or, notwithstanding appraisal, believes is fair. So the Section provides that if the Remaining Member elects the appraisal procedure, then the Offering Member was anew

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[8] The word "Remaining" appears if it his interest being sold and the word "Offering" appears when the Remaining Member chooses to buy, rather than sell.

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given the option to purchase using that appraised value. If he decided against it, then unless and until there was another offer, there was no purchase or sale of member interest by reason of the initial offer. Bidsal's has contended that "once the FMV has been established by appraisal the Offering Member is deemed to have made an an offer to purchase the Remaining Member's membership interest at the FMV." (Respondent Shawn Bidsal's Opening Brief dated January 8, 2018 (*"RB I"*) 9:12.) Once again Bidsal is wrong. As relevant to this issue, immediately after the description of the appraisal process Section 4.2 reads, "The Offering Member has the option to offer to purchase the Remaining Member's share at FMV as determined by Section 4.2." (Emphasis added.) In other words after making an offer the Offering Member gets second chance to decide should the Remaining Member request an appraisal.

In effect, under all circumstances if there was to be any purchase or sale, the value was set by the Offering Member. Either it was the amount he provided in the offer or if the Remaining Member elected to have appraisers set the value, then only if the Offering Member chose to accept that value was it the amount to be used. But in all instances, once the Offering Member chooses to offer to buy at that value, the Remaining Member gets to choose whether to buy or sell. While one may quarrel with the exact way Section 4 is worded, one is almost given to applause at the genius behind all the checks and balances built into Section 4. Moreover, the wording of Bidsal's offer which is discussed below, clearly demonstrates that he perfectly understood how it worked.

4. **OFFER AND RESPONSE**.

On July 7, 2017 Bidsal (through his lawyer) offered to buy out CLA per Section 4 setting out his valuation of fair market value at $5,000,000.00. (Exhibit 30) Without quotation marks except those in it, and emphasis in original, the offer says:

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

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> Article V of the Company's Operating Agreement.
>
> (The Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***"). Unless contested in accordance with the provisions of Section 4.2 of Article V of the Operating Agreement, the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold."
>
> Upon receipt of this notice, the Remaining Member has certain rights and obligations, as set forth in Section 4.2 of Article V of the Operating Agreement. This notice shall trigger the time periods and procedures set forth therein.
>
> If you have any questions or concerns, please do not hesitate to contact me.

The notice asserted Bidsal was proceeding under Section 4.2 and forewarned CLA that it triggered "the time periods and procedures set forth" in that Section.[9]

On August 3, 2017, CLA, as the Remaining Member," responded that it "elects and exercises its option to purchase your 50% membership interest in the Company on the terms set forth in the July 7, 2017 letter based on your $5,000,000.00 valuation of the Company." (Exhibit 31.) Specifically, CLA did **not** invoke the appraisal procedure option within Section 4, which only it, as Remaining Member, had the right to do. As Offering Member, there is no right to demand an appraisal under Section 4. But on August 5, 2017, Bidsal refused to go forward with sale of his interest, claiming he had a right to initiate the appraisal procedure. (Exhibit 32.)

On August 28, 2017, CLA provided proof of funds to close escrow and again demanded Bidsal perform. (Exhibit 35.) Bidsal has continued to refused to sell without an appraisal; and thus this Arbitration.

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[9] As will be laid out shortly, Section 4.2 calls upon the notice to include what "the Offering Member thinks is the fair market value." Here the notice said the $5,000,000 was Bidsal's best estimate of the current fair market value." We do not anticipate Bidsal contending that "estimate" is so different from "thinks" that Section 4 never came into application. Such contention would be incompatible with Bidsal's lawyer writing (1) that Bidsal's offer was being made "pursuant to and on the terms and conditions set forth in Section 4 of Article V of the Company's Operating Agreement," (2) that the because of the notice CLA had "certain rights and obligations "as set forth in Section 4.2 of Article V of the Operating Agreement," and (3) that it "shall trigger the time periods and procedures set forth therein."

5. **APPLICATION OF SECTION 4**.

5.1. **Section 4 Language Used.** So then, what does their "pre-nuptial" agreement say. In summary, here is what it provides: After definitions in Section 4.1, Section 4.2 provides:

> "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. . . 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 upon following procedure [for appraisals]
>
> * * *
>
> "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 **based upon the same fair market value (FMV)** according to the following formula ..." [Emphasis added.]

That formula is identical whether the purchase is by Offering Member or Remaining Member: "(FMV-COP) x 0.5 plus capital contribution of the [Selling] Member(s) at the time of purchasing the property minus prorated liabilities."

Note: While the Section uses the words "offer" and "counteroffer," in fact the recipient is obligated to act: The Remaining Member must either accept the offer or make a counteroffer and should he make a counteroffer, as made clear by the concluding sentence of Section 4.2 set out below, the Offering Member is obligated to sell his interest.

The emphasized portion is the subject of this Arbitration. Bidsal claims unless his offer to buy had been accepted, the "same fair market value" could only be that obtained through an appraisal. But nowhere does the Agreement say or imply that. Alternative (i) provides that CLA, as Remaining Member, could accept Bidsal's offer in which case the FMV would be that in the offer, here the $5,000,000. Then alternative (ii) provides that CLA could instead elect to purchase ("counteroffer") instead of sell "based upon the same fair market value." The same fair market value is that in alternative (i), here the $5,000,000 Offered Price.

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Bidsal contends that instead the word "same" must be to the earlier mention of appraisal, and that without appraisal he does not have to sell. So the issue is what is the antecedent FMV to which the qualifier "same" refers. Unless CLA had requested an appraisal, and it had not, there is no amount to which the word "same" can apply other than the Offered Price.

Bidsal's argument that "same" refers to the earlier mention of "FMV" as that obtained from appraisal, when the Remaining Member invokes his right to request an appraisal, in addition to being illogical is in violation of what is called the "last antecedent rule." In a case involving interpretation of a contract, the court in *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal.App.4th 516,529, 132 Cal.R.2d 151,161 (2003) referred to " 'A longstanding rule of statutory construction-the "last antecedent rule"-provides that "qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote" ' " and cited other cases in which the same rule applied to contract interpretation. *State Farm Mut. Auto. Ins. Co. v. Eastman* 158 Cal.App.3d 562, 569, 204 Cal.Rptr. 827 (1984) and *Anderson v. State Farm Mut. Auto. Ins. Co.* 270 Cal.App.2d 346, 349, 75 Cal.Rptr. 739 (1969). (While Nevada law governs this arbitration, Bidsal has already claimed that reliance may be placed on California law. "[A]lthough Nevada law controls, Nevada courts do consider California cases if they assist with the interpretation." *RB I* 7:1.)

To avoid any possible confusion, the Operating Agreement goes on to specifically describe what the rights of the Remaining Member are:

> "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 **the Offering Member shall be obligated to sell his or its member interests**

the the remaining Member(s)." [Emphasis added]

We hastily call attention to the use of the conjunction "or" and the conditional application of appraisal, "if". By necessity the conjunction "or" must mean that there is a different price "if appraisal is invoked" and the only other possible different price is that obtained from the offer, the Offered Price. More than that, if the portion "or FMV if appraisal is invoked" is to have any meaning, then the FMV is **NOT** determined by appraisal if it is **not** invoked. Otherwise what meaning can be apprised to the condition "if appraisal is invoked?"

Whether the writing be a contract, a statute or a constitution, one principle appears to be nationwide: that if at all possible every part shall be given meaning[10]. Seemingly both parties agree on that. Bidsal has stated: "A court should not interpret a contract so as to make its provisions meaningless. *See, Phillips v. Mercer* (1978) 94 Nev. 279, 579 P.2d 174. . . .[T]he court will prefer the interpretation which gives meaning to both or all provisions rather than an interpretation which renders one of the provisions meaningless. *See, Quirrion v. Sherman* (1993) 109 Nev. 62, 846 P.2d 1051 (1993). To that end, in construing contracts, every word must be given effect if at all possible. *See, Royal Indemnity Company v. Special Service Supply Company* (1996) 82 Nev. 148, 413 P.2d 500 (1966)." (*RB I* pages 6-7.)

Yet one looks in vein though briefs heretofore filed by Bidsal to find any meaning

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[10] Perhaps the earliest pronouncement was by the United States Supreme Court in *Marbury v. Madison*, 1 Cranch 137,174 (1803)[rejecting a construction that makes "part of the section . . .mere surplusage [and] entirely without meaning . . .It cannot be presumed that any clause in the constitution is intended to be without effect."] The principle was repeated by that court as late as 2001 *Duncan v. Walker*, 533 U.S. 167,174 (2001) [avoid construction rendering word "insignificant, if not wholly superfluous. ' "It is our duty 'to give effect, if possible to every clause and **word**."'" (Emphasis added)] So we find the principle repeated from coast to coast, from Florida (*Palm Beach County Canvassing Board v. Harris*, 772 So.2d (Fla.) 1220,1234 (2000) and *Gore v. Harris*, 772 So.2d (Fla.) 1243,1249 (2000) to California, *Hot Rods, LLC v. Northrop Grumman Systems Corporation,* 242 Cal.App.4th 1166, 1181 (2015) ["interpret contracts to avoid surplusage"]; *Brandwein v. Butler*, 218 Cal.App.4th 1485,1507 (2013) ["interpret the parties' agreement to give effect to all of a contract's terms, and to avoid interpretations that render any portion superfluous"]; *Mirpad, LLC v. California Ins. Guarantee Ass'n,* 132 Cal.App.4th 1058,1072 (2005) [construe contract to give meaning and effect to every term]; *Martin Marietta Corp. v. Ins. Co. of North America*, 40 Cal.App.4th 1113,1127 (1995) [construe contract to give "force and effect" to each provision and avoid making any "meaningless"].

or effect given to the words "or" or "if appraisal invoked" above.

More than that. The sentence covers the Remaining Member's selling as well as buying. Nowhere does it say that FMV is dependent on the choice by the Remaining Member. The emphasized portion say "either sell or buy at the same offered price (or FMV if appraisal is invoked." Well, what if CLA had chosen to be bought out, and never requested an appraisal? What is the FMV then? If Bidsal's contention that appraisal is needed when the Remaining Member chooses to buy, were correct, appraisal would be likewise necessary when the Remaining Member elects to sell. The emphasized phrase refers to both "sell or buy at the same offered price." That would mean that the amount in the offer is never used. That is simply an absurd conclusion, in addition to being contrary to what the Agreement actually says.

Furthermore, Bidsal's position that he does not have to sell unless there is an appraisal necessitates the conclusion that Section 4 gives the Offering Member the right to request or demand an appraisal. Indeed, that is precisely what he wrote on August 5, 2017 (Exhibit 32). There, in his attorney he wrote, "Shawn Bidsal . . .does hereby invoke his right to establish the FMV by appraisal." (Emphasis added.) Doubling down on that contention on August 31, 2017 (Exhibit 38) Mr. Shapiro wrote, "As set forth in my August 5, 2017 letter to Benjamin Golshani, Shawn Bidsal has exercised his right under Article V, Section 4 of the Company's Operating Agreement, to establish the FMV by appraisal." (Emphasis added.) But the only mention of appraisal in Section 4 begins, "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" and that procedure is for appraisal. Nowhere is there even an implication, much less an expression that under any hypothesis the Offering Member who already has stated what he thinks is a fair market value can nonetheless request, much less demand, an appraisal.

Claimant in two briefs regarding Rule 18 motion pointed out that the contention by Bidsal's attorney that Bidsal had "the right" to demand an appraisal was wrong. He

then changed tunes, acknowledged he had no right to request an appraisal, and instead claimed that appraisal was automatic whenever the Remaining Member chooses to buy rather than sell. (Respondent Shawn Bidsal's Reply Brief dated January 25, 2018 ("*RB III*") 5:26. There is nothing within Section 4 that hints, much less expresses, that whenever the Remaining Member chooses to buy, there must be an appraisal. And as here pointed out, it would be directly contrary to "the specific intent" of the Section obligating the parties to buy or sell using the offered price absent a request for appraisal by the Remaining Member. Finally, the claim that appraisal is automatic is in contradiction to Bidsal's repeated claims that he had "the right" to require an appraisal.

The issue presented is (i) after an offer to buy is made, (ii) and the Remaining Member does not contest the Offered Price, and elects to purchase the Offering Member's interest for the same Offered Price, (iii) does the Offering Member (here Bidsal), rather than selling at the Offered Price, have the right to initiate the appraisal process to set a new FMV. The answer is "no."

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There is nothing within the Agreement that would justify Bidal's contention that CLA could not require Bidsal to sell his interest using Bidsal's own statement of "FMV" as the value of the Property. Likewise, there is nothing within the Agreement that would justify Bidal's contention that he can demand an appraisal before selling to CLA, or that there is automatic requirement for appraisal. "When a dispute arises over the meaning of contract language, the first question to be decided is whether the language is 'reasonably susceptible' to the interpretation urged by the party. If it is not, the case is over." *Reynolds, supra* 107 Cal.App.4th at 524, 132 Cal.R. 2d at157. If the language is clear and unambiguous, the contract will be enforced as written. *Am. First Credit Union*, 131 Nev. Op. 73, 359 P.3d at 105, 106 (2015).

5.2. **Extrinsic Evidence.**

The portions of Section 4.2 applicable to the question of whether an appraisal was here required is not ambiguous and the issue should be decided based on what the Operating Agreement alone says.

Apart from the fact that a full examination of all the extrinsic evidence lasting beyond the foreseeable future would confirm rather than dispute what Claimant has here stated to be what the Agreement says, the extrinsic evidence that is anticipatable is not admissible.

We anticipate that Bidsal will attempt to support his position by asserting his understanding of the words used in Section 4. "[A]mbiguity does not arise simply because the parties disagree on how to interpret their contract." *Parman v. Petricciani*, 70 Nev . 427,430-32, 272 P.2d 492,493-94 (1954). In *Galardi v. Naples Polaris*, 129 Nev.Adv.Op 33, 301 P.3d 364,366 (2013) the Nevada Supreme Court affirmed a summary judgment against Galardi in which his testimony of "how he understood the deal terms was insufficient to generate a genuine issue of material fact." *Id.* 301 P.3d 366. It concluded:

> "[P]arties to a written contract are bound by its terms regardless of their subjective beliefs at the time the agreement was signed. The extrinsic evidence with which Galardi opposed Naples properly supported summary judgment motion was either inadmissible or irrelevant or both, and thus insufficient to generate a genuine issue of material fact." 301 P.3d at 369, [End parenthesis omitted.]

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Similarly, the Nevada Supreme Court in *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 21 P.3d 16,21 (2001) said: "The parol evidence rule forbids the reception of evidence which would vary or contradict the contract, since all prior negotiations and agreements are deemed to have been merged therein." [Internal quotation marks omitted.]

The authorities are therefore clear that Bidsal cannot use his understanding to argue that as the Offering Member he can insist on an appraisal or that the amount included in his offer cannot be used by the Remaining Member to establish the fair market value of the Property.

Claimant is familiar with *P G & E Co. V. Drayage*, 69 Cal.2d 33, 37 (1968) and its progeny. That line of cases has been rejected in Nevada. The relaxation of the parol evidence rule in that line of cases was arguably adopted in Nevada in *Russ v. General Motors Corp,* 111 Nev. 1431, 906 P.2d 718 (1995). But in *Frei v. Goodsell*, 129

Nev.Adv.Op, 305 P.3d 70,73-74 (2013) the court said that the plaintiff argued that

> "the district court should have allowed extrinsic evidence regarding his understanding [citing Russ] (stating that 'a court should provisionally receive all credible evidence concerning a party's intentions to determine whether the language of a release is reasonably susceptible to the interpretation urged by the party'). We conclude that Frei's reliance on *Russ* is misplaced, as this court subsequently discredited this language as dictum. *Kaldi*, 117 Nev. at 282, 21 P.3d at 22 (concluding that '*Russ* does not stand for a general proposition that evidence of a party's intent may be admissible to create ambiguity in an otherwise unambiguous contract").

In fact in *Kaldi*, *supra*, 21 P.3d at 22 the court said that statement from *Russ* was "dictum" and "not controlling." "*Russ* does not stand for a general proposition that evidence of a party's intent may be admissible to create ambiguity in an otherwise unambiguous written contract. To do so would be to eviscerate the parol evidence rule."

While Claimant does not believe that Section 4 is reasonably susceptible to the interpretation urged by Bidsal, absent which even *P G & E* would not permit extrinsic evidence, Claimant respectfully urges that *P G & E* is contrary to Nevada law which controls here (Operating Agreement Article X.d).

Additionally, citing two authorities at 6:15 of *RB I* Bidsal stated, "When a document is clear and **unambiguous** on its face, the court must construe the document according to its language." (Emphasis added.) There can be no possible reason for inserting that principle, much less the supporting authorities unless Bidsal (like CLA) contends that the Operating Agreement is unambiguous, at least with regard to the issue at hand. And of course if the agreement is unambiguous, parol evidence is not permitted.

5.3. **Bidsal's Offer Confirms That Remaining Member Can Buy At Offered Price**.

Now faced with CLA's election to buy, Bidsal makes contentions are in direct conflict with what he wrote in his offer. And it was his attorney, James Shapiro, who wrote the offer. Of course, this was when he thought he could lowball his partner and "steal" the property. Bidsal's attorney in the offer wrote "Unless contested in accordance with the provisions of Section 4.2 of Article V of the Operating Agreement, the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold."

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That "foregoing FMV" was the $5,000,000.00. But now Mr. Shapiro argues that what he said is not true.

And note: the offer does not state that "the foregoing FMV shall be used to calculate the purchase price only if Bidsal is the seller." No it says that "the foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold" without any limitation on which Member is the seller.

And when the offer says that that $5,000,000.00 is to be used "unless contested," that contest could only be by the Remaining Member, CLA. To contend that the one who states the "best estimate of the current fair market value" can then be the one who contests his own best estimate makes no sense at all. Yet that is the necessary result were Bidsal's position to be upheld.

Once again we point out: **CLA NEVER REQUESTED AN APPRAISAL OR OTHERWISE CONTESTED THE $5,000,000.00. THEREFORE, BY BIDSAL'S OWN WORDS, THE $5,000,000.00 IS THE AMOUNT THAT "SHALL BE USED TO CALCULATE THE PURCHASE PRICE OF THE MEMBERSHIP INTEREST TO BE SOLD."**

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And that is not the only statement in Bidsal's offer the contrary of which he now argues. When in the offer Mr. Shapiro first in parentheses identified "Offering Member," "Company", "Remaining Member" and "FMV" he carefully introduced each with the article "the"; "the Offering Member," "the Company," "the Remaining Member" and "the FMV." Had Mr. Shapiro simply identified the people and things as "Offering Member," "Company," "Remaining Member," and "FMV" he might have argued that the quotation marks around each of them merely signified an abbreviation for subsequent use of the term. But when instead he inserted the word "the" there can be no meaning other than that he was referring to those words as used in Section 4 to which he refers in three places in the offer.

So when the offer states Bidsal's best estimate of current fair market value, and then labeled it "the FMV," he could only have been referring to "FMV" as specified in

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Section 4.2. Thus the offered amount becomes the FMV "unless contested", just as Mr. Shapiro wrote. But CLA never contested the offered amount.

Bidsal has previously argued that the statements by lay person Bidsal in his offer cannot change how the Agreement should be interpreted.[11] But CLA has not contended that what Bidsal's offer said "modify or replace the meaning of the term 'FMV' as set forth in Section 4." What was stated in the offer confirms that Bidsal understood Section 4 exactly how CLA has here set it out. More than that it was not Bidsal who drafted the offer. It was written by his lawyer, James Shapiro!

Bidsal acknowledges that the $5,000,000 was the "offered price." *RB* II 4:7 Therefore, when the penultimate sentence of Section 4.2 in part provides that "the Remaining Members shall either sell or buy at the same offered price" that offered price becomes $5,000,000.00. And when the final sentence says "In the case that the Remaining Member(s) decide to purchase, then the Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s)" that means that Bidsal must sell using the $5,000,000 as the offered price or FMV.

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Bidsal attempts to avoid these conclusions on the claim that "the use of the term 'FMV' was technically inappropriate." *RB II* 4:9 In truth, it was totally appropriate, and Bidsal only expressed regret at its use after CLA opted to buy rather than sell.

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5.4. **Bidsal's Position Makes No Sense**.

Bidsal's position makes no practical sense. According to the first sentence of Section 4.2, the Offering Member's offer is supposed to be based on what "the Offering Member thinks is the fair market value" after having the full opportunity to research and determine what price to offer. Why would he then have the right to challenge what he already said was "fair" by demanding an appraisal? As Bidsal himself has stated, "Contractual provisions should be harmonized whenever possible and construed to reach a reasonable solution. *See, Eversole v. Sunrise Villas VIII Homeowners Association*

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[11] Respondent Shawn Bidsal's Responding Brief And Opposition to Claimant's Rule 18 Motion For Summary Disposition dated January 19, 2018 (*"RB II"*) 6:23.

(1996) 112 Nev. 1255." (*RB I* 6:17.)

5.5. **Bidsal's Misplaced Reliance on One Sentence.**

We have above shown that Bidsal's position is wholly unsupported by the provisions of Section 4 (regardless of who drafted it). On what then does Bidsal rely? There is one sentence that he picks out of context that reads: "The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." Based on that, he argues that the only definition of FMV is the medium of the two appraisals. But here is the full portion from which that sentence comes:

> "**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)." (Emphasis added.)

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An examination of Bidsal's arguments reveals that each of them is premised on his contention that the final sentence of that portion means that the FMV can only be determined by appraisal. (In *RB* II he said it eleven times.[12]) For multiple reasons he is wrong, and therefore, each of his arguments fails.

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5.5.1. **Sentence Applies Only If Remaining Member Requests Appraisal.**

The sentence on which he relies is wholly dependent on the condition which makes it applicable, to wit: "If the offered price[13] is not acceptable to the Remaining Members,

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[12] *RB II* 3:25, 4:11, 4:17, 4:23, 4:25, 5:7, 5:13, 5:16, 6:27, 7:6 and 7:16.

[13] The initial mention of the word "price" appears in the beginning of Section 4.2: "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." In other words it is the fair market value of the Company's property, not the price for the Member interest being sold. Rather the reference to "price" is in effect the "price" for Green Valley's property and since that virtually constitutes all that Green Valley has, it means the value of the Company itself. As above noted, the actual amount paid for the seller's interest is determined by a formula. In neither instance where the formula is inserted is it called "price."

within 30 days of receiving the offer, the Remaining Members (or any of them) can request to establish FMV based on the following procedure." But here the Remaining Member, CLA, did not find the offered price unacceptable, so what followed was never applicable. Similarly the "following procedure" for appraisal never came into being because the Remaining Member (CLA) never made such a request.

What is clear is that FMV determined one of two ways; first, by the offer, and then second, only if the Remaining Member requests it, by an appraisal.

Stated differently, had CLA requested an appraisal and it was done, then it would be true that the medium of the two appraisals would "constitute the fair market value of the property which is called (FMV)." Bidsal wants to convert that sentence into meaning that it is only the medium of the two appraisals which is called FMV. That is just not what it says and it is preposterous. For example, assume that CLA simply had accepted the offer. What then would be the FMV? Remember, the formula for Buy Out Amount requires the insertion of FMV. There would have been no appraisal. Or what if CLA had just never responded. According to Section 4.3, "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 . . ." What amount would be used for the FMV then?

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5.5.2. **Meaning of Phrase.**

As we have pointed out, the FMV is included in the formula to determine the Buy Out Amount. Section 4.1 defined FMV as "fair market value" but did not say fair market value of what. Likewise, Section 4.2 begins that a member can make an offer including what he or it thinks "is the fair market value," but once again does not state of what. So it is in this sentence where finally the Section 4.2 tells us what it is of which the fair market value is determined. It says "fair market value of the property which is called FMV." (Emphasis added.)

So the purpose of that phrase is to finally say of what the fair market value or FMV is taken. It is the only place in Section 4.2 where the object of which the fair market

value is taken is expressed.

In other words, what this phrase emphasized by Bidsal says is not that the only FMV is that determined by appraisal, but rather is that when FMV is referred to it means the fair market value of the property.

5.5.3. **Bidsal's Contention Makes Application of Section Impossible.**

As before noted, there has to be a determination of FMV to determine Buy Out Amount. But if there is no request by the Remaining Member for an appraisal, what can possibly be that FMV other than the amount included in the offer? For that question, Bidsal has no answer because he cannot possibly have one that is consistent with Section 4. We above have noted that if the offer were accepted there would be no appraisal so were Bidsal's argument accepted, there could never be a sale by the Remaining Member. And, similarly, if the Remaining Member did not respond at all, then according to Section 4.3 the offer is deemed accepted, but according to Bidsal there is no FMV and therefore it would be impossible to determine a Buy Out Amount–the formula could not be applied.

So while the FMV can be that determined through appraisal when requested by the Remaining Member, that is not the same as saying appraisal is the only way in which FMV can be determined, which is Bidsal's contention.

5.5.4. **Offered Price is FMV Absent Appraisal.**

Apparently Bidsal contends that if the Remaining Member is the seller, then there does not have to be any determination of FMV because then the sale will be at "the offered price" which Bidsal argues is not "FMV." (*RB II* 6:2.) That contention is without support.

Section 4.1 says "'FMV' means 'fair market value' obtained as specified in section 4.2." Section 4.2 begins "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." (Emphasis added.) So the very first time the offered price is mentioned it is defined to be fair market value and therefore "FMV." True, it is what the Offering

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Member thinks is the fair market value, but absent Remaining Member's request for appraisal, what the Offering Member says he thinks is the fair market value is the fair market value. Bidsal has acknowledged that that amount is the Offered Price. *(RB II* 4:8 and 5:3.)

In addition, as we above noted, regardless of who buys and who sells, the Buy Out Amount is determined by a formula. That formula in the case of purchase by the Offering Member reads: "**(FMV** - COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." (Emphasis added.) So Bidsal's contention that when the Offering Member is the buyer there need be no determination of FMV because the offered price is used and it is not FMV is simply contrary to what the Agreement says. No matter who is the buyer and who is the seller, there has to be a determination of FMV and if the Remaining Member does not request an appraisal, that can only be the Offered Price. Therefore, Bidsal mis-states what the Section says. Of course the Offered Price can be the FMV, and indeed it is absent a request by the Remaining Member for appraisal.

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Finally, Bidsal ignores the provision stating the intent of the parties: "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). . ." So even if the offered price were not FMV, CLA as Remaining Member can "buy at the same offered price."

5.6. **Post Execution Characterizations of Draftsman Neither Admissible Nor Relevant.**

No doubt Bidsal will attempt to introduce statements by LeGrand in 2013 and 2015 characterizing what in November of 2011 he had received from Ben Golshani as making him the draftsman of Section 4. Delving into what LeGrand meant will go down a rabbit hole from which it is not likely we will escape in the time allotted for this hearing. As noted above, by reason of the recital in Article XIII designating LeGrand as the draftsman, just like California law, Nevada law preludes Bidsal's attempt to dispute

that recital.

Even if such introduction were permitted, two things about it are true: First, according to statements by LeGrand in 2011 at the time of the actual drafting, what appears in Section 4 was the result of his re-writing what he had received from Mr. Golshani. Therefore, even if the concept originated with Golshani alone (and in fact Bidsal was likewise involved), consistent with the recital the draftsman was LeGrand, not Golshani.

Second, and perhaps most significantly, evidence of the draftsman is relevant only if the agreement is susceptible of the interpretation being urged, and it is not susceptible to Bidsal's interpretation. Bidsal's claim is that Section 4 should be interpreted to mean that while the Offering Member as the buyer can use the "Offered Price" as the FMV in the formula to calculate the Buy Out Amount, the Remaining Member as the buyer could only use a FMV obtained through appraisal. For the reasons stated above, there is nothing in Section 4 that makes it susceptible to such an interpretation.

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For each, if not all, of the foregoing reasons Bidsal should not be allowed to burden this proceeding with post 2011 statements regarding who drafted Section 4.

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5.7. **Other Bidsal Arguments**.

Bidsal has contended that the Agreement cannot be interpreted as it reads because no one would ever make an offer. (*RB III* 2:15.) For this he suggests no evidence. One member wanting to disassociate from the other would chose a fair value of the property and let the other decide whether to buy or sell based on that value. And as shown by September 16, 2011 e-mail (Exhibit 17), that is exactly what the parties here said they wanted.

Bidsal cannot harmonize that contention with the provisions allowing the Remaining Member "to purchase the interest of the Offering Member based upon the same fair market value" in "the Offering Member's purchase offer," or with the portion stating that the "specific intent" is that "the Remaining Members shall either sell or buy at the same offered price."

Those same provisions disprove another of Bidsal's arguments. He has contended that the initial offer is one to "purchase, not to sell." *RB III* 3:10. So what? It still triggers the right of Remaining Member either to sell or buy. And if an offer by the Offering Member did not trigger those rights in Remaining Member, then why was Bidsal demanding an appraisal to determine the Buy Out Amount for purchase by CLA. Answer: CLA had the right to buy, contrary to Bidsal's arguement that the offer can only trigger a purchase by Offering Member.

6. **BIDSAL'S HAIL MARY**.

Bidsal has previously claimed that CLA's response to the offer did not qualify for CLA's purchasing his interest because he argues, it uses the offered price and not an appraised FMV. Seemingly Bidsal abandoned this claim. *RB III* 7:7. His caption stated the abandonment was "for purpose of this motion." Since the Rule 18 motion would have resolved the arbitration seemingly the abandonment should apply, but CLA cannot be certain.

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This claim by Bidsal is based on the same contention that a Remaining Member may only counteroffer on the basis of an appraised FMV, and we have just explained why that is just wrong.

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But more than that analysis, Bidsal himself acknowledged that the counteroffer was valid. He responded to it in the August 5, 2017 letter from his counsel, Exhibit 32. In it he in part states:

> "This letter is in response to your August 3, 2017 letter relating to the Membership Interest in Green Vallee Commerce, LLC, a Nevada limited liability company (the '***Company***'). By this letter, and in accordance with Article V, Section 4 of the Company's Operating Agreement, SHAWN BIDSAL, OWNER OF Fifty Percent (50%) of the outstanding membership Interest in the Company, does hereby invoke his right to establish the FMV by appraisal. . . .Please provide my office with two MIA appraisers within two weeks."

Nowhere did Bidsal's counsel claim that CLA's August 3, 2017 letter (Exhibit 31) was an improper response to Bidsal's offer. Indeed, he wrote that in accordance with

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Section 4, he was claiming the right to initiate the appraisal process which could not have occurred unless there was a proper response to Bidsal's notice.

7. **CONCLUSION.**

The intent of the buy-sell provisions could not be clearer. If a Member wanted to disassociate from the other, he could do so, but he had to make an offer based on a reasonable value for the property owned by Green Valley. If he tried to steal the other Member's interest, the other Member would be protected in two ways. First, he could request an appraisal instead of the amount offered, and second he could force the Offering Member to sell his interest based on the same valuation turning what he believed to be a low ball offer into an offer to sell. That is exactly what happened. Bidsal gambled that CLA lacked either the will or ability to buy him out so he set a low figure.[14] His gamble failed when CLA chose instead to buy. Now caught in the web of his own scheme, Bidsal claims that there always has to be an appraisal for purchase by Remaining Member. The Operating Agreement says no such thing.

Dated: May 3, 2018.

RESPECTFULLY SUBMITTED,

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

By: _____
RICHARD D. AGAY

[14] *In RB* II N. 3 Bidsal claims that CLA is inconsistent in referring to Bidsal's offered price as a low ball figure and still the FMV. It is not inconsistent at all. The FMV is the amount inserted into the formula to determine the Buyout Amount. It is fixed as the offered price if there is no appraisal or the appraised amount if the Remaining Member requests an appraisal. If the offered price is inserted into the formula, it could be reasonable, it could be too high or it could be a low ball figure.

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EXHIBIT "A"

imous approval of Members.

Section 02 Transfer or Assignment of Membership Interest.

Member's interest in the Limited Liability Company is personal property. Except as wise provided in this Agreement, a Member's interest may be transferred or assigned. If the (non-transferring) Members of the Limited Liability Company other than the Member osing to dispose of his/her interest do not approve of the proposed transfer or assignment by imous written consent, the transferee of the Member's interest has no right to participate in the igement of the business and affairs of the Limited Liability Company or to become a member. transferee is only entitled to receive the share of profits or other compensation by way of ne, 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 assigned his/her interest in the Limited Liability Company with the approval of all the ibers of the Limited Liability Company by the affirmative vote of at least ninety percent in est of the members. The Substituted Member shall have all the rights and powers and is subject the restrictions and liabilities of his/her assignor.

ion 3. Right of First Refusal for Sales of Interests by Members. Payment of Purchase e.

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

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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.

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

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(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.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 3, 2018, I served the foregoing document described as **CLAIMANT'S HEARING BRIEF** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

James E. Shapiro
Sheldon A. Herbert, Esq.
Smith & Shapiro
3333 E. Serene Avenue, #130
Henderson, Nevada 89074
Email: jshapiro@smithshapiro.com

Daniel L. Goodkin, Esq.
Goodkin & Lynch, LLP
1800 Century Park East, 10th fl.
Los Angeles, CA 90067
Email: dgoodkin@goodkinlynch.com

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

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

_X__ **VIA E-MAIL TO:** James E. Shapiro at jshapiro@smithshapiro.com and Daniel L. Goodkin, Esq. At dgoodkin@goodkinlynch.com prior to 4:00 p.m.

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Executed on May 3, 2018 at Beverly Hills, California.

Barbara Silver

Barbara Silver

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Barbara Silver

From: Barbara Silver [barb@rtlewin.com]
Sent: Thursday, May 03, 2018 2:52 PM
To: 'jshapiro@smithshapiro.com'
Cc: 'dgoodkin@goodkinlynch.com'
Subject: CLA Properties v. Shawn Bidsal, JAMS Ref. No. 1260004569
Attachments: 20180502122232708.pdf

Attached is Claimant's Hearing Brief.

Barbara Silver
Law Offices of Rodney T. Lewin, APC
8665 Wilshire Blvd
Suite 210
Beverly Hills, California
90211-2931
Tele: 310-659-6771
Fax: 310-659-7354
E-Mail: barb@rtlewin.com

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Barbara Silver

From:	Barbara Silver [barb@rtlewin.com]
Sent:	Thursday, May 03, 2018 2:56 PM
To:	'judgehaberfeld@gmail.com'
Cc:	'Roslynn Hinton'; 'bwinter@jamsadr.com'
Subject:	CLA Properties v. Shawn Bidsal, JAMS Ref. No. 1260004569
Attachments:	20180502122232708.pdf

Attached is Claimant's Hearing Brief.

Barbara Silver
Law Offices of Rodney T. Lewin, APC
8665 Wilshire Blvd
Suite 210
Beverly Hills, California
90211-2931
Tele: 310-659-6771
Fax: 310-659-7354
E-Mail: barb@rtlewin.com

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APPENDIX (PX)000553

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Barbara Silver

om: Roslynn Hinton [RHinton@jamsadr.com]
ent: Thursday, May 03, 2018 3:13 PM
To: barb@rtlewin.com; Stephen Haberfeld
Cc: Bryan Winter
Subject: RE: CLA Properties v. Shawn Bidsal, JAMS Ref. No. 1260004569

Receipt acknowledged.

Sincerely,
Roslynn

Roslynn Hinton
Case Manager
JAMS – Century City
rhinton@jamsadr.com
Direct Line: 310-309-6255
Main Line: 310-392-3044

From: Barbara Silver [mailto:barb@rtlewin.com]
Sent: Thursday, May 03, 2018 2:56 PM
To: Stephen Haberfeld <judgehaberfeld@gmail.com>
Roslynn Hinton <RHinton@jamsadr.com>; Bryan Winter <BWinter@jamsadr.com>
ubject: CLA Properties v. Shawn Bidsal, JAMS Ref. No. 1260004569

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Attached is Claimant's Hearing Brief.

Barbara Silver
Law Offices of Rodney T. Lewin, APC
8665 Wilshire Blvd
Suite 210
Beverly Hills, California
90211-2931
Tele: 310-659-6771
Fax: 310-659-7354
E-Mail: barb@rtlewin.com

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APPENDIX (PX)000554

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Barbara Silver

From:	Barbara Silver [barb@rtlewin.com]
Sent:	Thursday, May 03, 2018 2:58 PM
To:	'lgarfinkel@lgealaw.com'
Cc:	'ben@claproperties.com'
Subject:	CLA Properties v. Shawn Bidsal, JAMS Ref. No. 1260004569
Attachments:	20180502122232708.pdf

Attached is Claimant's Hearing Brief.

Barbara Silver
Law Offices of Rodney T. Lewin, APC
8665 Wilshire Blvd
Suite 210
Beverly Hills, California
90211-2931
Tele: 310-659-6771
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Barbara Silver

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Sent: Thursday, May 03, 2018 9:07 AM
To: barb@rtlewin.com
Subject: Order 3332812 Confirmation

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Ste 100
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COMPANY NAME: n/a	ADDRESS: 8665 Wilshire Blvd., #210
ADDRESS: 8224 Blackburn Ave.,	CITY: Beverly Hills
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Louis E. Garfinkel, Esq.
Nevada Bar No. 3416
LEVINE & GARFINKEL
1671 W. Horizon Ridge Pkwy., Suite 230
Henderson, NV 89102
Tel: (702) 673-1612
Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

CLA PROPERTIES LLC, a limited liability company, Petitioner, vs. SHAWN BIDSAL, an individual, Respondent.	**Case No.: A-19-795188-P** **Dept. 31** **APPENDIX TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND IN OPPOSITION TO COUNTER-PETITION TO VACATE AWARD-Part 4**

Petitioner CLA Properties LLC ("CLA"), hereby submits its Part 4 of Appendix to its Memorandum of Points and Authorities in Support of its Petition for Confirmation of Arbitration Award and in Opposition to Courter Petition to Vacate Award entered on April 5, 2019, in JAMS Arbitration Number: 1260004569 in favor of CLA and against Respondent, Shawn Bidsal ("Bidsal").

Dated this 5th day of August, 2019.

LEVINE & GARFINKEL

By: _____

Louis E. Garfinkel, Esq. (Nevada Bar No. 3416)
1671 w. Horizon Ridge Pkwy., Suite 230
Henderson, NV 89012
Tel: (702) 673-1612/Fax: (702) 735-2198
Email: lgarfinkel@lgealaw.com
Attorneys for Petitioner CLA Properties LLC

Case Number: A-19-795188-P

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App.	PART	EXHIBIT	DATE	DESCRIPTION (*italics presented by Bidsal* in arbitration) (Parenthetical number is exhibit identification at arbitration hearing)
000003	1	101.	09/22/11	Golshani e-mail with rough draft (20, 316 and N)
000007	1	102.	11/10/11	LeGrand e-mail (24)
000012	1	103.	11/29/11	LeGrand e-mail with draft (26)
000043	1	104.	12/10/11	LeGrand e-mail (27)
000045	1	105.	06/19/13	*LeGrand e-mail and Agreement (343)*
000104	1	106.	10/02/13	*Bidsal e-mail with Agreement (344)*
000164	1	107.	08/31/17	Shapiro letter (38)
000166	2	108.	01/08/18	*Respondent's Opening Brief*
000374	3	109.	01/08/18	CLA Rule 18 Motion for Summary Disposition
000430	3	110.	01/19/18	*Respondent's Responding Brief*
000439	3	111.	01/19/18	CLA Response to Bidsal's Opening Brief
000455	3	112.	01/25/18	*Respondent's Reply Brief*
000468	3	113.	01/25/18	CLA Reply Brief In Support of Rule 18 Motion
000481	3	114.	03/21/18	*Bidsal's Exhibit 351*
000483	3	115.	05/03/18	*Respondent's Hearing Brief*
000515	3	116.	05/03/18	Claimant's Hearing Brief
000559	4	117.	05/08/18	Transcript of arbitration hearing-Day 1
000781	5	117.	05/09/18	Transcript of arbitration hearing-Day 2
000984	6	118.	06/28/18	Claimant's Closing Argument Brief
001030	6	119.	06/28/18	*Respondent's Post-Arbitration Opening Brief*
001066	6	120.	07/18/18	Claimant's Closing Argument Responsive Brief
001114	6	121.	07/18/18	*Respondent 'sPost Arbitration Response Brief*

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Docket 80427 Document 2020-42930

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of LEVINE & GARFINKEL, and that on the 5th day of August, 2019, I caused the foregoing **APPENDIX TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND IN OPPOSITION TO COUNTER-PETITION TO VACATE AWARD-Part 4** to be served as follows:

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

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

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

001892

James E. Shapiro, Esq.
Nevada Bar No. 7907
Sheldon A. Herbert, Esq.
Nevada Bar No. 5988
Smith & Shapiro, PLLC
3333 E. Serene Ave., Suite 130
Henderson, NV 89074
T: (702) 318-5033/F: (702) 318-5034
E: *jshapiro@smithshapiro.com*
sherbert@smithshapiro.com
Attorneys for Respondent Shawn Bidsal

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Melanie Bruce

An Employee of LEVINE & GARFINKEL

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EXHIBIT 117

(Transcript of Arbitration Hearing)

Day 1

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EXHIBIT 117

J A M S

* * * * * *

CLA PROPERTIES,

Claimant,

vs.

SHAWN BIDSAL,

Respondent.

Reference No. 1260004569

TRANSCRIPT OF PROCEEDINGS

Taken Before the Honorable Stephen E. Haberfeld

Volume I

Las Vegas, Nevada

May 8, 2018

11:12 a.m.

Reported by: Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 469894

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APPEARANCES OF COUNSEL

For the Claimant:

RODNEY T. LEWIN, ESQ.
Law Offices of Rodney T. Lewin
8665 Wilshire Boulevard
Suite 210
Beverly Hills, California 90211
(310) 659-6771
(310) 659-7354 Fax
rod@rtlewin.com

For the Respondent:

JAMES E. SHAPIRO, ESQ.
Smith & Shapiro
3333 East Serene
Suite 130
Henderson, Nevada 89074
(702) 318-5033
(702) 318-5034 Fax
jshapiro@smithshapiro.com

- and -

DANIEL L. GOODKIN, ESQ.
Goodkin & Lynch, LLP
1875 Century Park East
Suite 1860
Los Angeles, California 90067
(702) 552-3322
(702) 943-1589 Fax
doodkinlynch.com

The Arbitrator:

Honorable Stephen E. Haberfeld, ESQ.
JAMS
3800 Howard Hughes Parkway
11th Floor
Las Vegas, Nevada 89169
(702) 457-5267
(702) 437-5267 Fax

* * * * * *

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WITNESS INDEX

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LAS VEGAS, NEVADA

Tuesday, May 8, 2018

11:12 a.m.

TRANSCRIPT OF PROCEEDINGS

* * * * * *

THE ARBITRATOR: On the record.

Good morning again, all. We have had off-the-record conversations prior to going on the record with the welcome arrival of our court reporter. This being JAMS arbitration reference No. 1260004569, CLA Properties, LLC vs. Shawn Bidsal.

May I have appearances, please.

MR. LEWIN: Yes. Rodney Lewin appearing on behalf of the claimant, CLA Properties.

MR. SHAPIRO: Jim Shapiro on behalf of Shawn Bidsal.

MR. GOODKIN: And Dan Goodkin, as well, for Shawn Bidsal.

THE ARBITRATOR: And may I also have the appearances of the other people in our hearing room, please.

MR. SHAPIRO: Shawn Bidsal is present.

MR. LEWIN: And -- go ahead.

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MR. GOLSHANI: Benjamin Golshani from CLA Properties.

THE ARBITRATOR: Very good.

MR. LEWIN: And Shawn Golshani.

THE ARBITRATOR: Very good.

MR. LEWIN: Mr. Golshani's son.

THE ARBITRATOR: And has our court reporter been provided yet with the correct spelling of everybody's name? Let's do that at the break, if we don't have that to her already.

While we were off the record, preparatory to a formal start of our first evidentiary session of the merits hearing of our matter, we talked about several categories of things.

One of the first things that I would like to get into is the rules of evidence, if any, that we're going to be following: And -- and since there appears to be no contractual or other written stipulation or contract requiring the Arbitrator to follow any set of rules of evidence, such as the Federal Rules of Evidence, the Arbitrator, under the applicable JAMS Arbitration Rules, which govern this arbitration, has the discretion. And the exercise of that discretion

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will relax the rules of evidence so that just about everything which is offered in evidence will be received in evidence going to the weight, if any, to be given by the Arbitrator at the close of the evidence.

For example -- and as also alluded to in the conversation off the record -- all exhibits which have been premarked and exchanged, which are in the three binders which are in front of the Arbitrator, two binders which appear to be from respondent and one binder of which appears to be from claimant, each and all of those exhibits are now deemed to be received in evidence.

As discussed off the record, the Arbitrator believes that it is not necessary in our arbitration to lay a foundation for, authenticate, or to move into evidence these things. And so rather than to follow the usual court procedure, where things are out until they're in, following the steps that I alluded to, everything is until they're out.

By that reference, the Arbitrator means to say that these things are in evidence. However, if any side believes that the exhibits of the other side should not be in evidence, please

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let the Arbitrator know, preferably in writing via written objection, what that objection is unless it's so serious that you believe that we need to do that in-hearing. And that would go to, for example -- and hopefully not present in any way in our arbitration -- manufactured or altered evidence or anything where the bona fides of the documentation are false or fraudulent or in any way inappropriate or anything like that.

With respect to testimony, similarly, just about anything that comes in on direct examination -- and I have been alerted by claimant's counsel that there may be some sectors of testimony that are objected to as irrelevant -- but just about anything on direct that comes in or is offered will come in subject to a serious consideration of objection.

On cross-examination, it is a different exercise -- and I'm speaking to counsel and to witnesses -- that the Arbitrator believes that cross-examination is very, very important. It is what the Arbitrator regards as an engine of truth. And in aid of making that engine of truth work and be effective, I encourage robust cross-examination, by which -- which, by the same

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token, means for the side that is not on the cross-examining side, avoiding making objections or otherwise engaging in any -- any conduct or behavior which the Arbitrator and cross-examining counsel feel unduly interferes with that cross-examination.

Among the kinds of things that I -- usually occur are two objections which are disfavored by the Arbitrator, which are asked and answered -- if we get to something about three or four times, which appears to be an asked and answered question, at that point, I generally much more seriously consider sustaining such an objection -- and unduly vague and ambiguous.

Those two objections are disfavored because they do tend to interrupt cross-examination. And cross-examination, very often, depends for its effectiveness of the opportunity of cross-examining counsel to ask a question more than once to see if the answer remains the same.

And unduly vague and ambiguous is disfavored because in almost every arbitration where I am the leader, the witnesses tend to be educated, sophisticated, and knowledgeable

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sufficiently so that they understand if there's a difficulty with the question and don't need an interruption by non-questioning counsel on the grounds of unduly vague and ambiguous.

This is not a jury trial. This is a trial to the Arbitrator as if it's a court trial, so that I would ask you, as non-questioning counsel, to refrain from any kind of objection unless you truly believe that it's necessary to make an interruption of the other side's cross-examination.

We also spoke about post-hearing briefing, which the Arbitrator has suggested include closing argument and legal briefing; that if a particular side wants to have oral argument in addition to closing, written argument, that I would consider that and likely permit it if it's brief and -- and deemed to be important.

But since we have a court reporter, the stakes in this arbitration are viewed by the Arbitrator as being high enough to warrant the post-hearing briefing. References to the hearing transcript, which will be prepared of our proceedings, and the Arbitrator's suggested, for further consideration, possible order, concurrent

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opening briefs, and then concurrent reply briefs, as being a -- a recommended but not yet required way of proceeding, because that has been and continues to be a means which is very, very useful to the Arbitrator.

I believe we discussed other things, but I think we can put those to rest for the moment.

Is there anything that we should do by way of additional procedural conversation before we go to opening argument?

Yes, Mr. Shapiro.

MR. SHAPIRO: So I just wanted to put on the record that we have an agreement between the parties to split the cost of the court reporter for these proceedings. I just wanted to get that on the record.

MR. LEWIN: Sure.

THE ARBITRATOR: And under the -- under the JAMS rules, that is both welcome and provides the basis for the Arbitrator to say in that event that our court reporter is here by agreement, and that the transcript that will be prepared by our court reporter of our proceedings will be the official record of our arbitration.

So stipulated, Mr. Shapiro?

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MR. SHAPIRO: Yes.

MR. LEWIN: Yes, so stipulated.

THE ARBITRATOR: Thank you very much. So --

MR. LEWIN: But there was one question.

THE ARBITRATOR: -- I very much appreciate that.

MR. LEWIN: We do have that one issue. I said I thought there were a couple of areas that were -- in terms of the evidentiary issues -- that were segregated enough to have us bring up, because -- in terms of whether they're relevant or not.

THE ARBITRATOR: Okay.

MR. LEWIN: The first area is -- and there's some time spent in the respondent's brief about who's the drafter. And we touched on this in our brief, that there is a recital in the operating agreement as to who the drafter is, which is, under both California law and Nevada law, a conclusive presumption. California code is Evidence Code 622, and the Nevada law is section -- NRS Section 47.240, Subsection 2.

It's a -- it's a conclusive -- a conclusive presumption. The -- the recital is

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that the attorney for the company, David LeGrand, is the drafter of the document. So there should be, in my opinion, no evidence offered as to trying to figure out who -- who is the builder -- who is the drafter because that should be the long and short of it.

That's one -- that's one area. I don't know if you want to take each area as they go -- as they go forward.

THE ARBITRATOR: How will that affect how much time is involved in testimony as opposed to the legal issue presented?

MR. LEWIN: Well, I think it's a -- they spent a significant amount of time on it. There's a number of exhibits that they have on it. I mean, there's no secret about it.

The evidence is going to show that how these documents came to be done is a matter of evidence, but that after a series of operating agreements that were being prepared by Mr. LeGrand -- that's the attorney for the company -- the -- there was a -- two -- two rough -- two drafts -- two proposed drafts of some language for the buy/sell part that were prepared by Mr. Golshani. The evidence comes in they were

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prepared in conjunction with Mr. Bidsal.

They were -- that was provided to Mr. -- the second of those was provided to Mr. LeGrand, who then provided a separate -- his own version of it. But it's a significant amount of time, since a significant amount of time was spent in his deposition, and I think we're probably going to spend a significant amount of time on it. And if it's a conclusive presumption, it's a conclusive presumption.

THE ARBITRATOR: Well, if that's something which is dispositive at the outset of our arbitration, do you have a bench memo or is it already in your brief so that I can take a quick look at it? Because my inclination would be that if it doesn't require very much in the way of arbitration hearing time, I would prefer not to have to rule on it until after I've taken all of the evidence up.

MR. LEWIN: And that's a -- that's -- then I'll --

THE ARBITRATOR: That's --

MR. LEWIN: It's not going to take hours. It's not going to take hours. It's going to -- but there is -- I believe that based on

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the -- it is one of the -- it is one of the areas of -- the respondent's position is that if there's an ambiguity, that CLA is charged with it because Golshani is the drafter. We're going to go through that, if we need to, to show that he's not necessarily the drafter and --

THE ARBITRATOR: My suggestion would be that that's what -- one of the reasons why we're in this arbitration hearing. And if we were going to cut that off, I -- I would think that that should have been presented maybe at a much earlier time for me to -- to do that and maybe even save us a trip, but --

MR. LEWIN: Well, I don't think -- I don't think, by the way, that it -- I think there's still an issue as to the interpretation of the agreement. The issue that -- the issue that I'm raising, and the issue that they have raised, is that who -- if the agreement is ambiguous, which we don't really believe it is, but if the agreement is ambiguous -- it was ambiguous enough for us not to get summary judgment. So but -- but if the agreement is ambiguous, then, you know, their position is, is that there's -- that ambiguity is charged to the drafter and we say

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there's no drafter. And so it wouldn't --

THE ARBITRATOR: And I think -- and I think that I need to reserve that and -- and I'm inclined not to do that at this time, unless it would be unduly consummative of hearing time, so that really makes sense to put the bit in my teeth and decide the legal issue that you're presenting.

However, it appears to the Arbitrator that if those statutory sections have a bearing on our case, bring it to my attention, but it does bear on contractual interpretation issues.

MR. LEWIN: All right.

THE ARBITRATOR: And sometimes, if something isn't perfect equipoints, who the drafter is or isn't may tip the balance. And so that's what I'm -- I'm sort of hearing might be the case in our case.

MR. LEWIN: Well, I don't think -- I don't think he is the drafter. Forgetting about the presumption, I don't think that the evidence is going to show that the drafter -- there's an attorney -- we'll address that as we go.

THE ARBITRATOR: Okay. Let me hear from Mr. Shapiro.

MR. GOODKIN: Well, I'll address

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Your Honor.

THE ARBITRATOR: Okay. Very well.

MR. GOODKIN: The evidence is going to come in like counsel said, so we're really just talking about legal -- I'm sure that will be addressed in closing argument, so I don't think there's any reason to address it now.

THE ARBITRATOR: What would be the position of your side on it just so the record and the Arbitrator are clear? We've heard on claimant's side. What's respondent's side?

MR. GOODKIN: Oh, the evidence -- the evolution of the agreement will be through Exhibit 315, where Mr. LeGrand started the process of drafting the operating agreement. But then with respect to the clause we're talking about today, that had a different evolution and that will come through with the witnesses. Mr. Golshani and Mr. Bidsal will talk about the evolution of it, and how they talked about it and came to the final resolution of what that provision would be.

And so that's the evidence Your Honor is going to hear for the purposes of evaluating the intent of the parties, so you can have a full

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understanding of the circumstances in which the agreement was entered into, the context, and the full flavor of what they were agreeing to in this agreement. Because I do believe the agreement is ambiguous for all the reasons why the motion for summary judgment wasn't granted, as well as the fact that it's just a complicated provision that needs to get full flavor of.

So once all the evidence comes out as to what the agreement provides, then you'll be able to decide one way or the other if that legal principle of, you know, the drafter will be applicable in any way.

THE ARBITRATOR: Why don't you give to me, in a very concise form, what your position is so we have it in the record in response to Mr. Lewin about those two statutory sections that he cited under California and Nevada law.

MR. GOODKIN: Well, I believe --

THE ARBITRATOR: What is respondent's position about those?

MR. GOODKIN: Go ahead.

MR. SHAPIRO: Let me -- I'll take that.

THE ARBITRATOR: Okay. The tag has been made to Mr. Shapiro.

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MR. SHAPIRO: The response is, number one, I don't recall this being raised before, so this is kind of off the cuff for us, but that's okay.

I don't believe the section of the operating agreement that they're referring to says what they claim it says. I read it to be different, and so I don't believe that the -- the statute that they're referencing even applies in the manner that they're referencing it. Because the language that they're relying upon in the operating agreement, which is Article 13 --

THE ARBITRATOR: Would you read it to me? Read it to me and for the court reporter.

MR. SHAPIRO: This is what it says. Sure.

This agreement has been prepared by David G. LeGrand, Esquire, in parentheses the law firm, as legal counsel to the company and, colon, paragraph 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 the individual members, and, subparagraph two -- or B, the members have been advised by the law firm to seek

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the advice of independent counsel and, subparagraph C, the members have been represented by independent counsel or have had the opportunity to seek such representation, and, subparagraph D, the law firm has not given any advice or made any representations to the members with respect to the consequence of this agreement, and, subparagraph E, the members have been advised that the terms and provisions of this agreement have -- may have tax consequences and the members have been advised by the law firm to seek independent counsel with respect thereto and, subparagraph 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.

THE ARBITRATOR: The Arbitrator has heard and understood the provision and believes that the thrust of that recitation is not to foreclose that anybody else may have had a hand in the drafting of that. That, of course, is subject to whatever the evidence is and -- and further consideration by the Arbitrator, that the provision is more in the nature of what appears to be self-protection of the drafts person to make

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clear and -- in contractual language that the lawyer, who -- who puts a name to the document as having been involved with the drafting of the document, did so without a -- a serious conflict of interest or any conflict of interest. That appears to be what the Arbitrator is hearing.

I'm going to hear from Mr. Lewin. I'll give him the last word before we got to the second area that you wanted to --

MR. LEWIN: Sure, sure. The -- the provision says what it says.

THE ARBITRATOR: Okay.

MR. LEWIN: It says it was prepared by him. I think that that's a representation that he's prepared it. That -- I understand the protection, but it does say it's prepared by him.

THE ARBITRATOR: I understand, and we'll argue that.

MR. LEWIN: And the evidence -- and the evidence is going to come through. By the way, that provision, for the record, is on page 20 of the agreement.

THE ARBITRATOR: Okay. Very good.

MR. LEWIN: So I have nothing else to say on that issue.

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THE ARBITRATOR: Okay. Is there a second issue that you wanted --

MR. LEWIN: Yeah, the second issue -- the second -- I'm sorry, Your Honor. The second issue had to do with the attempt by respondent to introduce an appraisal of the property. He -- we can address that when it comes up, so I think it's a -- it's going to -- the issue is going to come up at some point. But the evidence is going to show that after Mr. Golshani received the offer from the respondent to buy or sell, that he went and obtained for his own benefit an appraisal of the property.

The -- the respondent wants to introduce that appraisal, essentially solely for the purpose of showing that the -- in their mind, that the price that he offered and that my client accepted is too little now, that he should be bound by it. And I think that's irrelevant in the context of what the buy/sell says.

THE ARBITRATOR: Okay. Once again, I hear what you're saying. It sounds like argument and I'm either going -- or both going to hear in opening and closing, but that I am not going to rule -- that I'm not going to receive that in

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evidence.

MR. LEWIN: Okay.

THE ARBITRATOR: If it's in the binder, it's going to be in -- in evidence already under the Arbitrator's ruling. And if it -- if it comes in by way of questioning as well, I'm probably going to take it, subject to an objection at that time. And I will invite you to bring it up when -- once again, and in -- in closing argument in written form, what your position is on that.

MR. LEWIN: Very well.

THE ARBITRATOR: And I'm probably going to take it and determine --

MR. LEWIN: Sure.

THE ARBITRATOR: -- the weight, if any, that the Arbitrator is going to give it after all of the evidence is in.

Anything else before we start opportunity for opening argument?

MR. SHAPIRO: Nothing from our side.

MR. LEWIN: My only question is, Your Honor, is have you had an opportunity to read our briefs?

THE ARBITRATOR: I did.

MR. LEWIN: Okay. Because I don't want

to -- I certainly -- I'm not intending on repeating everything that's in our brief.

THE ARBITRATOR: Well, I was about to say, hopefully to head off the question just made, that the Arbitrator has read both side's briefs and, with that in mind, would suggest to counsel that if they want to make an opening statement, it is invited, but it should be made with having the confidence and just having the reaffirmation by the Arbitrator that the Arbitrator has read the briefs and believes that the arbitrator is sufficiently familiar with the matter, that opening statement should hit the high points, what you think you want -- you wish to reiterate from your opening briefs. And anything that might not have made it to your openings briefs, this would be your opportunity to do that.

Would you like to do opening statements?

MR. LEWIN: I would. I would. Thank you, Your Honor.

Do you mind if I do it sitting down?

THE ARBITRATOR: I do not.

And, by the same token, I should say for respondents, that you not only have the opportunity to make opening argument or not, but

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you have the opportunity to reserve your opening statement at the close of claimant's case if you'd like to do that.

So go ahead, Mr. Lewin.

MR. LEWIN: Thank you very much, Your Honor. So I'm not -- as I mentioned before, it is not my intention to -- let me stand up, then, because I probably -- I'll probably be a little louder.

So I'm not going to restate everything that's in our brief, but I do want to address a couple of points.

The evidence is really -- will show in this case that the parties, through a number of different areas of testimony -- it's going to come in with Mr. Golshani, I believe it's going to come in with Mr. Bidsal, and it's going to come in with Mr. LeGrand in some respect, that they were trying to provide for a forced buy/sell agreement.

And as we used -- it was discussed during our last hearing, the sort of concept of rush justice, although that was not words that they provided, and that that's a term that they now want to try to get away from. But the -- but the answer -- the point was, that a member makes

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an offer, and the other member either buys or sells.

That the idea of that is obviously to force the offering member to make -- who has whatever time he wants to do his research, to make a fair offer. And there's a lot of reasons for that.

As it turns out, Mr. LeGrand did not think that -- he had some -- he who is really representing Mr. Bidsal from the beginning and as the -- you'll see that he doesn't even know Mr. Golshani's last name until well into the -- well into it. He had -- but at a July -- July 21st meeting, this concept was reiterated to him. And he, after thinking about it, thought it didn't really make too much sense, not because of how they took it in their brief out of context, but because of the difference in the capital accounts.

So he had suggested that there was a formula, that they needed to either do some -- have some other way. He made a couple of other attempts to try to resolve it, Mr. Golshani, who had put up four -- $4 million to buy the two properties that they were awarded at auction.

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This property, which he put in over $2.8 million -- there was another property at the same time that they bought, the country club property, that he put in almost a million two -- or more than a million two. He had $4 million. And as September rolled around, he didn't have one piece of paper that showed that he was an owner.

Mr. Bidsal, who had said that he was going to have his lawyer take care of drafting this operating agreement, the evidence will show -- and this is -- and he's a very sophisticated man. For some reason, having an operating agreement that conformed to the parties' agreement, the oral agreement, was never forthcoming.

So Mr. -- Mr. Golshani, after the last version of this -- after the last version --

(Cell phone interruption)

THE ARBITRATOR: Let's all make sure that our phones are off. I did not indicate off the record or on the record that we should have our phones off. However, I will say that if history is -- the past is prologue, I'm the biggest violator of the Arbitrator's rule as -- as has just been shown. At least I'm the first

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violator of the rule. I have just turned off my phone.

Go ahead, sir.

MR. LEWIN: So as of -- as of September 20, when they received Mr. LeGrand's latest version of the operating agreement, it still did not conform to what the parties told him they wanted.

Mr. Golshani and Mr. Bidsal got together, and he said, "If he wants a formula, let's put together a formula." Mr. Golshani talked to Mr. Bidsal, put something together, sends it to Mr. Bidsal. Mr. Bidsal commented -- they met, they commented on it, he did another draft. Mr. Bidsal said it was okay. These two drafts, Mr. Bidsal now claims mysteriously, he never received, never received them.

So that's going to be an issue for you to decide who's telling the truth here.

But then Mr. Golshani sends it to Mr. LeGrand, who -- who then sends Mr. -- all parties saying he's got -- received a fax from Mr. Golshani, he's going to try to redraft on the -- the operating agreement. And then he sends out a -- a draft of the provision that we've been

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talking about that's the subject of this. It's in -- it's -- in his draft, it's called draft number two.

It's -- it's seven point -- it's -- he put -- he puts it at 7.1. It ends up being a different number, but that's the draft. It goes to all parties.

Now, as part of this process, they -- the issue -- the issue -- and the evidence is going to show that the -- there was two things that happened. One, the parties, when they started talking together about trying to fix what Mr. LeGrand had done, Mr. Bidsal had raised the issue of what happens if one member -- if a party -- if there's an offer, but the one member is short on cash, doesn't have the ability, but the offer is so low he can't respond, he will be forced to -- he will be forced to sell at an artificially low price.

So they decided to put in this concept of a second -- of a second -- of an appraisal process. The appraisal process is designed to -- to be as follows. It's the offering member submits a price to buy/sell, but the remaining member doesn't -- thinks it's too low, then the

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appraisal -- then the remaining member had the option of asking for an appraisal. That protects the remaining member from the -- may not have the money to -- from being forced to sell the -- sell the property or his interest in the company at an artificial price. That the appraisal then becomes -- the appraisal number then becomes the fair market value, if the remaining member asks for it.

So let's say -- in this case, let's say Mr. -- Mr. Golshani -- in this case, if Mr. Bidsal had offered to sell -- to buy the -- excuse me -- buy the property for $5 million, he didn't have $5 million, but he thought the property was worth $7 million, he could then ask for an appraisal, and then that appraised price would then become the fair market value. That's a protection for the remaining member.

And that is the evolution. That's how this -- that's how this -- the second issue became a protection for the remaining member. That is how the -- that's how that whole issue becomes.

So fair market value, as the evidence is going to show, is really -- there's two fair market values. There's one fair market value if

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the remaining member accepts -- you know, accepts the price -- accepts the offer or offers to buy; the second fair market value, if the remaining member decides he wants an appraisal. And that's why there's two -- that's why there's two issues. And this is all going to come out in the --

THE ARBITRATOR: As we were discussing, I think in the Rule 18 portion of the arbitration, the drafting of the document does not perfectly align, at least as recalled by the Arbitrator, with what you just said. And maybe that's what brought us here today.

MR. LEWIN: Well, I -- the drafting of the -- look, I wouldn't put -- we even say in our brief that the operating agreement -- so what happens is that the -- after they come to the rough draft number two between themselves, they send it to LeGrand. LeGrand then edits it, does some modifications for -- to it, sends it to the parties, the parties then say it's okay. He then inserts it into the operating agreement. And then there's some other changes that we'll get to later on, but there's some -- but that's how that -- that's how it comes about.

And the drafting is not perfect. I

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mean, we pointed out that there's some paragraphs that don't follow and whatnot. But when you go to the essence of the agreement and you really study it and find out why the -- what the purpose of -- for the remaining -- for this appraisal process, it begins -- it all makes sense.

Now --

THE ARBITRATOR: So you're basically saying that the key purpose -- the word "key" is the Arbitrator's addition to what you said -- that the key purpose of the appraisal is to protect the remaining member. Is that what you said?

MR. LEWIN: That's what I'm saying and that's what the evidence is going to show and that's what the document says because only the remaining member has the right to demand an appraisal, and it's clear. It's absolutely clear.

And if there's any issue about -- about how this came up, a point that the -- that the respondent wants to avoid -- like a lot of other things -- I mean, there -- I expect that we're going to have a lot of evidence in here which is -- which is going to be evidence to misdirect, to try to -- to try to throw a whole -- as my old boss used to say when I was -- he was -- used to

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say when I was his -- when I was hired, he was 70 years old, and Max was a good lawyer. And he said, Rod, throw some fleas at them.

Well, that's what we're going to see here. I think you're going to see a lot of this evidence is only offered for the purpose of throwing fleas and misdirect.

But what they completely ignore is, and they would like to ignore, is the language in the -- the language that sets forth a specific intent of the parties.

Now, if there's anything that is -- if there's anything that should be most important in -- in trying to resolve what this agreement really was intended to do, is a paragraph that said the specific intent of the parties is that when one member offers to buy, the other member has the right to either buy or sell at the same price, unless he demands an appraisal. What else do you need in that? They want to ignore that, that's not part of the agreement, it's not what it means.

Under their theory, an appraisal is always needed because you would need an appraisal to -- to set forth what FMV means in the formula.

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The formulas are fairly -- are fairly straightforward.

So -- so I believe that the -- when the -- when you hear all of the evidence and you hear the story, number one, you're going to find that Mr. Bidsal, despite his protestations in the -- what I expect he's going to testify to, that he never received the drafts that were -- that they were negotiating between themselves that were put in the formula, you're going to find that that's not true. We'll prove it's not true.

Number two, that even -- even if he didn't get the drafts, he got -- he got the language from Mr. LeGrange -- LeGrand, I mean, LeGrand. And he got -- he got that, so he's bound by it.

Thank you very much, Your Honor.

THE ARBITRATOR: Okay.

MR. GOODKIN: Your Honor, is there anything you need from us? Or if we can, we'd like to reserve our opening statement for when we start our chase in chief.

THE ARBITRATOR: As I indicated, you have that right and opportunity, and it sounds like you're exercising your right to reserve. And

so we'll -- we'll go to our first witness on behalf of plaintiff.

MR. LEWIN: Okay. We'd like to call Mr. Benjamin Golshani.

THE ARBITRATOR: Would you like to stay --

MR. LEWIN: Well, why don't we move him over here?

THE ARBITRATOR: Very good.

MR. LEWIN: I think that would be good.

THE ARBITRATOR: Mr. Golshani, if you would come around -- go -- go around the long way, around the horn, if you don't mind.

THE WITNESS: No problem.

THE ARBITRATOR: And before you're seated, if you would please face the court reporter, raise your right hand, and be sworn as a witness --

THE WITNESS: No problem.

THE ARBITRATOR: -- for arbitration.

Court Reporter, if you'd please swear our witness.

Whereupon,

BENJAMIN GOLSHANI,

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was called as a witness, and having been first duly sworn to testify to the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEWIN:

Q Mr. Golshani, what is your relationship to CLA Properties, LLC?

A I am the managing member and manager of that entity.

Q And where did you grow up?

A Pardon me?

Q Where did you grow up?

A Oh, I grew up in the country of Iran.

Q And when did you come to the United States?

A I came here 1979, after there was a, you know, big turmoil over there and they didn't need --

THE ARBITRATOR: I think we know what happened in 1979.

THE WITNESS: Yeah, education -- education.

BY MR. LEWIN:

Q And could you please outline your

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educational background for His Honor?

A I have a -- a master degree in civil engineering and I have been -- I mean, I did practice civil engineering for some time back in Iran and in the United States.

Q What type of civil engineering did you practice?

A In here?

Q Yes.

A Well, when I came here, I had to take my license. I studied, and I got the license and I got a job with the government. And I worked in construction and supervising the construction. And after a while, I decided that -- to go and build buildings and that kind of -- and I became specialized in civil structural design.

Q I see.

And at some -- was there a point in time when you stopped doing that and did something else?

A Yes. There -- at a -- a few years later, there was a recession in buildings and real estate, and I had some investment -- small investment in a textile company, and I went there to help. I didn't have much to do, and I started

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becoming interested in that business. And I went into textile business.

Q And what kind of textile business was that?

A I started a -- a unique business using natural, environmentally-friendly fibers.

(Interruption in proceedings.)

THE WITNESS: And learning as to how to -- because I was an engineer, didn't have much difficulty. I learned about how to weave and dye and produce for apparel use and home -- home decor.

BY MR. LEWIN:

Q And, did -- now, when you say for "home decor," what do you mean?

A Like, for curtains, couches, chairs, things like that.

Q And how do you know Mr. Bidsal?

A Well, I had known Mr. Bidsal from long time ago. We are related and, you know, we -- I knew of him.

Q And how are you related?

A Oh, he's my cousin.

Q Is he a first cousin?

A First cousin. He's my first cousin.

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His mom is my dad's sister.

Q Okay. And were you -- were you close with him before 2010?

A No. We were not close, but we -- I knew him. I -- you know, from a distance.

Q Okay. And you lived where?

A Pardon me?

Q You lived where in 2010?

A I lived in the city of Encino.

Q Okay. And how about Mr. Bidsal, was he living in Los Angeles as well?

A Yeah, I learned that he was living almost close to me.

Q Was there a point in time when -- when you and Mr. Bidsal started talking about buying properties together?

A Yes. There was a time that we decided we -- you know, met each other and we had several talks, and it led to doing investments.

Q So tell us on or about, when did that start? Give us a -- give us a synopsis of when you first started talking with Mr. Bidsal.

A Well, I met her -- him at my sister's place, and, you know, we sat down. We were talking, and he mentioned that he has been doing

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real estate business for some time and he had been doing very well. And he's specialized in doing real estate in Las Vegas. And he knows all the areas and the -- because of his practice in real estate and dealing with a lot of brokers and the -- and attorneys. He's extremely good with legal matters, also, and management of the properties. And he has been doing -- buying and selling and he has been doing very well.

Q Okay. When was this?

A This was sometime about probably 2008, '9, those time.

Q And were you -- were you looking to invest in real estate at that time?

A I was looking to invest in real estate, yes, and I was looking mostly in Los Angeles area. And there was a -- a crash in real estate in those times, so I was trying to see -- I had some savings and I had some moneys available to me from relatives, and I thought it would be a good idea to go invest, especially that I was very good in construction. I could buy things and make it better and, you know, sell it.

Q Had you invested in any real estate in Nevada?

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A Before that?

Q Yes.

A About that time, some of my friends were buying real estate and they offered me to take part, which I did, and I had, like, 10 percent in -- interest. I was a minority shareholder, yes.

Q In what?

A In a shopping center in Las Vegas.

Q Okay. But you indicated you were looking primarily in Los Angeles?

A I was in Los Angeles. I mean, I was looking, they offered, and I knew them and I trusted them, so I did invest in that property.

Q So Mr. -- Mr. Bidsal says -- asked you if you're interested in buying some -- investing in real estate with him.

What happens next?

A Well, we had a few meetings. And in those meetings, one of them, he said that if I came to Las Vegas, you know, to look him up. And one time I was here with one of my friends, I did so, and I called him, you know, and we went to have coffee and all of that.

And then he took me around and showed me

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some of the real estate that he had acquired and was managing. And the nature of those, you know, they were, like, big shopping centers and apartment buildings. And he mentioned to me that he has been managing them very well and he has been doing extremely good with those.

Q Was there -- was there a time when you and he began to look into properties to invest in together?

A Yes. What -- what happened, during one of those times, he mentioned that he had -- because of the downturn, he had -- he does not have much cash available, and there would be a lot of opportunity. And I said, "I am looking for this." And I started becoming interested in what he was doing, especially, you know, when I ask question, I -- I -- it seemed to me that he had all of the answers and he knew what he was doing.

And we discussed more. And after I saw more, I was very impressed. And I told him that, you know, I could be -- we could be working together and he concurred, and we said that it would be a good idea if we were. And buy things and either fix it or make investment and create a partnership.

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Q And did you begin to look at properties together?

A Yes, we did.

Q Properties to buy -- potentially buy?

A That's correct.

Q And how many -- over what period of time were you looking at properties to buy?

A Well, it took a few months, and we would locate properties, mostly in Las Vegas. And then we would go see them. There was a time that a lot of properties went into auction in Vegas. And we went and we -- we made a list, and we went, we saw almost all of them. And then we would underwrite them.

He was familiar with the locations as to what location is -- would fit our needs better. I -- I was not. And he seemed to know the history of every -- every building. He seemed to know the brokers when he called. He called the brokers by their first name. And I was very impressed that he had so much knowledge about this.

And we decided that -- to go partnership and work together.

Q Okay. So what -- was there a time when you began to bid on properties?

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A Yes.

Q Okay. Let me -- let me -- I have some -- I want to -- I'm coming back to that.

But before, can you tell us how many properties you bid on before you actually acquired Green Valley?

A I don't remember, but a few.

Q Okay. And before you bid on any properties, did you and Mr. Bidsal have a discussion about what your -- how you would work together?

A Well, we -- we -- it came a little later. And what happened in the beginning, we discussed that we work together and join effort and all that. And then he told me that, "As you know, I am a lot more familiar with the real estate, with the properties, with the location, with the legal matters, with everything. I know a lot of people here and you don't, so I need to get paid for that."

And then I -- it sounded reasonable to me. And then he said that, "Well, I will bring some money, but I am short on cash, and I'm looking to borrow money. These properties are so profitable, I would be very happy to go get hard

money and put in these properties."

And then we discussed a little bit more. He told me, "How about if you invest more than me, and we" -- "because I do the work and because of my knowledge and expertise, but we share the profit 50/50." And I agreed tentatively on that. I put 60 percent of the money and buy 60 percent of the property, he would buy 40 percent of it.

However, we -- when we make money on that -- on that property, whether if it is rent, we cut it in half.

Q Okay. Now, was there a discussion about what kind of entity you would -- you would buy properties in?

A Well, he said that we should open an LLC property, the LLCs are geared more toward real estate. And I had no problem with that.

Q Was there any discussion -- was there any discussion at the time before you purchased any property about if you got one and formed an LLC, about a -- about buying or selling each other out?

A What happened when we were discussing about the partnership and -- what I did, I told him that, okay, now that we are -- we have decided

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to go into partnership and we are friends and we trust each other and all of that, we better have to have an exit also, so that for whatever reason, if we don't want to be together or somebody is not -- doesn't want to work in Las Vegas or whatever, there should be a way to separate without having to go into court.

I have seen my friends to fight with their partners and all that, and I really wanted to avoid that. You know, I thought that the same way we became partners, we also, if -- whoever -- if a partner didn't want to continue the partnership, he should be able to -- there should be a mechanism to separate.

Q And what did Mr. Bidsal -- what did Mr. Bidsal say?

A Oh, he said -- he said he also concurred, and he said it's no problem, he has done that before, and he knows that attorneys can write it and take care of that. And I insisted a few times, and, you know, I -- I'm talking ahead of time, but when we met with LeGrand, I did mention that --

Q Well, we're going to talk about Mr. LeGrand too.

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A Yeah, I know. What I did mention, we don't want to go to court. We need to have a system that if a partner doesn't want to be a partner, should be able to somehow buy or sell and leave the partnership amicably.

Q So were you bidding on properties at auctions?

A Yes.

Q And would you -- and the -- what is the process for being able to bid at an auction?

A Well, the process is, that you first register, and they want you to put up some money, like 50,000, 100,000, depending on the value of the property. And after that, you start -- at a certain date, you bid. If you are awarded, within a few hours you need to put up, like, about 10 percent of the money.

And they give you a very short period of time to come up with the rest of the money and close the escrow.

Q Now, if -- and did you put in bids -- did you make it a -- did you and Mr. Bidsal make a deposit in order to be able to bid at these auctions?

A We did. And one thing that happened,

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Mr. Bidsal told me that he's short on cash and -- for that 50,000, 100,000 deposit, it's not available. And I volunteered, I gave him my credit card. I had a few hundred dollars -- thousand dollars' credit, and I said, okay, use this. And he would use that, and they would block the credit, and they would register us.

If he defaulted -- for example, if he -- I agreed to buy a property awarded, and if he didn't do it, they would have confiscated that money.

Q And how many -- do you recall how many bids you put in on the auction process?

A Total?

Q Approximately, give us a --

A No. Many. Many, you know. Of every -- I don't know, 10, 15, maybe one would materialize.

Q So --

A It was a difficult process.

Q So you put in -- did you put in 10 to 15 bids to buy properties at auctions?

A Probably, yeah.

Q Okay. But many -- but more than one?

A Yes.

Q Okay. And ultimately, were you

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successful in acquiring -- being awarded a bid?

A Yes.

Q And for what properties?

A We -- the first property we were awarded was that Green Valley, which is in the -- the subject of this arbitration. And another property which is called Country Club. We bought it at the same day. We got awarded at the same day.

Q And what kind of property is Country Club?

A Country Club is a shopping center.

Q And where is that located?

A In Henderson, Las Vegas.

Q All right. So let's take a look at -- let's take a look at Exhibit No. 2, if you would.

What is Exhibit No. 2?

A Exhibit No. 2 is a -- a receipt of a -- money that I wired to the escrow for the amount of $404,250 on May 20th. It was probably a couple of days or same day that we got awarded.

Q I see.

So did -- so you said that you had to put up a percentage of the purchase price to open up an escrow?

A Yes, sir.

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Q Okay. And is this --

A About 20 -- about 10 percent, I believe.

Q Well, and take a look. You know what -- and did you -- I see.

So you understood the -- so you put up $404,250?

A That's right.

Q And what was this -- what property was this for?

A For Green Valley.

Q And did Mr. Bidsal put up any of that money?

A No. At that time, he said that he is short on cash. And I said, "It's no problem. I do have the cash." So I did put up the money.

Q Let's take a look at Exhibit No. 3.

What is this?

A That's the -- the -- I believe wire instruction of Mr. Bidsal to his bank to send money to the escrow.

Q All right. And take a look at Exhibit No. 4.

A That's the closing statement.

Q For Green Valley?

A Correct.

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Q Okay. And this shows that you put up -- what was your total amount that you put up?

A I put up $404,000 and --

Q Actually, 404,250. Don't forget the 250.

A 250. At -- I mean, in the escrow. At the close, I put 2.4 million, 30,000. Total of 2.834.

Q Now, that's 70 percent of the purchase price. I thought you said that the deal was supposed to be 60/40?

A Well, when we -- when things started getting serious, then Mr. Bidsal talked to me and said, "Listen, I thought about it. I thought about it, and the services and the time I'm going to put on this is tremendous. And you don't have the knowledge and you don't have the time to come and take care of these things.

"And I need to get paid for my time, and I need to get paid for my knowledge of legal matter and management matter, you know, transactional matter and all of that. And I have acquired all of these properties, you don't."

And I -- for two reason, I -- I agreed to -- he said that he wants to change that to

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70/30. And I was too far ahead in the game, number one, and then I thought, okay, I have come so far for that 10 percent, I better not make an issue out of it and all that. Let's try it and see what comes out of it.

And I agreed with that 70/30, and I did pay. And the 70/30 was that I would buy 70 percent of the property, he would buy 30 percent of the property, but the profit would be divided in half.

Q Okay. 50/50?

A Yes.

Q Okay. And was there -- and did Country Club close at the same time?

A About the same time with the same setup.

Q Same setup.

And take a look at -- let's take a look at Exhibit No. 1.

A Okay.

Q Now, these are articles of organization for Green Valley Commerce, LLC, which were filed on May 26th, 2011.

And you received a copy of these?

A Yes.

Q And did you receive a -- and I -- and I

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note that your name is nowhere to be found in this document.

A That's correct.

Q And did you ask Mr. Bidsal about that?

A Well, I did. He said that, you know, I formed a corporation, and, you know, this is the corporation which is going to be the owner. And I noticed that he is both the member and the manager. And I said, how about me?

He told me that by law, there is only one manager in the -- in the LLCs. And as far as the membership, he said, we will add you, not here, but we will write an operating agreement and will add you there.

But at that time, he was the owner and, you know -- and I had trusted him with that money.

Q But he was the owner in name?

A That's right.

Q So --

A And the papers showed that.

Q Okay. Now, I see the paper. You had already -- by the time this entity was already -- by the time this -- you had already deposited the $404,000 by the time this entity was formed; right?

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A I think I --
Q Look at Exhibit 2.
A -- before that.
Q Look at Exhibit 2. It's dated May 20th.
A Okay. This is May 25. The money was in May -- May 20.
Q Okay. All right. So now, at the time that escrow closed, June 3rd, 2011, had -- had you -- had you seen a draft of any operating agreements?
A No, sir, I hadn't.
Q Had you been introduced to a lawyer who was going to draft the operating agreements --
A No.
Q -- for Green Valley or Country Club?
A No, I hadn't.
Q Is it -- am I correct that you just said -- is the deal supposed to be the same for Green Valley and Country Club?
A Correct.
Q The same deal?
A Yes.
Q Were the -- the same buy/sell?
A That's correct.
Q Okay. So now, after the -- after the

escrow closed, did you receive -- did you begin to receive some operating agreements from Mr. Bidsal?

A Yes. I did sometime after close of escrow.

Q Okay. Did you receive -- how much -- how many draft operating agreements did you receive? I mean, let me stop that.

Did you receive any direct -- any -- did you have any direct communication with any lawyer -- let me rephrase that.

Up until July 21, did you have any direct communications with any lawyer who was drafting the operating agreements for Green Valley or Country Club?

A No, sir.

Q You said you received some operating agreements.

From whom did you receive them?

A Bidsal would send me, and I did notice that somebody sent it to him, and he's sending it to me.

Q Well, for example, let's take a look at Exhibit No. 5.

Is this -- is this the -- is this one of the drafts of the operating agreement that you

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received before July 21?

A I'm not sure if I received this one, but -- because the one that I received had the cover sheet in form of an e-mail from Mr. Bidsal. So I'm not really sure that I received this one.

There was -- you know, I was not in communication with -- privy to the discussions. They were discussing among each other, and the only way I would receive something was through Mr. Bidsal.

Q So in any case, before July 21, did you receive any operating agreement that had a forced buy/sell agreement in it, or any -- or anything like a forced buy/sell agreement in it?

A No. I did probably receive something, but it didn't have any buy/sell agreement as we discussed with Mr. --

Q Okay. At some point in time, did you meet a lawyer named David LeGrand?

A That's correct.

Q And where did you meet him at?

A In his office.

Q And do you remember the date that you met him?

A I believe it was -- I believe it was

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July 20 -- 20 or so.

Q Can you take a look at Exhibit 13, please.

MR. SHAPIRO: Did you say a date that you met him?

MR. LEWIN: He said --

THE WITNESS: Yeah.

MR. SHAPIRO: What date did you say? I'm sorry.

THE WITNESS: I said I think it was -- I think it was June -- the month of July.

MR. SHAPIRO: Oh, not a specific date.

MR. LEWIN: I think he said -- I think he said I thought it was July 20.

THE WITNESS: Twenty, around that, yeah.

BY MR. LEWIN:

Q Take a look at --

A No, I'm sorry, but if I look at this letter, I will remember exact.

Q Okay. Well, take a look at Exhibit 13. Are you looking at Exhibit 13?

A I'm looking at it.

Q Okay. Look at July 21.

This is Mr. LeGrand's bill?

A Yeah.

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Q Look at July 21.

A That's right. On this date, I know that we met Mr. LeGrand for the first time -- I met for the first time, yes.

Q Okay. And who did you understand Mr. LeGrand was?

A Our attorney.

Q All right. And can you tell us -- it says that the meeting lasted 2.2 hours.

So what -- what were you discussing during those 2.2 hours? Can you identify the topics, please?

A Well, the first topic was that I discussed how come I can't be a manager, you know. I have seen people -- companies that I -- can have many managers. And he said, yeah, your company can have 20 managers.

And we discussed it with Mr. Bidsal -- I mean, he discussed it and all of that. And one of the things that came out of this meeting was that they named me as a manager also with Mr. Bidsal.

Q Okay. By the way, this is a meeting among all three of you?

A Yes, sir.

Q You, Mr. LeGrand, and Mr. Bidsal?

A That's right.

Q And what else was discussed during this meeting that's pertinent to this arbitration?

A The other discussion was that -- the buy/sell agreement.

Q Okay. Tell us -- tell us what --

A The -- for --

Q Hold on. Just hold on, hold on a second.

Tell us what was said about the buy/sell.

A I'm not sure what --

Q Just tell us --

THE ARBITRATOR: Why don't you lead him and see if Mr. Shapiro objects.

BY MR. LEWIN:

Q Okay. Well, just tell us what was said about the buy/sell agreement.

MR. SHAPIRO: Object to leading.

THE ARBITRATOR: Overruled.

BY MR. LEWIN:

Q Just tell us what was said about the buy/sell agreement at this meeting.

Who said what?

A Okay. He didn't talk about it. I talk

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about it and Mr. Bidsal. And I reiterated what me and Mr. Bidsal had talked and had -- I agreed. And I said that we are here so that you would write a provision that anytime we didn't want to be a partner, we would be able to separate without having to go to court and, you know, the court decide about us.

And, I mean, he asked some questions that for what reason and all of that, and Mr. Bidsal said that for no reason at all. Maybe a partner doesn't even want to be in Las Vegas or doesn't want to continue real estate. For whatever reason, we want to have a mechanism to give a notice and be able to leave.

And the way we have discussed it is that -- and I said and Mr. Bidsal said the same thing, that a partner, a member or an investor would offer to buy the interest of the other member, and within certain time, that member has to either sell his interest at that price or buy the interest of the first person at that price.

So this time, this way, everything would be fair, because the person who was making the offer for sure researches about how much he should offer so that either way, it would be fair. And

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the person who is being offered to has the choice to do either one.

And he also mentioned what if one -- one person doesn't have money and all that, and we said we have decided that we always be prepared for a situation like this and would have the money to do this forced buy/sell.

Q Was there any other -- on this issue of the forced buy/sell, was there anything else discussed that you can remember?

A I don't -- well, I -- probably, but I -- I don't remember. You know, if I had my notes, probably I would have said a few things. But the -- the manager and the buy/sell agreement would be the one that we discussed, that somebody makes an offer, and that offer -- the other person can buy or sell at the same.

Q By the time of this meeting on July 21st, had you received any documentation showing that you were an owner in Green Valley?

A No.

Q Okay. Let's take a look at --

MR. GOODKIN: I hate to ruin this -- you know, the process so far, but do you want to do anything about lunch? I just bring it up for --

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THE ARBITRATOR: Let's go off the record and discuss.

(Discussion off the record.)

THE ARBITRATOR: Okay. Back on the record.

BY MR. LEWIN:

Q Okay. Mr. Golshani, talking about that July 21st meeting -- by the way, do you know how Mr. Bidsal chose Mr. LeGrand to be the attorney to draft this agreement?

A How Mr. Bidsal chose -- I'm sorry.

Q Do you know how Mr. Bidsal chose Mr. LeGrand?

A Oh, I didn't know, no.

Q Did Mr. Bidsal ask you if you knew an attorney to draft the agreement?

A No. He mentioned that he knows the best in Las Vegas.

Q All right. And at the meeting, was there any conversation about the buy/sell only occurring in the -- in an event of a deadlock?

A I'm not sure. It -- there was a discussion of that. It probably had or had not -- I don't remember that.

Q Okay. Let's take a look at -- let me

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just go back at -- just in some time here.

So the --

A But I remember that that forced buy/sell was independent of anything else. It did not have anything to do with the deadlock or anything else. That I remember.

I remember that the forced buy/sell that we had agreed was independent of the deadlock or any other thing. That I remember.

Q Take a look at Exhibit No. 10, would you please. This is now dated June 27th. This is before the meeting.

This is an e-mail from LeGrand to Mr. Bidsal on June 27th.

Did you receive -- did you ever receive a copy of this before this -- this lawsuit?

A Before this lawsuit, yeah; recently I did, yes.

Q Okay. Did -- did you -- did you know that Mr. Bidsal had -- was setting up the voting so that Shawn's vote was needed for any vote to pass? It says here, "One vote for 1,000, because the whole purpose of setting votes at 90 percent was to make sure your vote was needed for a vote to pass."

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Do you remember --

A At that time, I did not know that, no.

Q And looking at the -- looking at the -- okay. Let's back up. Okay.

Looking -- please turn to Exhibit No. 11. This is a -- it's an e-mail from -- two e-mails from Mr. LeGrand to Mr. Bidsal. It says -- this is July 22nd, the day after the meeting. It says, "Okay, I'm working on the OPAG" -- and I think that's his denomination for operating agreement.

A Correct.

Q "I'll send it shortly."

A Yes.

Q Was it -- at the meeting on July 21, was there a discussion that you were going to receive a -- that he was going to revise the operating agreement?

A Correct, yes.

Q Take a look at Exhibit No. 12.

A Okay.

Q This is a -- a July 22nd, 2011, e-mail from Shawn Bidsal?

A Uh-huh.

Q And then it says to Bengol&@yahoo.com.

By the way, is that your e-mail address?

A No. That ampersand should have been seven. I didn't receive this e-mail.

Q All right. Did you ever receive this e-mail?

A Recently, yes, after.

Q Okay. Well, did you receive this e-mail in July of 2011?

A No.

Q Okay. Take a look at --

A From that time, I didn't.

Q Let's take Exhibit 13 -- Exhibit 14. This is a -- an e-mail dated August 10, 2011, and I see it's sent to you and Shawn Bidsal. It says, "Ben, please find the red-line revised OPAG per our last meeting."

Two things, did you have any meetings with Mr. -- with Mr. LeGrand in between July 21 and August 10?

A No, I did not.

Q Did you have any communications with him?

A Probably by telephone.

Q And had you received the revised operating agreement before August 10?

A I'm not sure, but I know that on this August 10, I received this e-mail.

Q And did you -- and did you review the operating agreement?

A Yes.

Q And what did you --

A Well --

Q Hold on a sec.

What did you conclude about this revised operating agreement?

A I realized that Mr. LeGrand didn't put here what we discussed in that July 21st meeting. We had discussed about that forced buy/sell, and he -- I think he took care of the managers, but he didn't take care of the -- he didn't mention anything about that.

Q Okay. So let's take a look at the --

A About the forced buy/sell.

Q Okay. Let's take a look at the revision. Look at page 7 on the red line. It has a provision for deadlock in here.

Do you see that?

A Yes.

Q And then it has a provision for arbitration; right?

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A Yeah, yes.

Q Page 8 has a provision for manager?

A Yes.

Q And page -- page 10 has, in Section 3, a right of first refusal in the -- if a member sells his interest?

A Yes.

Q But it didn't have anything -- but there's nothing in here about a forced buy/sell; right?

A No, it doesn't.

Q So after you received this and you looked at it, what -- what did you do?

A From what I remember, I contacted them -- him and Mr. Bidsal, and I said, "The operating agreement I received does not contain what we discussed."

Q And did you -- did you have a conversation with Mr. Bidsal about this?

A You -- generally, when I got things that I didn't think it was correct, yes, I would have had discussion, you know, if he was available.

THE ARBITRATOR: Would have had or did have?

THE WITNESS: Did have. Generally, I

did have conversation with Mr. Bidsal.

THE ARBITRATOR: On that subject?

THE WITNESS: Yes, and others, generally. On that subject, I am not sure 100 percent. But generally -- like I said, generally I do -- I did talk to Mr. Bidsal.

BY MR. LEWIN:

Q Well, the -- was the forced buy/sell important to you?

A Yes, it was.

Q Now, take a look at page 28 on this exhibit -- of this red line.

A Uh-huh.

Q And I see that it includes CLA Properties as -- as a 70 percent percentage interest.

Do you see that?

A That's right.

Q Okay. So take a look at Exhibit 15.

A Okay.

Q This is an e-mail from Mr. LeGrand to you, and it says, "Ben, I'm confused by your phone call. I included extensive right-of-first-refusal language in this OPAG draft. My notes are that this approach is what we discussed. Please call

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me if this is wrong."

Okay. So did you -- did you call Mr. LeGrand?

A I -- yes, and I had called him before, yes.

Q And do you remember what -- was this a telephone message or is this a conversation?

A I had left a message for him, and then I also contacted him.

Q So when you spoke to Mr. LeGrand, what did you tell him?

A I told him, you know, we had a meeting and -- for hours, and we discussed things in detail, and you said that you would prepare the operating agreement, and on that operating agreement there was supposed to be a forced buy/sell that we could separate, but I didn't see it here. And then --

Q What -- what did he say?

A He said he would do it. He would do it, he would take care of that.

Q Okay. Take a look at Exhibit 16.

A Okay.

Q This is an e-mail dated August 18 that says to Ben -- to Ben and Shawn. And it says,

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"Ben and Shawn, please find attached OPAG based on my conversation with Ben this morning."

A That's correct.

Q "I modified the books and records provision, modified the right of -- ROFR to be for sales for third parties and added a Dutch auction provision. The Dutch auction only works if there are two members. To bring in more members, it would be more complex."

So when you -- you received it -- did you receive this?

A Correct.

Q And did you -- did you review it?

A Yes, I did.

Q And take a look at page 7 -- pardon me, page 12 of -- actually, there's -- actually, there's two -- if you observed what -- first of all, take a look -- first of all, take a look at the next page, the third page.

THE ARBITRATOR: Can you give the Arbitrator and the court reporter what page exactly?

MR. LEWIN: It's the third page of Exhibit 16.

THE ARBITRATOR: Is there anything

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written on the bottom of that page?

MR. LEWIN: Yeah, it says "Bidsal Version."

THE ARBITRATOR: Thank you.

BY MR. LEWIN:

Q Okay. And the purpose of this is --

THE ARBITRATOR: Down in the bottom right-hand corner, just for the record, it says 9/13/2017, 2:08 p.m. down at the bottom right corner.

Go ahead.

BY MR. LEWIN:

Q And when you received this e-mail from Mr. LeGrand, were there two attachments?

A Yes.

Q Okay. Were the attachments -- one was a red line and one was a clean version?

A It was, but they were not the same. They were two different versions.

Q Okay. So are you saying the red line was not a red line of what the clean version was?

A Correct.

Q Okay. Let's take a look at the clean version. And I don't think there's any dispute in this, the red line is not a red line of the clean

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version.

So take a look at the clean version, page 12. That's the -- that's the second version. Okay. Looking at section -- there's now a Section 7. You have to look at the clean version, Mr. Golshani. That's the second -- that's the second document in the package.

A Page --

Q Twelve.

THE ARBITRATOR: 29 it says there; is that correct?

MR. LEWIN: That's correct.

THE ARBITRATOR: All right.

THE WITNESS: Yeah, page 12, correct.

BY MR. LEWIN:

Q So when you received this e-mail from Mr. LeGrand and he said he put it in the -- he put it in, the Dutch auction, did you locate this provision here on 7.1?

A That's right, I read that.

Q And was this what -- was this consistent with what your -- with your understanding of what Mr. LeGrand was supposed to be drafting?

A No, it was not. This was not what we discussed at that July 21st meeting.

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Q Okay.

A It was still not what we want.

Q And how -- and what was wrong with this version of the -- of the buy/sell?

A First, there -- there -- here -- let me take a look at it. I apologize.

Okay. First thing was that the offering member should bring an offer -- an appraisal showing that this offer is bona fide, and that is what -- not we had agreed. We had agreed that the offering member would offer any amount that he thinks is fair, to have the freedom to have any number. And the second problem I had was that it would give the second party -- the other party only ten days to make a decision, and it was not enough.

And then it was talking about the fair market value here, and that was not what we discussed, either. Because we -- the offering member was supposed to offer something that he thinks is fair, and he can -- he could do his due diligence and appraisal, whatever come of it, a number that he is comfortable with, buy or sell, and offer it; whereas here it would tie it to a fair market value that we didn't know how to get

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it.

For this reason, I told him that this is not what we wanted to have.

Q So after you saw this, did you -- did you discuss this provision with Mr. Bidsal?

A Correct, yes.

Q Okay. Tell us what the conversation was between you and Mr. Bidsal about this -- about this proposal.

A Exactly the same conversation, that we -- I -- you know, that I told him that these are not what we discussed, and he said he would talk to him and he would take care of it -- things. And by that time, I was a little bit frustrated. I didn't -- I wanted to have an operating agreement signed.

So I asked to please expedite and talk, whatever they need to talk and --

Q Well, when you -- did you go through -- did you tell Mr. Bidsal what you saw were the problems in the Section 7.1?

A Yes, yes.

Q And did he -- what was his comment about what you saw?

A He concurred. He said that that's not

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what we discussed with Mr. LeGrand.

Q And you said you were frustrated.

Had you received any written -- did you have any written agreement reflecting that you were -- that you owned Green Valley or Country Club by this time?

A That was the problem. Here I was, you know, trusting $4 million of my money and buying these properties, and I didn't have -- have a single paper in my name that I have the ownership. And I didn't like that, and I started, you know, questioning that. And I thought that was wrong. I talked to Mr. Bidsal about it and I talked to Mr. LeGrand, that we need to wrap this up and we need to have an operating agreement.

Q And you wanted one for both Green Valley and Country Club; right?

A Definitely.

Q And did -- look at the Section 7.

Did you draft any of this language?

A No, not at all.

Q And take a look at the last -- the last section, the last sentence of Section 7.1.

A That's right.

Q Where it says, quote, "The specific

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intent of this provision is that the offering member shall be obligated to either sell his or its member interest to the remaining members or purchase the member's interest of the remaining members based on the fair market value of the company's assets."

Did you -- did you draft that language?

A No.

Q Did you suggest that language be put in this --

A No.

Q -- this document?

A No, not at all.

Q Okay. Now, I want to take a look at Exhibit 17. This is a -- an e-mail from Mr. LeGrand, which is almost -- is almost a month later -- no, pardon me. No. It's -- well, it's almost a month later, actually.

A Yeah.

Q Between -- between August 10 and September 16, did you receive -- did you receive any other versions of the -- any further revised operating agreement?

A I don't think so.

Q Okay. Was anything happening with

respect to the operating agreement during this time period?

A Not really.

Q Were you -- did you have any discussions with Mr. Bidsal between August 10, when you got -- pardon me -- August 18 -- August 18th and -- let me start over.

You received the draft with the -- from Mr. LeGrand on August 18. Between August 18 and September 16, did you have any conversations with Mr. Bidsal about what was happening getting the revision out?

A Yes. We -- we had discussion and I said that we need to wrap the operating agreement, and he said he's on top of it and he would take care of it. And I left it at that at that time.

Q Did you call -- okay. So when you received this -- this August -- September 16, 2011, e-mail that, again, has a -- a draft of -- a revised operating agreement, did you read it?

A On which date?

Q This is -- this is Exhibit 17. It's September 16, 2011.

A Yes, I have reviewed that.

Q Okay. So did you -- did you -- did you

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see anything in this September 16, 2011, revision that caught your attention?

A Well, I realized that everything is eliminated.

Q When you say "everything is eliminated," what do you --

A I mean, the -- that forced buy/sell is eliminated.

Q Is not included in this agreement?

A I didn't see it.

Q Okay.

A I didn't see it.

Q Okay. So Mr. LeGrand says, "I made some" -- in his e-mail says, "I do not know how to address the concept of the Dutch auction after much thought. We discussed that you want to be able to name a price and either get bought or" -- "bought or buy at the offer price." Let me stop there.

A Right.

Q When it referred to "we discussed," was that a discussion -- do you know who he's talking about there?

A What discussion?

Q Well, it says, "We discussed that you

want to be able to name a price and" --

A It means three of us, yeah.

Q I can -- then it goes on, "I can write that provision, but I'm not sure it makes sense because Ben has put in more than double the capital of Shawn. So if Ben names a price to be bought out, that price has to reflect getting his capital back."

Did you -- did you recognize this as a an -- as an issue?

A Yeah, I recognize.

Q But after you -- but you -- but when you noticed that there was no buy/sell provision in this new redraft, did you talk to anybody about it?

A Well, yes, I did.

Q Who did you speak to?

A I talked both to LeGrand and Mr. Bidsal. What -- when -- do you want me to explain about what is here or --

Q I just want to know what you said -- what did you say to Mr. Bidsal about this?

A Well, I said that I understand capitals are different. And there should be -- I mean, it's not that if somebody offers a dollar a month,

the other party can buy the other amount at the same amount, because the capital -- the contribution in the beginning was different.

And the -- we thought that we should come up with a way to address that.

Q Did you -- and did -- was -- did you have a conversation with Mr. LeGrand about this?

A Yes. And he also said the same thing, that, you know, we need to address so that it would be working, the capital -- the initial capital.

Q Well, did you have a conversation with LeGrand or did you leave him a voicemail?

A I don't remember.

Q Okay. Let's take a look at Exhibit 18, which is a -- it's called -- it's dated September 19th. And it says, "Shawn" -- it says, "Shawn and Ben, I got Ben's voicemail Saturday regarding buy/sell, and I talked with Shawn about that issue. Because your capital contributions are so different, you should consider a formula or other approach in valuing your interest. A simple Dutch auction, where either of you can make an offer to the other and the other can elect to buy or sell at the offered price does not appear

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sensible to me.

"But you are both the clients, and I will write it up as you jointly instruct. I know Ben wants to get this finished. We can talk by phone and figure this out" -- "figure out this last issue."

Were you anxious to get this deal done?

A Definitely.

Q For the same reasons that you discussed earlier?

A Exactly.

Q And take a look at Exhibit 19, which is an e-mail dated September 20. And it says -- it says, "Ben and Shawn, please find the revised OPAG with the new Article 5, Section 5 which sets forth the Dutch auction."

Now, take a look at page -- that portion is on page 12.

And it's at the bottom of page 12, and it says "sales between members." And it goes on to page 13.

Did you -- did you read this section?

A Yes.

Q And did you believe that this -- did you form any opinions or conclusions about whether

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this -- this fit the bill? In other words, it satisfied what -- your idea of what -- what you and Mr. Bidsal agreed to?

A No, it didn't, for the -- for the following reason. Number one, it did not -- I mean, it did eliminate that appraisal and the fair market value, and the -- but I realized that it is not the forced buy/sell at the last paragraph. If the second party was offered, don't do anything, this thing is not enforceable and --

Q So you mean if the -- if the offeree doesn't do anything.

A The offeree, yeah, if he doesn't do anything, the person who made an offer cannot enforce it.

Q You mean there's no mechanism for forcing the sale?

A For force -- exactly. And also it talked about the ratio of capital that we hadn't discussed and was not very familiar.

Q Did you discuss this with Mr. Bidsal?

A Yes, I did.

Q Okay. So tell -- and when did you discuss it with Mr. Bidsal?

A Well, after this and I discussed with

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Mr. Bidsal and I told him that, listen, we all talked about this, everybody knows the problem, everybody knows what we need to do, but the end result is that we still do not have an operating agreement and we need to take care of it. Okay. How difficult can it be? We know the basics. Mr. LeGrand says, okay, the capitals are different, we need a formula. Okay. So let's sit down and work up a formula.

And then there was --

Q And what did Mr. Bidsal say when you said that?

A Pardon me?

Q What did Mr. Bidsal say?

A Mr. Bidsal said, okay, you know, we -- oh, he was busy at that time, and he -- you know, but he would listen to me. And, you know, he said, okay, yeah, there is a formula needed.

And then I asked him, what else do you think is needed? He said that the -- when the offering member offers, if the offer is low and the -- the remaining member doesn't -- is not in the position to buy and has to -- because they don't -- I'm sorry. Because they don't have money, so they have to sell and they have to sell

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at a low price.

So we need to have a mechanism that the remaining member should appraise the property and -- and if the price is higher, the offering member offers at that appraised price so that the remaining member would be protected.

And I thought it was fair, and I said --

Q Well, why did you think it was fair?

A Because if the -- you know, the -- the offering member has the right to -- to offer at anytime they want. They can go spend time, research, find out how much it is, and all of that. And then at that time, when they -- and acquire the money and be ready and offer to the remaining member.

And the remaining member has to come up with money and the price is low. And if they can't, but they really want to, they can so they have to sell it at the lower price.

In that case, to protect them, it's better that remaining member have the opportunity to ask for appraisal. All right?

Q So, I'm sorry, you're talking about if the price -- if the -- if the -- when you say if the price is low, what do you -- what did you

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mean? When you said if the -- if the -- if the offered price is low --

A Yes.

Q -- did you mean low -- what did you mean by that?

A Lower than the regular going market price. And the other guy doesn't have the money but wants to sell, at that time, if you give him a right to appraise, he would be protected.

Q I see.

A That's -- that's the -- that's what the -- he said, and I thought it was a -- it's a good idea. It's a balancing point.

And then there was another issue that I -- these were the main two -- I'm sorry. These were the main two issues, to come up with a formula and to come up with an appraisal for the remaining member. And I discussed it with him, and I said, okay, let's figure out the -- made suggestion, I said, "You know, would you like to write something, and we go take it to LeGrand?" He said, "I'm busy, you write it."

And I went down and I put everything that I just said on the paper. If you look at the -- and I called it rough draft, you know, it's

a suggestion that I have to my partner. And I asked him that -- to take a look and give me -- give me his comments.

Q Okay. So let's --

A And --

Q Let's -- let's move on. Let's turn to the page. Let's turn to exhibit --

A May I say something?

Q Sure, go ahead.

A Yeah. If you look at the -- whatever e-mail that Mr. LeGrand sent on August 18, I took that, the same -- the specific intention or the same -- everything, and I added two -- actually, it was one formula, but then we thought that it's difficult to understand it. I added two formula and appraisal, and that's it.

Q So you said you -- could you -- did you use a prior draft from Mr. LeGrand to help you draft -- to help you come up with the formula --

A Exactly. If you look at it verbatim, you know, the bottom and the top is the same. The two formula and the appraisal is what LeGrand wanted. LeGrand wanted a formula, and we thought it's a valid thing. I did -- I added that.

And the -- also, the appraisal, we --

one thing I would like to do -- to tell you, that the -- on August 18, the appraisal, the offering member had the right to appraise, and we didn't agree with that. All right? We thought that the offering member should be free to make any number that he is happy with, you know, because he's going to either buy or sell.

All right? So that appraisal went to the remaining --

Q You said you -- "we thought." Is this a -- like, a conversation you had with somebody?

A Oh, about the --

Q About the appraisal. You said "we thought." I want to know who is "we."

A No, I'm talking about me and Mr. Bidsal.

Q Okay. And you're saying that you took the -- you took the Section 7 -- you -- are you saying you used Section 7 from the August 18 e-mail that's on page 12 of 29 and used that as a basis for creating -- creating a formula?

A Yes, sir. If you --

Q Well, let's -- we'll get there.

A I'm sorry.

Q We'll get there.

Take a look at Exhibit 20. Okay. Is

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this what you -- is this what you've been talking about?

A That's correct.

Q And -- and it says Section 7. Can you --

A Do you want me to read my e-mail?

Q Okay. You said you -- did you send this -- did you send this e-mail September 20 --

A Yes.

Q -- to Mr. Bidsal?

A Yes.

Q Did he ever acknowledge that he received it?

A We discussed about it many times.

Q Okay. And looking at this Section 7, did -- do you -- what is -- did you use the August 18 --

THE ARBITRATOR: Did you understand the question from your lawyer?

BY MR. LEWIN:

Q Okay. The question is, did Mr. Bidsal ever acknowledge that he received this rough draft?

A Yes.

Q And how did he acknowledge that he

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received it?

A We discussed about it.

Q Okay. So tell me -- when did -- when was the first time you discussed it?

A I don't remember exact date, but I sent a letter, and I called and I said, "Hey, I sent you what we discussed, what do you think?" And he said he was busy; he didn't talk to me for a few weeks.

And then I called and I called, and then finally I got him. And we discussed -- there was a time that we came to Las Vegas together and we were talking about it. And he had questions. I had a copy of this, and I brought it. And we sat down and he went through it, and he had some problems with it, had some questions, that I said, "I will correct and I will send it to you."

Q Well, did -- what were Mr. Bidsal's issues with this rough draft --

A Well --

Q -- that he told you about?

A That he told me about? From what I remember, he liked that -- that we are -- the way -- you know, the appraisal worked, because both parties would seek the appraisal. I put

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three MIA, and then he said this overkilling it, two would suffice. And then on the formula, I have put the FMV minus the cost of purchase, which is the profit, and multiply it by the coefficient of the interest percentage of offering member. And he mentioned to me that it wouldn't be fair to him, because he would get less in since his percentage is 30 percent, and he wanted it to be 50 percent. And I changed it in the next draft.

Q Okay. I want to go -- I want to stop there for a second.

You had -- you had the formula as being FMV, which --

A Fair market value.

Q Which is the price of the cost of the purchase --

A That's right.

Q -- times the percentage interest of the remaining member.

So if you were being bought out, that would be -- what would that -- what number would be in there?

A If I would be bought out, I would be the remaining member. Well, not necessarily. Because offering member -- member could be bought out or

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could also buy.

Q Okay.

A But regardless, if the person -- if I was going to be buying out, the profit would be multiplied by 70 percent.

Q And what did Mr. Bidsal --

A Regardless if I'm remaining or not.

Q So what was your deal with Mr. Bidsal about the division of profits?

A We had agreed to cut it in half.

Q Okay.

A We said that, you know, I put more money because he's working and because he's a specialty and things that he knows that I didn't know. And in return, we take a profit, half-half.

Q Okay. So Mr. Bidsal questioned whether or not that -- that this formula was correct?

A That's right. He -- he told me that is not fair to him.

Q Okay. And did it -- was there any other -- was there any other -- anything else that he objected to in this rough draft?

A He -- he mentioned -- he mentioned probably some comments. I am not -- I don't remember.

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Q Okay. Looking at the rough draft, at the last paragraph on the first page --

A Yes.

Q -- where it talks about the specific intent --

A Yes.

Q -- where did you get that language from?

A As I said, I got it from LeGrand's October -- August 18, Section 7; Section 7, what he calls it, a Dutch auction. And if you look at the numbering, the numbering all is exactly like what he wrote. And on the top -- on the top it says "Purchase to sell right amount," all of them is LeGrand, you know.

Q Okay. So after -- after you met with Mr. Bidsal and went over the rough draft, did you create another draft?

A That's right.

Q And --

A Then I created the second draft that addressed his concern.

Q And that's on Exhibit 22?

A Yes. 21, sir -- no, you are right, 22.

Q And did you -- did you send this to Mr. Bidsal?

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A Yes, I e-mailed it to him.

Q And did you -- and this was the cover letter?

A That's correct.

Q And the second draft says "Rough draft two"?

A That's right. As I said, you know, these were like suggestion. It was, like, you know, because I really wanted to get this thing done and get my operating agreement.

Q So then I see -- what changed --

A So that's why I, you know, rolled up my sleeve and --

Q And I see you made a change on the fair market -- on the formula -- on the formula to provide that he gets, instead of 70 percent, it's 50 percent?

A That's correct.

Q That's in the second.

Did you make any other changes that you can recall?

A The one that I remember -- yeah, I made the appraisal, two appraisals. And then there was this question, by the way, about who is offering member and -- because, you know, the offering

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member offers and the other party can buy or sell, so it was a little bit confusing.

And I tried to -- and, you know, we came up with this -- with this definition. I'm not sure if I talked to Mr. Bidsal about definition or LeGrand, but we came up -- I got some help to do that.

Q And then you -- did you -- did you speak to Mr. Bidsal about this rough draft number two after you sent it to him?

A Yes, I discussed it. The other thing was that I changed the -- the offer from selling to a -- to a second person. I changed it to start the offer with purchasing.

Q I see. And had you discussed that with Mr. Bidsal before you -- before you drafted this?

A Oh, yes.

Q Okay. Tell us -- tell us what -- so that was in the discussion regarding the first draft; right?

A No. Between the first draft and second draft. On the first draft, it was offer to sell, although it didn't matter, because the other party could buy or sell. All right? But I change it to an offer to buy.

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Q And why did you do that?

A Because to make sure that the person who is initiating the forced buy/sell really has thought about it and has the money ready for it. If somebody offers to sell by mistake or, you know, somebody buys this company and there is something between them, they may forget about this idea, and they would say, okay, I offer to sell without having the money available. I did it -- you know, in my mind, I did it so that the person who is initiating this forced buy/sell has the money available, because he has to close escrow in 30 days. And we discussed it among our -- ourselves, me and Mr. Bidsal, and we changed it to offer to --

Q Okay. So was -- how many discussions between draft one and draft two did you have with Mr. Bidsal about this?

A A few discussions.

Q All right. And after -- after you sent this to Mr. Bidsal, did he -- did you have a discussion in which he acknowledged receiving it?

A Yes. What happened -- again, things got delayed. And I called and I said, you know, let's take care of this. You know, right now, we were

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in October, so meaning from May that I have paid my money in good faith until then, my money was the -- I had no papers showing the company was in my name. God forbid if something happened to me or him, who would have been collected, you know, who would have believed all of these things.

THE ARBITRATOR: Did you understand the question that your lawyer asked? What is the question that you think you're answering now, sir?

THE WITNESS: I'm not sure. I just -- I'm telling what --

THE ARBITRATOR: Okay. Let me -- let me --

THE WITNESS: Yeah.

THE ARBITRATOR: -- see if I can help.

How do you know Mr. Bidsal received draft number two? That's what I understood the question to be.

THE WITNESS: Because I talked to him after a couple of days as to -- actually, I believe the same day I called and we had a discussion, lengthy discussion about it.

THE ARBITRATOR: About draft number two?

THE WITNESS: About draft two, that's correct.

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THE ARBITRATOR: Is that the answer to your question?

MR. LEWIN: Yes, that's the answer.

THE ARBITRATOR: All right. Next question.

THE WITNESS: Oh, I'm sorry. I apologize.

BY MR. LEWIN:

Q And did Mr. Bidsal have any further comments about rough draft two after you -- when you spoke to him about that?

A He said he reviewed it and he would talk to Mr. LeGrand about it. And he is the attorney, and return it to him. And that was the whole idea from the beginning.

Q Okay. And did you -- did he ask you to send it anybody?

A Yes. He told me, okay, send it to Mr. LeGrand, and let him -- let him take care of it. His attorney, he has to take care of it. With this, he knows what the discussion is.

Q All right. And did you -- did you send it to Mr. LeGrand?

A Yes, sir.

Q Which document did you send him?

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A I send the rough draft two.

Q Okay. Take a look at Exhibit 23.

A Twenty-first?

Q Twenty-three.

A Okay.

Q It says -- it's a letter to -- it's an e-mail from Mr. LeGrand to Shawn Bidsal. It says, "Shawn, I received a fax from Ben and rewriting it to be more detailed and complete. I will send it out to both of you shortly." And he asked about some money that he was -- billings he was looking to get paid for.

Did you send out -- is this Ben -- take a look at Exhibit No. 48 -- not 48, I'm sorry, 24.

By the way, before we go to that, the fax that Mr. LeGrand is referring to, did you ever fax him anything else other than the rough draft two?

A No, I don't think so.

Q Okay. So take a look at Exhibit 24, if you would. The bottom -- the bottom part of this is an e-mail dated November 10, 2011, from LeGrand to you and Mr. Bidsal. It says, "Gents, here's a revised version of what Ben sent me. I will insert it into the OPAG if these terms are

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acceptable to you." And take a look at the attachment, which is direct -- it says -- his is draft two.

Did you receive this -- did you receive this e-mail from Mr. LeGrand on or about --

A Yes.

Q -- November 10, 2011?

A I did, yes.

Q And did you read -- did you read this draft two?

A Yes.

Q And did -- was it acceptable to you?

A Yes, I think so.

Q Did it seem to be what -- did it seem to be consistent with what you understood your deal was with Mr. Bidsal?

A Yeah, we -- and I discussed it with Mr. Bidsal, also.

Q Oh, you did?

So -- so I see you sent an e-mail to Mr. LeGrand, still back on Exhibit 24, the day after he sent this draft to you, and said, "Hi, it looks good. Please complete and send it to us. Please issue share certificates and send to us" -- "send it to us by UPS."

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You sent that to Mr. LeGrand?

A Yes, I did.

Q Now, in between -- in between your receipt of this -- his rewrite of Exhibit -- of Section 7, and you're saying in this e-mail that says, "It looks good, please complete it and send to us."

Had you talked to Mr. Bidsal about it?

A Yes.

Q Tell Your Honor what that discussion was.

A Well, we discussed that this is a draft that you -- are modified by -- a rough draft number two -- put it draft two. This is the work of LeGrand. And it addressed the -- what we discussed -- what Bidsal and I discussed in having a formula and having the appraisal, and it seemed to be what both partners might want.

Q When you sent the rough draft number 2 to Mr. LeGrand, did you believe that was a draft that you created, or was that a draft that you and Mr. Bidsal had worked on and put it together?

A Jointly, because we discussed that, and he would comment, I would comment. And based on that, I would write it. And that's why I send it

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to him. And if you look at the -- my cover sheet, I said, "Per our discussion." I was -- both of us were open to discuss.

Q Did you -- do you have any legal training?

A No, not at all.

Q Had you ever drafted a -- an operating agreement?

A No.

Q Had -- how many LLCs were you involved with before -- well, you hadn't been involved with this one yet, but how many other LLCs had you been involved with before --

A I was --

Q -- before this -- before this transaction with Green Valley?

A A couple of LLCs, yeah, but never went, you know, so deep into any of that.

Q Okay. So November 11, you're still -- you're still -- you've got your $4 million out there, don't have anything signed?

A Correct.

Q Okay. So then Exhibit -- please turn to Exhibit 25.

Did you receive this from Mr. LeGrand?

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A Correct.

Q And what did you observe about this -- this document?

A I believe that this was a mistake, because it didn't have any of the things that we had discussed in it.

Q So he sent the wrong agreement?

A I think so, yes.

Q Okay. So then look at Exhibit -- so this was sent at 3:40. And then at Exhibit 26, he sends another e-mail to both you and Mr. Bidsal on November 29 at 5:06 that says, "Ben and Shawn, this version has Ben's Dutch auction language and a buy/sell at FMV and a death or dissolution of a member."

And did you look at this agreement?

A Yes.

Q And if you look at page 10, this has -- this agreement -- look at page 10 of 28. There's a section of -- there's a purchase -- even though it's a -- labeled "Right of First Refusal for Sale of Interest by Members," there's a section for purchase and sale by members; is that correct?

A Where are you reading?

Q I'm looking at -- on page 10 of 28 on

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Exhibit 20 -- 26.

A Which -- oh, Section 3?

Q Yeah.

A Oh, okay.

Q But you see it says -- internally it says Section 7.1, 7.2. Do you see that? On Section 4 it says in terms of Section 7.1 it's -- it -- did this agreement still have errors in it?

A Yes, it does have errors, yeah. It does have errors.

Q So then what -- did you have a discussion with Mr. Bidsal about this version of the agreement?

A Well, as to --

Q Did he indicate that he was going to revise this agreement?

A Yes. Yes.

MR. SHAPIRO: Did -- you said "he." The last one was --

BY MR. LEWIN:

Q Did Mr. -- did Mr. -- did you have a discussion with Mr. Bidsal where he said he was going to make some final revisions in this agreement?

A After LeGrand send the -- this revision,

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I inquired about it, that, okay, if -- you know, this should be what we wanted. He -- Mr. Bidsal said he has to find time and revise it and look at it, and if any -- there is any revision required, to do it.

Q Did he indicate to you of how he was going to revise it?

A No. He said that I will check the whole thing.

Q And then take a look at Exhibit 28 -- no, pardon me, Exhibit 20 is -- pardon me.

Exhibit 27, which is an e-mail from Mr. LeGrand to Mr. Bidsal as of December 10 saying, "Shawn, did you finish the revisions? Ben really wants to get this finished."

Were you in communication with -- with anyone about getting this agreement done as of August -- December 10?

A That's -- that's -- yeah. Yes, sir. Yes, sir.

Q And then if you look at Exhibit 29, you finally have an agreement that's signed. And this was -- do you recall when this -- this was signed on -- this is not dated, but do you recall when this was signed?

A End of 2011.

Q Okay.

A There is a -- there is a letter to that effect.

Q And did -- subsequently, did you notice something about this -- since we got involved in this lawsuit, did you notice something about this agreement that you didn't notice before?

A Well, after, you know, the lawsuit and the -- after the -- I looked at the documents that I did not have access before. And after I looked at this -- the signed operating agreement closely, yes, I found things. As I mentioned, everything I did is -- was based on trust. All right? But from the time that David LeGrand sent the final -- his final version until the time that we signed, there were changes that was not communicated with me.

And one of those changes, if you look at all of the operating agreement that LeGrand sent, as me and Mr. Bidsal agreed, it was 70 percent share mine and 30 percent his. And then on the signed agreement, I realized that it was changed to 50/50. It doesn't make any -- probably -- to be honest with you, I'm not an attorney and I

didn't inquire, but this is what change I saw he had made.

Q Okay. Well, take a look at Exhibit --

THE ARBITRATOR: When you say "he had made," who made it?

THE WITNESS: Mr. Bidsal, because he had -- he was in the possession of the operating agreement. I don't think LeGrand --

THE ARBITRATOR: Who prepared the document -- from whose computer generated the -- what you signed?

THE WITNESS: From Mr. Bidsal.

THE ARBITRATOR: So it was not a LeGrand --

THE WITNESS: No.

THE ARBITRATOR: -- document, it was a Bidsal document --

THE WITNESS: Correct.

THE ARBITRATOR: -- according to your testimony? All right. I think I'm getting it now.

MR. LEWIN: Take a look at --

THE ARBITRATOR: That's what --

MR. LEWIN: That's right. That's the point.

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BY MR. LEWIN:

Q Look at Exhibit -- go back to Exhibit 25, the last page, which is Exhibit B. It shows the membership interest at 70/30; is that correct?

A I'm sorry. That is correct, 70/30.

Q And going to -- looking at the Exhibit 29, the last page, which is Exhibit B, shows the -- the membership interest is -- that the ownership interest as being 50/50.

Do you see that?

A That's correct.

Q Now, if there's a profit, it doesn't make any difference. But if there were losses, how would that make a difference?

A Well, that's the second thing I noticed, that I was burdening all the risks from the beginning until the end. And here it says that if you lose, I pay 70 percent of that loss. But if we profit, I get 50 percent of that profit.

Q Okay. Well, going forward now to 2017, the -- was there a point in time where Mr. Bidsal asked if you were interested in investing more money on any more properties?

A Yes, from time to time.

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Q Okay. In 2017, just to put it in some time frame, if you look at Exhibit 30, the time framework here shows that his offer to purchase your membership interest is dated July 7, 2017.

Before -- at any time in 2017 before July 7, did Mr. Bidsal approach you about making further investments?

A Before July?

Q Before July.

A Yes, sir.

Q And when was that?

A Generally, he would want me to invest -- have more investment. And the last one that he asked about some property that he found was probably, like, four or five months before this.

Q And at the time -- and -- tell us about the conversation.

MR. SHAPIRO: Five months before what?

THE WITNESS: Before the July 7 that I got this and -- well, he mentioned that there are opportunity and if I were -- I'm interested to invest.

BY MR. LEWIN:

Q And what did you tell him?

A At that time, I had -- there was not

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