Case Nos. 80427 & 80831

In the Supreme Court of Nevada

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

APPEAL

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

APPELLANT'S APPENDIX
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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

	Authorities in Support of Petition for Confirmation of Arbitration Award and in Opposition to Counter-Petition to Vacate Award			
16	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 1	08/05/19	6	1324–1490
17	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 2	08/05/19	6 7	1491–1500 1501–1702
18	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 3	08/05/19	7 8	1703–1750 1751–1889
19	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	08/05/19	8 9	1890–2000 2001–2114
20	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 5	08/05/19	9 10	2115–2250 2251–2320
21	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 6	08/05/19	10	2321–2468
22	Reply to CLA's Memorandum of Points and	08/26/19	10	2469–2498

	Authorities in Opposition to Counterpetition to Vacate Arbitration Award			
23	Appendix – Volume 6	08/26/19	10 11	2499–2500 2501–2525
24	Supplemental Exhibit to 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	09/05/19	11	2526–2534
25	Recorder's Transcript of Hearing: All Pending Motions	09/10/19	11	2535–2546
26	Recorder's Transcript of Pending Motions	11/12/19	11	2547–2605
27	Notice of Entry of Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award	12/16/19	11	2606–2619
28	Order to Statistically Close Case	12/30/19	11	2620
29	Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	01/03/20	11	2621–2683
30	Affidavit of Rodney T. Lewin, Esq. in Support of Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	01/03/20	11	2684–2709
31	Affidavit of Louis E. Garfinkel, Esq. in Support of Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	01/03/20	11	2710–2734
32	Notice of Appeal	01/09/20	11	2735–2736
33	Case Appeal Statement	01/09/20	11	2737–2740
34	Respondent's Motion for Stay Pending Appeal	01/17/20	11	2741–2749
35	Respondent's Opposition to Petitioner CLA Properties, LLC's Motion for Attorney's	01/17/20	11 12	2750 2751–2879

	Fees and Costs			
36	Petitioner CLA Properties, LLC's Reply in Support of Motion for Attorney's Fees and Costs	01/27/20	12	2880–2889
37	Affidavit of Louis E. Garfinkel, Esq. in Support of Petitioner CLA Properties, LLC's Reply in Support of Motion for Attorney's Fees and Costs	01/27/20	12	2890–2911
38	Supplemental Affidavit of Rodney T. Lewin, Esq. in Support of Petitioner CLA Properties, LLC's Reply in Support of Motion for Attorney's Fees and Costs	01/27/20	12	2912–2919
39	Petition CLA Properties, LLC's Opposition to Respondent Shawn Bidsal's Motion for Stay Pending Appeal	01/31/20	12	2920–2943
40	Affidavit of Benjamin Golshani in Opposition to Respondent's Motion for Stay Pending Appeal	01/31/20	12	2944–2956
41	Recorder's Transcript of Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	02/04/20	12	2957–2990
42	Respondent's Reply to CLA Properties, LLC's Motion for Stay Pending Appeal	02/11/20	12 13	2991–3000 3001–3011
43	Recorder's Transcript of Pending Motions	02/18/20	13	3012–3048
44	Notice of Entry of Order Denying Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	03/05/20	13	3049–3055
45	Amended Notice of Entry of Order Denying Petitioner CLA Properties, LLC's Reply in Support of Motion for Attorney's Fees and Costs	03/06/20	13	3056–3062
46	Notice of Entry of Order Granting Respondent's Motion for Stay Pending Appeal	03/10/20	13	3063–3067

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

23	Appendix – Volume 6	08/26/19	10 11	2499–2500 2501–2525
15	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	08/05/19	6	1321–1323
16	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 1	08/05/19	6	1324–1490
17	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 2	08/05/19	6 7	1491–1500 1501–1702
18	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 3	08/05/19	7 8	1703–1750 1751–1889
19	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	08/05/19	8 9	1890–2000 2001–2114
20	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 5	08/05/19	9 10	2115–2250 2251–2320
21	Appendix to Memorandum of Points and Authorities in Support of Petition for Con-	08/05/19	10	2321–2468

	firmation of Arbitration Award and in Opposition to Counter-Petition to Vacate Award-Part 6			
33	Case Appeal Statement	01/09/20	11	2737–2740
48	Case Appeal Statement	03/13/20	13	3070–3074
14	CLA's Memorandum of Points and Authorities in Support of Petition for Confirmation of Arbitration Award and in Opposition to Counter-Petition to Vacate Award	08/05/19	6	1277–1320
32	Notice of Appeal	01/09/20	11	2735–2736
47	Notice of Appeal	03/13/20	13	3068–3069
4	Notice of Department Reassignment	05/28/19	1	61
44	Notice of Entry of Order Denying Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	03/05/20	13	3049–3055
6	Notice of Entry of Order Granting Motion to Dismiss and Entry of Judgment	06/25/19	1	68–75
27	Notice of Entry of Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award	12/16/19	11	2606–2619
46	Notice of Entry of Order Granting Respondent's Motion for Stay Pending Appeal	03/10/20	13	3063–3067
5	Notice of Entry of Stipulation and Order to Stay Proceedings	06/21/19	1	62–67
49	Notice of Posting Cash in Lieu of Bond	03/20/20	13	3075–3078
28	Order to Statistically Close Case	12/30/19	11	2620
3	Peremptory Challenge of Judge	05/28/19	1	59–60
39	Petition CLA Properties, LLC's Opposition to Respondent Shawn Bidsal's Motion for	01/31/20	12	2920–2943

	Stay Pending Appeal			
1	Petition for Confirmation	05/21/19	1	1–56
29	Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	01/03/20	11	2621–2683
36	Petitioner CLA Properties, LLC's Reply in Support of Motion for Attorney's Fees and Costs	01/27/20	12	2880–2889
25	Recorder's Transcript of Hearing: All Pending Motions	09/10/19	11	2535–2546
26	Recorder's Transcript of Pending Motions	11/12/19	11	2547–2605
43	Recorder's Transcript of Pending Motions	02/18/20	13	3012–3048
41	Recorder's Transcript of Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	02/04/20	12	2957–2990
22	Reply to CLA's Memorandum of Points and Authorities in Opposition to Counterpetition to Vacate Arbitration Award	08/26/19	10	2469–2498
34	Respondent's Motion for Stay Pending Appeal	01/17/20	11	2741–2749
7	Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award	07/15/19	1	76–115
35	Respondent's Opposition to Petitioner CLA Properties, LLC's Motion for Attorney's Fees and Costs	01/17/20	11 12	2750 2751–2879
42	Respondent's Reply to CLA Properties, LLC's Motion for Stay Pending Appeal	02/11/20	12 13	2991–3000 3001–3011
38	Supplemental Affidavit of Rodney T. Lewin, Esq. in Support of Petitioner CLA Properties, LLC's Reply in Support of Motion for Attorney's Fees and Costs	01/27/20	12	2912–2919

24	Supplemental Exhibit to 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	09/05/19	11	2526–2534

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:

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by itself. It could be adversarial or it could be in a friendly manner.

Q Now, you weren't able to fully explain when you were in cross-examination about the two deposits.

Tell us what you meant by the two deposits.

A So basically the procedure -- each platform has a different procedure. The procedure for auction.com is that you come up with a so-called -- either a credit card -- they have three methods of doing it. One is called indemnity agreement, one is called credit card, or you actually send them money.

And it's a small amount. It's 10- or 25- or 50,000 to be able to participate in the auction. And if you are the winner and you don't exercise your right to buy it, then that becomes -- that's a foreclosable amount. In other words, they take your money, 10,000 or 20,000.

So I bought a lot of properties, and every time, before 2011, dealing with Ben or even after, they performed. And so that's one component.

And you also need to have a registered

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company with them. LLC, it's all this paperwork. And also you need to have a proof of funds. And you need to fill out their forms. You basically need to be a part of that platform to be able to bid at the auction.

So I was bidding and purchased a few properties prior to buying Green Valley Commerce. And for that property, I was qualified to bid, so I did bid.

Now, I don't recall whether Ben put the so-called deposit money or myself. I'm assuming he did. And then once you are the winner -- but you have to always be prequalified to bid. In other words, if you are bidding 4 million, you need to be qualified to bid 4 million. And even -- the company was qualified.

You bid, and if you win, there are two procedures if it's a note versus property. Notes are usually a short, 10-day window of closing, because there's no due diligence. If it's a property, they give you 30 days to close. This was a note purchase, so we had to close quickly.

Q Okay. So let's --

A And once you -- once you -- once they approve you, you need to wire the money for the

initial so-called 10 percent. And Ben's money was that first 10 percent.

Q Okay. And why did you use Ben's money?

A He wanted to be a partner, provide funds, that's what we did.

Q All right. And let's look at Exhibit 1. Do you recognize what Exhibit 1 is?

A Yes. Yes.

Q I'm just waiting for everybody to catch up.

THE ARBITRATOR: I'm ready.

BY MR. GOODKIN:

Q Tell us what Exhibit 1 is.

A It's an article of organization in the state of Nevada for Green Valley Commerce, LLC.

Q And did you file this out?

A Yes.

Q Why did you do that?

A We bid -- when we bid, we don't have the company form, so I'm bidding under my own platform under my own entities, not under GVC. So -- because you don't know if you're winning or not yet. I mean, you bid on multiple deals, you win one of so many. So once I win, I know I have the deal in escrow with the platform, the auction.com.

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And this was a short version, a 10-day version or so. So I had to go and immediately form an article of organization and send it to the auction.com to show that them we are taking title or the vesting under this name.

Q Now, did you ultimately submit a document with the Secretary of State showing Ben to be a member?

A Absolutely. So what happens is, the procedure in Nevada, once you form the article, there is a -- the agency who has formed it for you sends you something called the Initial Members List of Managers/Members. So they usually send that a few days later. And once they send that, then I fill it out and I -- and I send it to them.

Q So as you sit here now, there is a document with the Secretary of State identifying Ben as an owner of the property?

A As one of the members/managers of the company.

Q Okay. Now, after you bought the note, did you ultimately subdivide the property?

A No. After we bought the note, we engaged the borrower to see if we can convert that into a property.

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Q Right. Let's go there. Sorry. I jumped the gun. Let's talk about the deed in lieu.

Did you ultimately obtain a deed in lieu?

A Yeah, we -- I worked on it pretty hard.

Q Tell us what you did to obtain a deed in lieu from the borrower.

A This was a CMBS loan, which was foreclosed. There were certain rules and regulations that we had to follow. It was not a balance sheet loan. And we had to follow, based on the CMBS guidelines, where the loan was initiated. So we had to send a letter, a very formal letter, to the borrower, which is probably one of the largest companies in Nevada, Greenspan family, who was the actual borrower, to notify them that -- it's called a letter of negotiation.

And we sent them that letter to formally engage in negotiations. This was --

Q Now, did Ben assist with that letter in any way?

A No. This is different than if it was a regular loan that you could pick up the phone and talk to the borrower.

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Q Now, what was your experience with what Ben was doing at this time with his own work? Was he in textiles?

A Yes.

Q Tell us what that means.

A From what I understand, he owns a company called Novatex at that time, which imports linen products, fabrics.

Q And in connection with this venture you were working with him, what involvement did he have with talking to the borrower to obtain a deed in lieu?

A He did not talk -- I don't think he did talk to the borrower. He might have, but I don't --

Q So tell us what you did.

A I found the deed through auction.com. I introduced it to Ben. He was okay with it. I -- I bid on the deal, of course. Ben was present when we were bidding; and got lucky, we won. And then we started the -- the purchase procedure of the note, which involves getting an Article of Organization, signing a purchase and sale for the purchase of note, wiring the initial deposit, and getting busy and understanding the deed or

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absorbing the deed.

And once we actually owned it, then we start engaging the borrower.

Q And you sent this CMBS loan letter to him?

A We sent the loan. And at that time, David LeGrand was hired to be the attorney to deal with the deed in lieu process.

Q Okay. And did you engage Mr. LeGrand to be the attorney for that?

A So what happened is, before we even start bidding on the Green Valley Commerce, I have a long-term broker in Vegas called Jeff Chain.

Q C-H-A-I-N?

A C-H-A-I-N. I introduced Ben and -- to Jeff in Jeff's office. So he knows that -- who the broker is. And also Jeff was finding us deals, too, and helping us in due diligence, providing broker's opinion of value, part of underlying analysis of the deal.

And he also is the one that when we met in his office -- this is prior to any of these purchases. He introduced us to -- we asked him, do you have an attorney for us? And he says, yes, I have a transactional attorney called David

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LeGrand. So he provided David LeGrand's, you know, business card information and he put him on the line saying that here, here is an attorney for you guys that you can use.

Q And who was on the line with you?

A It was Jeff, Ben was there, I was there, and I think David was on the line. I mean, he just called David to introduce him.

Q Now, let's open up the book to Exhibit 302.

THE ARBITRATOR: The Arbitrator just wants to push the pause button for a second.

MR. GOODKIN: Sure.

THE ARBITRATOR: Based on the testimony, it appears to the Arbitrator that the testimony of Mr. LeGrand was, was that first contact occurred on or about a document of June 27, 2011. We now have Exhibit No. 1, which are the articles of the LLC, where in the upper-right corner it appears that they were filed on 5/26/2011. It now appears, that based on what Mr. Bidsal just testified, that before the filing of the articles, he, Mr. Golshani, and Mr. LeGrand were on the phone having been introduced by Mr. Chain. That's what it appears in terms of connecting the dots.

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So we're -- we're now back at least a month.

MR. GOODKIN: And can --

THE ARBITRATOR: That's what it appears to the Arbitrator at this time. I'm releasing the pause button.

BY MR. GOODKIN:

Q Yeah, let's clarify what the Arbitrator just said.

Is that chronology right?

A Yes, it's prior to that, at least a month or more, but it was prior to getting involved in GVC.

Q So if you look at Exhibit 2, does that support what you're saying? If you see Exhibit 2 -- excuse me, 302, there's a June 13, 2001 -- '11 e-mail from Jeff Chain to you with subject David LeGrand.

And then the third page has a -- also Jim Shapiro's title, but the -- you'll see there's all of the contact information for David LeGrand attached to it.

A Right. Right -- so yes. So Jeff Chain sent V card or business card -- digital business card of LeGrand to -- to me.

Q And did you forward this?

A To Ben? Yes. And also he was there present in Jeff's office when we talked -- when we all talked with Mr. LeGrand.

Q Now, we're talking -- we're not talking about the operating agreement yet. We're focusing just on what you did with respect to the -- the efforts to obtain the property and then later subdivide it. Okay?

A Yes.

Q So tell us approximately when you were able to obtain the deed in lieu for the property.

A I need to look at a document. It took a few months to do a -- a friendly negotiation between me -- part of it, David LeGrand handled the -- the actual grant deed and some of the assignments. I did the negotiations on the business side to -- with Chris Child, which was the attorney for the borrower, and Mr. Paulson, who was the general manager of the borrower.

Q So ultimately you obtained a grant deed for the property so that you didn't have to foreclose on the note, is what you're saying?

A We did a so-called friendly foreclosure. That's what we call it, a deed in lieu, deed in lieu of foreclosure.

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Q And did that happen before you finally signed the operating agreement with Ben?

A That -- yes, that happened before.

Q Now let's talk about what happened next after you obtained title of the property.

What did you do next?

A Okay. Just very briefly, through that negotiations we got a great deal of cash money and -- and the -- I negotiated --

Q Oh, yeah.

A -- that they pay us -- in order not to deal with the unfriendly approach to foreclosure, they have to give us all of the back rents they collected plus other fees. And we collected a good sum of money for the company, for the LLC, through my negotiations.

Q So are you saying, then, that you were able to negotiate not only getting title of the property, but some money paid by the borrower to the company as the lender?

A Correct.

Q Can you estimate approximately how much?

A I have to estimate. I do not remember. Between 70,000 to maybe 150, 200.

Q And what did you do with that money when

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you received it?

A Went to the pot in the LLC.

Q Now, after you got title of the property, what did you do next?

A Well, we worked with brokers, which the primary one was Jeff Chain, and to sell and lease the Green Valley Commerce. So we were able to lease a few of the units that were empty. We were able to also renew and save the rest of the tenants. Because as you go to a foreclosure proceeding, a lot of tenants either don't pay rent or they -- they are ignored by the borrower because the borrower is no longer there; it's a lender. And there's chaos. People do not pay much attention to the -- to the property.

So we cleaned house. We renewed leases. We leased some more. And we start selling -- tried to sell the whole thing. We would not get a good price, because at that time, when you sell the whole property -- especially you're talking 2012, which the market was very low -- you wouldn't -- two reasons: Market conditions, and the other reason is the property was, like, almost half full.

So the investors would dent the price a

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lot under that scenario. So I suggested to Mr. Golshani that the better and the best use of maximizing the return on investment is to subdivide this business part into each separate buildings. And there were eight buildings.

And then I started the process of subdividing it by obtaining surveys, by doing a reserve study, but creating the homeowner -- or in this case, business owner association, which I created a separate association for it. We did a service study work, we did a survey work, and through the help of the surveyor, passed it through the City to automatically subdivide it into eight buildings.

Q Well, let's turn now to Exhibit 334. Now, do you recognize what Exhibit 334 is?

A Yes.

Q What is Exhibit 334?

A It's basically an e-mail from Jeff Chain. Once the buildings were subdivided, we talked of selling the buildings that are full with the reserve in tenancy. The tenant is there and it's a good tenant and it stays there for some lease term, and try to sell it to capitalize on --

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on the investment.

Q Were there also some properties that were empty that were more valuable empty than they would be if they had tenants?

A There are two ways of looking at it. If it's an owner/user/buyer, it has value to the user. F it's a full, then it's based on a capitalization rate. We call it the cap rate.

Q Now, how much did you buy the property for if you take the eight buildings on a price-per-square-foot basis?

A Around $50 a foot.

Q Now, if you turn to Bates page 623, that's an aerial view --

MR. LEWIN: What -- what page are you on? What page are you talking about?

MR. GOODKIN: I'm on Exhibit 334.

MR. LEWIN: Okay.

MR. GOODKIN: Bates page 623.

MR. LEWIN: Okay.

MR. GOODKIN: Are you there?

MR. LEWIN: Yep.

BY MR. GOODKIN:

Q Okay. All right. So is this an aerial view of the eight buildings?

A Yes. And then -- yes. Each building is there; there are eight of them.

Q Okay. So which buildings were you starting to sell after you subdivided the property?

A We sold building -- well, we marketed different buildings, because -- depending on who comes first and we are willing to sell. So we did market all of the buildings. The -- this is the brochure for building -- building D. On each building, Jeff Chain created a so-called brochure based on the broker's opinion of value, based on the lease term, the NOI, the expenses, and the cap rates you can get, and he priced it.

Q Now, how did the broker opinion of value assist you in selling the buildings?

A Basically he's a -- he's a veteran broker in town, a lot of experience, so his opinion we respect. And he came up with prices of how much to ask and he marketed it and we were able to sell one building.

Q And did you share all of that broker opinion of value information with Ben?

A Of course.

Q And did Ben assist you in deciding what

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amount to sell things for?

A No, but I consulted with him.

Q Okay. And ultimately what did you sell?

A We sold -- out of the eight buildings, we sold three of them: Building B, C, and E.

Q Now, in terms of how much money you received, are you able to estimate -- you said you bought it for $50 a square foot.

How much did you collectively sell these things for?

A Well, this building is sold around $121 a foot, almost 240 percent return. This was a full building.

The other two buildings, it was vacant, and we sold them, again, in the neighborhood of about $100, almost doubling the money.

Q And when the money came in, how did you account for it between you and Ben?

A One of the buildings, I think we did an exchange. If I -- I have to check the record. We did a 1031 exchange. I have to revisit the document. But the other buildings we basically used a procedure to pay back the capital and the profit to the partners.

Q And so when you did, in fact, return

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capital -- because, remember, we looked at the operating agreement -- we'll talk about the operating agreement in a second -- but there was a listing of a capital of what was actually put in between the two partners.

Do you remember that?

A Yes.

Q How much of that capital have you already returned to Ben of his capital.

A A good portion.

Q Approximately around 70 percent so far?

A I don't know the exact percentage, but pretty high number.

Q Okay. So a lot of his capital has already been returned to him?

A A combination of capital, plus building profit, plus rent.

Q Yet you still have now six buildings?

A We have five buildings here under this park.

Q And one more in?

A In Arizona.

Q Arizona.

THE ARBITRATOR: Can we push the pause button for clarification?

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THE WITNESS: Sure.

THE ARBITRATOR: Are you saying, Mr. Bidsal, that the return of capital was treated in that way on the books and records of the -- what I'm thinking of as GVC?

THE WITNESS: Yes. The way it works, Your Honor, the capital is booked based on the operating agreement, which is a million 2 and change and 2 million 8 and change, roughly almost 4 million in our books, the company's ledger.

And originally there was two parcels, which we broke those two APNs and converted them into nine APNs, eight buildings and one general parking lot, the parking lot serving all eight buildings. Okay. That has the least amount of value because it's a parking lot. The real value goes to the buildings.

Accounting-wise, each building is also broken again, one more time, into two components. One, improvements, and one, the land under that particular APN. So now we are dealing with 17 valuations; 16 for eight buildings -- buildings and land -- and one general parking lot.

When we sell a building, we are not selling the parking lot. The parking lot is in

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the control of HOA, homeowner's association for the park. We are selling the improvements and the land under it per building. So if you sold three buildings, we sold six components of that, three lands, three buildings; essentially, three properties. Okay?

THE ARBITRATOR: Am I still waiting to hear about how -- how the --

THE WITNESS: This was -- Your Honor, this was required --

THE ARBITRATOR: -- the return to capital is going to to be treated?

THE WITNESS: Yes, Your Honor.

THE ARBITRATOR: Okay.

THE WITNESS: This was required to get to that. I'm sorry, but --

THE ARBITRATOR: That's all right. Backstory is fine.

THE WITNESS: Backstory to get to that.

So the accountant, the outside CPA, takes the total capital, and based on the square footage of each building, which is different, he assigns each APN a value. So let's say building E, $500,000 for land, $300,000 for building. Okay? So that initial is now broken up into all

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these components.

When we sell a building, we return to the partners, based on the 30/70 ratio, the capital portion of that sale proceed. The remaining is profit, the remaining profit is returned 50/50.

So let's say we sell building E, as an example, and we sold it for a million dollars. Let's say the base cost for that building is 500,000. We return that 500,000, 30/70, two checks; one to me, one to Ben. Then we take the $500,000 profit remaining, we also cut two more checks, 50/50; we return that, too.

THE ARBITRATOR: I think I understand. Let's go back to your examination.

MR. GOODKIN: Thank you.

BY MR. GOODKIN:

Q Now, when you sold these properties, did you do it with the approval of Ben?

A Of course.

Q And why did you go to the open market as opposed to selling directly to Ben?

A We wouldn't be -- the idea or discussions we had with Ben was to maximize the profit to put in the open market.

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Q Now, let's talk about the creation of the operating agreement that we were talking about earlier.

A Okay.

Q Let's go to Exhibit 303.

There was discussion about an operating agreement being sent to a Mr. LeGrand from you. Tell us the circumstances which led to that being sent.

A I asked Jeff Chain to give us -- to give me and Ben a so-called draft or -- I call it a draft operating agreement, a sample, a template operating agreement. And Jeff e-mailed me a -- one operating agreement that he calls it GC, LLC. And this LLC is basically -- is a form LLC. It's just -- it has all the captions and language, but it doesn't have the date or anything, the information about the parties.

So that was provided by Jeff Chain, and that was forwarded -- we call it the long version, investment LLC, to -- to Ben. I got it from Jeff and then I forwarded it same day, ten minutes later, to Ben.

Q So just so the record is clear, this is not an LLC agreement that you used previously?

A No.

Q No, I'm right?

A You are right, I'm not using this.

Q All right. So we're going to now fast-forward and bypass all of the various iterations of the David LeGrand version and go to the fact that -- and let's go to Exhibit 316.

A Wait a minute. This was also sent to David LeGrand. Not only to Ben, but also to David LeGrand.

Q Oh, okay. I see. Yeah. Thanks. And we were referring to Exhibit 302.

A 30 -- 303.

Q 303.

Now let's go to Exhibit 316.

MR. LEWIN: Hold on a second. Okay.

MR. GOODKIN: Your Honor, I'm accelerating this because we've spent so much time talking about all of the drafts. We don't need to go over it anymore.

THE ARBITRATOR: No need to feel under any pressure or any indication from the Arbitrator to accelerate. It's all up to you.

MR. GOODKIN: Okay.

MR. LEWIN: I want you to accelerate,

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though.

THE ARBITRATOR: You may want to confer with Mr. Lewin. I did not hear what he said, but I think his body language --

MR. SHAPIRO: He said, "I want to accelerate it."

MR. GOODKIN: He doesn't mind.

THE ARBITRATOR: And Mr. Shapiro, I think, has also given an indication. Go ahead.

BY MR. GOODKIN:

Q All right. So, Mr. Bidsal, you testified that you received Exhibit 316.

Do you remember that?

A Yes.

Q And if you look at the first paragraph of Exhibit 316, the second page where it says "Rough draft," Section 7, it specifically says "is willing to sell."

Do you see that in the first line?

A Page 2?

Q Yeah.

A Yes.

MR. GOODKIN: No, the -- page 2 of the exhibit, page 1 of the document.

THE ARBITRATOR: Okay. Got it.

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BY MR. GOODKIN:

Q Okay. Right here it says "willing to sell" in the first line.

Do you see that?

A Yes.

Q Then go to the second page, and you see where it talks about "willing and able to sell"?

A Yes.

Q That's in the first two paragraphs?

A Yes.

Q Now, let's turn now to Exhibit 319. Now, I want to direct your attention to the exact same portions of the agreement.

MR. LEWIN: I don't want to make waves, but why are we using -- I had questions about our exhibits. These are all marked. Is there a reason why we're using two different sets, two different numbers?

THE ARBITRATOR: Let's let them do that. And it would be helpful at some point, maybe in the closing briefing, where if you feel it's helpful to say Exhibit so-and-so in claimant's is the same as Exhibit so-and-so in respondent's. That will make it easier. But let's let them have the prerogative of using their own numbering

system.

MR. LEWIN: All right.

MR. GOODKIN: I want this to be as efficient as possible. The last exhibit we were using, Exhibit 316, is the same as Exhibit 20, for the record. And Exhibit 319 is the same as Exhibit 22.

BY MR. GOODKIN:

Q Now, referring to Exhibit 22/319, the exact same paragraphs that we're talking about before with respect to the -- the rough draft, now we're going to talk about rough draft two.

And in that first line where we said "willing to sell," it now says "is willing to purchase."

Do you see that?

A Yes.

Q Now, going down to the next paragraph, do you see where it says "Who offers to purchase"?

A Yes.

Q And if you go to the first page of Exhibit 319 or Exhibit 22, there's an e-mail that says, "Shawn, here is the agreement we discussed."

Do you see that?

A Yes.

Q And the changes made in rough draft two from rough draft one were as a result of your conversation; right?

A We had conversations, yes.

Q Okay. And then you said you had conversations with Ben about the terms of the buy/sell provision. So I want to -- instead of going through the specific language here, just I want to explore what your conversations were.

When did you have conversations with Mr. -- with Ben about the terms of the buy/sell provision?

A We had it over a course of, like, a few months towards the end of 2011.

Q Where were those conversations?

A Either on the phone or in my office.

Q Was there a way of estimating how many conversations you actually had?

A I would say a few on the phone and two or three in person in my office.

Q Approximately what time would these meetings happen in your office?

A At the end of the day. Because during the day, you know, we were busy, so ...

Q Okay. And when you say "your office,"

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where was your office?

A In Van Nuys, in Los Angeles.

Q Did Ben go to your Las Vegas office?

A No, to Sherman Oaks, Van Nuys office.

Q And do you remember what Ben would bring when he came to your office to talk about the terms of the buy/sell provision?

A Ben would bring a copy of the document and plus a copy of the operating agreement.

Q And did he have a folder with him?

A Yes, he usually come with a folder.

Q Why was that something you remember?

A Because that was the -- he would bring it in to sit down and to go over the points.

Q And what do you recall going over with Ben in terms of the points?

A Different discussions about different parts of it. And at one point in time, David LeGrand, you know, earlier on was working on parts of it to correct. Like, having two members, two manager members, to having a deadlock language, arbitration language, which was all done.

Later on, David LeGrand put a so-called first right of refusal language, which stayed throughout these revisions for the most part. And

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toward the end of the year, we were dealing with this plus a hard copy version of the latest operating agreement.

Q And how did you have a conversation with Ben about the hard copy version of the buy/sell?

A Of the buy/sell or the --

Q The buy/sell.

How did you bring it up? Would you discuss it by way of what is -- how did you discuss it?

A We discussed it, about different rights of the parties under different scenarios, the so-called -- we called it what if this happens, what if that happens, how would you -- how would you approach it.

Q And what do you remember discussing with Ben about the what-ifs?

A So basically he wanted to have protections for the other side and have a scenario of, you know, fairness, equity and fairness, so nobody loses out to the other one, so both people are kind of protected.

So basically, one tries to buy under this thing. So he makes an offer to buy. We call it purchase. So when a person makes an offer to

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purchase, he has a number in mind, whatever he's -- he's thinking, his estimate of value is, however he obtained it, that's his number. He's willing to buy it, he got the money, so that's his deal.

The other side looks at it. If he's willing to sell at that number, we are done. That's the end of the story. There's no problem.

He basically says, okay, you know what, I'm good with it. I'm going to sell it to you at this price.

If he's not -- if he's not happy with that number and he wants to get more money or make a counteroffer, then he would go -- he would go to an appraisal process. And initially we talked about having three appraisers, MIA appraisers, qualified appraisers; and one I select, one he selects, and then there's a third person selected.

Everybody gives -- two appraisers come in first, goes to the third one, and -- and he makes the final value, and then both parties buy at that value. That was too cumbersome; that's an overkill. As Ben puts it correctly, it's an overkill.

So we said, okay, why don't we go with

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two appraisers, one you choose, one I choose. And we got two numbers, we just basically -- rather than a third one, we take the medium of those two numbers. They shouldn't be that far apart. I mean, appraisals are appraisals. And we take the medium, that becomes the appraised value, and that becomes the FMV that the other party can look at.

Okay. So we massaged the language in our conversations, and that was -- there were meetings about that. So going back to where I started, if somebody wants to buy it, he makes an offer, the other side wants to sell at that number, we are done, it's over.

If the other side says, no, I'm going to make a counteroffer to you, I disagree with you, then we go to an appraisal process to determine the FMV, the fair market value, by appraisal. And that was the procedure put in to have two appraisers to create a happy medium and go to that number. So that way parties are protected.

There was no scenario where one person gives an offer to purchase at a number and the other side says, you know what, I'm twisting it around, and I'm going to make a counteroffer at that number, and I'm going to buy that from you,

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that same number. That was not agreed on. That was not discussed. There were safeguards put in. The safeguards, or so-called protections, was going to an appraisal.

Q Now, there is e-mail that was shown to you, Exhibit 41.

A Yes.

MR. LEWIN: It should be at the -- I think I put it at the end of the witness book.

THE WITNESS: Thank you.

MR. LEWIN: It's not tabbed. I'm not as efficient as Mr. Shapiro. We can't afford tabs.

THE WITNESS: Yes.

MR. SHAPIRO: You're being friendlier to the environment.

MR. LEWIN: That's right.

BY MR. GOODKIN:

Q Do you remember ever telling Mr. LeGrand that you personally were doing revisions as opposed to the collective both of you doing the revisions?

A I never told him I'm doing the revisions, no.

Q And when you said the operating agreements are finished, was that saying to him

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that you did personally any changes to the agreement?

A I did not make any changes to the operating agreement.

Q And tell us how you came to finalize the agreement with Ben.

A There were discussions when Mr. Lewin asked me that -- or actually, I think Ben testified that they used my computer to come up to the final signed draft. That is not the case. Mr. Ben brought in hard copies with him when we met. We would go over it, we would discuss it, we would comment back and forth, and he would take it back, come back a few days or a few weeks later, we would look at it another round, up to the point where it got -- we both were happy with it and it got signed in my office.

Q Okay.

A Okay. So I did not -- it was not a download from a computer. It was brought in by Mr. Golshani.

Q Okay. Now, let's turn to Exhibit 343.

THE ARBITRATOR: Is it a correct understanding of what you just testified that your computer never generated a draft or the signed

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copy of what is Exhibit 29?

THE WITNESS: My computer did not generate a signed copy of Exhibit 29.

THE ARBITRATOR: Or any draft?

THE WITNESS: To print it out?

THE ARBITRATOR: Did it generate any draft other -- of any kind?

THE WITNESS: No.

THE ARBITRATOR: So no draft. But did you have --

THE WITNESS: I did not --

THE ARBITRATOR: Did you have it in your computer as a download at all?

THE WITNESS: We had drafts of the -- many drafts of the document in the computer. When you receive an e-mail, it comes with an attachment, so it's there.

THE ARBITRATOR: Was it only there as an attachment or did you download it to make it a working copy from your computer?

THE WITNESS: I'm sorry?

THE ARBITRATOR: I'm only an apprentice when it comes to understanding these things.

But is there a difference between having something as an attachment and actually

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downloading it so you can actually save changes to a document in your computer --

THE WITNESS: Yes, you can. You can --

THE ARBITRATOR: -- as a different document?

THE WITNESS: You can -- you can download the attachment and save it into your files.

THE ARBITRATOR: Did you ever save an attachment to -- in your computer?

THE WITNESS: I open it up, and when it opens it up and saves it, yes.

THE ARBITRATOR: Did you ever make any modifications in your computer of any attachment?

THE WITNESS: No.

THE ARBITRATOR: All right. That's the clarification. Thank you.

THE WITNESS: Which page?

MR. GOODKIN: We finally got there.

BY MR. GOODKIN:

Q Let's go to 343.

MR. LEWIN: Your Honor, I have an objection to this line of evidence, talking about a different agreement that's two years after the -- after this is signed. I don't see the

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relevance. This operating agreement never -- was never changed.

THE ARBITRATOR: I'm permitting this to go. Overruled if it's an objection on relevance.

Please proceed.

BY MR. GOODKIN:

Q Do you recognize this as an e-mail you received from David LeGrand on June 19, 2013?

A Yes.

Q And it's referring to a operating agreement for a Mission Square.

Do you see that?

A Yes.

Q Just for background purposes, what is Mission Square?

A It's another LLC that I jointly own with Ben.

Q And was the LLC agreement created after the LLC agreement was created for Green Valley?

A Yes.

Q And I want to direct your attention to some language in this e-mail where it says, "Ben and Shawn, attached please find a new OPAG for Mission Square. Apparently there was a little confusion about which GVC OPAG I was to use as a

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base document. The revised version is based on the GVC OPAG that has Ben's language on buy/sell."

Do you see that?

A Yes.

Q What did you understand was being put in this agreement when it says "Ben's language on buy/sell"?

A It's the language that Ben, over the course of several drafts, perfected. Ben was basically in charge of these changes. He was spearheading these corrections and these revisions. So David is referring to -- Ben's language is referring to what Ben was doing with the revisions of the Section 4.2.

Q Did you ever receive any sort of e-mail objection from Ben to this being called "Ben's language on buy/sell"?

A No.

Q Now, when you sold properties that were part of the Green Valley group of properties, what formula, if any, did you use that was in the operating agreement to figure out how much to allocate between the two of you?

A That was Exhibit B, which is the last page of the operating agreement.

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Q Now, we talked a little bit about your offer to purchase a 5 million.

Now, that's not the final amount for the remaining member's share, is it?

A No, that's the company value.

Q Okay. And so if that was to be accepted by Ben to actually sell it to you at 5 million, how would the formula work?

A You basically return the capital, and -- based on what they put in. And again, when you return the capital, you return the remaining capital. And the -- the balance that is left over, you divide up 50/50.

Q Now, why did you initiate the process to buy the property?

A Basically, I wanted to, you know, finish this deal and move on to the next one. We are -- I didn't want to manage this property any longer.

Q And just so it's clear for the record, why did you use the $5 million number?

A I look at the -- I briefly looked at the financials of the property. I just made a -- an estimate of what I think was a fair value and came up with that.

Q And then there was a response to the

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letter, and then there was another response to the letter -- and we don't need to go to those because we all know what they say.

The question is, why did you say to Ben that he needed to initiate the appraisal process or that you were exercising a right to initiate the appraisal process?

A Because he made a counteroffer. And according to the operating agreement, Section 4.2, you make a counteroffer, you need to go to the FMV, and FMV is defined based on two appraisals.

Q Now, I want to make sure it's clear.

You had previously shared all this information that you looked at that you had from past history with Ben about efforts to try and sell the property and what they were worth; right?

A Yes.

Q And let's talk about this meeting at the coffee shop.

When did the meeting at the coffee shop happen?

A It happened sometime in -- I think July or August. Actually, I think it was probably in August. It was after Ben obtained the -- the appraisal, the one that he ordered.

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Q Now, let's turn to Exhibit 42.

MR. LEWIN: It's in the back of your book, Your Honor. The back of our Exhibit book, not tabbed, but it's the last page, I think.

BY MR. GOODKIN:

Q You received this e-mail on or about July 21, 2017.

A Right.

Q And this is before Ben got his appraisal?

A I don't know when he got his appraisal, but it looks that way.

Q And you provide the information relating to the condition of the property and financials in response to this e-mail; right? Do you see where it says "get some information for myself"?

A I don't recall whether it was in response to this one or -- or a telephone conversation, but, yes, he just asked for the property condition and he wanted financials, which are -- which my office e-mailed it to him and I wrote him an e-mail describing what I know about the property.

Q So you gave him all of the information about the financials that you had in the past, the

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condition of the property, yet when you asked for a copy of the appraisal, what did Ben say to you?

A He didn't provide it.

Q Did he say anything to you?

A No. I mean, we talked about it, and I asked for it, give me a copy of it, and he never did.

MR. GOODKIN: Okay. Your Honor, can we take a short break?

THE ARBITRATOR: Sure. Can you give me the reason for the break?

MR. GOODKIN: I'm almost done, and so I wanted to make sure with counsel that --

THE ARBITRATOR: Should we stay in place?

MR. GOODKIN: Yeah. I need two seconds.

THE ARBITRATOR: All right. Two minutes, staying in place. Off the record.

MR. LEWIN: Well, I'm going to want to take a five-minute break, so --

THE ARBITRATOR: Let's conclude --

MR. LEWIN: Okay.

THE ARBITRATOR: -- the direct --

MR. LEWIN: Then I'll just wait here.

THE ARBITRATOR: -- and then take -- if

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that's not asking too much.

MR. LEWIN: No, I'm good.

THE ARBITRATOR: This is not a test. Off the record.

(Whereupon, a recess was taken.)

THE ARBITRATOR: Back on the record.

MR. GOODKIN: Your Honor, I have no further questions.

THE ARBITRATOR: Thank you. We'll now take a 5-minute -- what is otherwise known as the Haberfeld five. See you back in ten.

(Whereupon, a recess was taken.)

THE ARBITRATOR: All right. Back on the record.

RECROSS-EXAMINATION

BY MR. LEWIN:

Q Okay. Good afternoon, Mr. Bidsal.

First of all, I want to congratulate you on the great job you did on subdividing the properties.

But would you say in terms of sophistication, the -- between you and Mr. Golshani, that you're much more sophisticated when it comes to real estate matters?

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A I don't know his limit of sophistication. He has a lot of properties, too.

Q But you heard him say that one of the reasons that he invested with you is because he relied on your expertise and your experience and your knowledge. You heard him say that; right?

A Yes, but also a good portion of it is my infrastructure in the company, having the tools and having the personnel to do the management.

Q I see. Now, you said that right now you have about -- you only self-manage about 20 percent of your company. You hire outside management companies to manage your other properties?

A Yes, I do.

Q What is a typical management fee? Wouldn't it be in the range of 5 percent or 6 percent of gross income?

A Correct.

Q Okay. Now, in your dealings with Mr. Golshani, he agreed to give you 20 percent; right?

A How do you calculate that?

Q Well, if it was 50/50 -- let's talk about this in net profits. You know, capital is

one thing; everyone has their capital. But the net profits, instead of being divided 70/30, are being divided 50/50; right?

A Yes.

Q And that 50 percent gives you a 20 -- gives you 20 percent more of the net profits than you would -- or be entitled to if you were just basing it on capital; right?

A Correct.

Q And that was -- that 20 percent was to compensate you for your sophistication, your skill, and your infrastructure; isn't it true?

A That's only one component. The management is only one component of what I did for the company.

Q That's right. So you got more than 5 percent. You got an additional 15 percent.

A Yes, but I also leased the vacancies in our -- in-house without charging the 6 percent of the entire gross income of -- of a tenant. So if a tenant signs a five-year lease and he's paying, I don't know, $5,000 a month for five years, that's -- that's a $300,000 contract; 6 percent of that, that's $18,000 which I'm saving the LLC. That's just one tenant. And I brought multiple

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tenants over the course of years.

Q You're saying you also hire outside brokers; right?

A Okay. In some instance --

Q Please answer my question.

A Yes, I do.

Q I want to get through this.

A Yes, in some instances we do.

Q I'm entitled to a -- I'm entitled to a direct answer, so please answer my question without a speech, if you don't mind. Okay?

A Sure.

THE ARBITRATOR: Let's not have any argument back and forth. The only thing I would ask is to please recall the conversation we had at the outset where you heard and understood, didn't have any questions then about your responsibilities as a witness on cross-examination. I feel obliged to remind you about that conversation now. Please help us out. Go ahead.

BY MR. LEWIN:

Q How much -- how much profit have you been paid -- not talking about any return on capital. How much profit have you been paid based

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on the 50 percent -- or 50 percent share of the profit since you bought Green Valley?

A I don't have the numbers in front of me, but --

Q Yes, sir. It's approximately $1.2 million; it that correct?

A I don't have the numbers in front of me.

Q Does that sound like the right number?

A Honestly, I don't want to say something that I don't have it in front of me.

Q You don't have any idea?

A We did good. We made a lot of money, yes.

Q You don't have any idea?

A Dollar-wise, no, I don't have it.

Q Is it more than -- would you say it's more than a million dollars, without having to look at your records?

A For the Green Valley Commerce?

Q Yes.

A Might be, yes.

Q Okay. That's a fair estimate; right?

A Yes.

Q Okay. And -- and so -- and 20 -- and an additional 20 -- so you would -- that's based on

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the 50/50 split; right?

A Yes.

Q Okay. Now, you talked about the two deposits, and you said that you can use a credit card, but they don't really take the money out unless you default; correct?

A Correct.

Q But they do block -- it's like when you -- when I go to check into a hotel, they'll take a, you know, in my case, an extraordinary high amount of the block on the credit card because they don't trust me. But they do block an amount, they do block an amount on the credit card; right?

A For a couple of days, yes.

Q Yeah. And you said -- and you said that it's basically somewhere between 10- and $50,000; correct?

A The amount of the credit card is somewhere between 10- to 50,000 for a few days, yes.

Q All right. And that credit card is at risk in the event that no one followed through; right?

A Yes.

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Q Now, going on to the David LeGrand deal, you said that -- by the way, Mr. Chain is -- is in town; right?

A He's from Las Vegas, yes.

Q So if you wanted to have him come in to talk about the conversation that you claimed took place on the telephone with Mr. LeGrand in some time before -- before May 26th, you could have had him come in to testify about it; right?

A Yes.

Q Okay. In the meantime, you said that before you formed the LLC, that Mr. Chain introduced you and Mr. Golshani, he gave you the telephone numbers, and had a conference call with Mr. LeGrand; right?

A Yes.

Q And this was before you succeeded in any bids on any property; right?

A No, this is before we buy Green Valley Commerce, prior to that day.

Q So you had not been successful in getting any bids whatsoever; right?

A Yes.

Q And did I -- and then you said -- and I'm looking at -- and so you're talking -- then

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you said that Mr. LeGrand -- pardon me, Mr. Chain sent you an e-mail on Exhibit 302 where he gave you Mr. LeGrand's contact information.

Do you see that? And that's --

A Yes.

Q And he gave you that -- he sent you that e-mail on June 13, 2011?

A Correct.

Q That was well after your bid to Green Valley had been accepted; right?

A Yes.

Q Well after Mr. Golshani had put up his $404,000?

A Yes, sir.

Q And after close of the escrow, which took place on June 3rd, 2011?

A Okay.

Q But I note -- so since Mr. -- can you explain why -- well, let me -- let me just say, I thought you had already been introduced to Mr. LeGrand prior to March -- or prior to May 20.

Why are you getting this information now?

A We were introduced on the phone in Mr. Chain's office.

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Q Okay. And I note you don't -- you forwarded this -- you didn't forward this e-mail from Mr. Chain to Mr. Golshani, did you?

A I don't have a copy of the forwarding, but I did forward it.

Q All right. But you don't -- but you don't have any evidence of that here today; right?

A Not in the e-mail chain.

Q I see. Now, the fact of the matter is, is that Mr. LeGrand said he didn't -- he didn't even know Mr. Golshani's last name until sometime after June 27th. And he said you didn't -- there was no telephone call with Mr. LeGrand before May 20, 2011.

You just made that up, didn't you?

A No.

Q Okay. Now, but Mr. Chain is a good friend of yours?

A I haven't talked to him for a couple of years, but we used to do business. The last business we did was for the Green Valley Commerce.

Q And the -- was that when -- did you give him the listing for the sale of the property?

A The building -- one of the buildings, yes.

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Q And you said -- and I think you said that -- that he was a veteran broker and that you valued his opinion.

Did I hear you correctly?

A Yes, he's -- he's a good broker.

Q And you valued his opinion in July 2017, didn't you?

A July 2017?

Q Well, you valued his opinion in listing the property for sale in March of 2017; right? Yes or no?

A You're confusing the brokers now. Jeff Chain works for a company called Millennium Properties. What you're referring to in 2017 is an entirely different marketing company called Cushman & Wakefield.

Q All right. So did you -- did you -- but did you rely on those brokers in setting the price?

A Which one now, Jeff or --

Q The Cushman & Wakefield brokers.

A Initially, yes.

Q You thought they were veteran brokers, as well; right?

A No, they are actually -- they're two

ladies with less experience.

Q All right. Now, looking at the Exhibit 303, why were you -- why were you getting an operating agreement from Mr. Chain when you had many operating agreements that you were already a party to that you had used in the past?

A The operating agreements that I had are very limited, simple, which we used mostly for California properties. We wanted an operating agreement that is more comprehensive.

Q And instead of asking Mr. LeGrand for a -- to prepare an operating agreement that he customarily used, you wanted him to use -- you forwarded this operating agreement of GC LLC to Mr. LeGrand and told him this was what you wanted him to use?

A We forward --

Q Is that a yes or no, sir?

A Yes, as a template, yes.

Q Did you read this operating agreement before you forwarded it to Mr. LeGrand?

A Just briefly looked at it.

Q Did you ask Mr. Golshani if you should forward this operating agreement to -- to Mr. LeGrand?

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A I think we already forwarded it to --

Q Did you ask -- did you ask Mr. Golshani if you should use this operating agreement as a template?

A I don't remember if I specifically asked him that, but --

Q Okay.

A -- he was aware of it.

Q Okay. We're coming -- we're getting closer to -- we're getting closer to the end.

If you'll turn to Exhibit 20. You were asked about the words where it says "willing to sell."

Do you recall that?

A Yes.

Q Looking just -- by the way, you graduated from UCLA with a -- what degree did you have?

A Mathematics and computer science.

Q Did you take any business courses?

A No.

Q Anyway, going on, Exhibit 20, so you were asked some questions about the words "willing to sell." I just wanted to ask you a question about the words in the bottom line of the -- on

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the sentence at the bottom of this page on the first -- on the rough draft where it says, "the offering member shall be obligated."

A Which -- I'm sorry, which area?

Q You're looking at the last paragraph on page -- it's actually page 2 of the Exhibit, but it's the last paragraph, where it says "the specific intent of this provision."

A Okay.

Q Now, and it says "shall be obligated."

You understood what the word "obligated" meant; right?

A Yes.

Q Okay. And looking at Exhibit 20 -- 23, again, looking at the -- looking at the second page of the rough draft, rough draft two --

A Page?

Q It's actually the third page of the exhibit, where it says --

A Are you at 23?

Q I'm at 23.

MR. SHAPIRO: There's only one page.

BY MR. LEWIN:

Q I'm sorry, 22. I beg your pardon.

I'm looking again where it says on the

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last -- on this paragraph which is the full -- the last full paragraph on the page where it says, "in part, the offering member shall be obligated to sell."

A Are you on --

Q I'm on page 3.

A Page 3. Okay.

Q Okay. See where the part -- see where it says -- the paragraph that starts with "specific intent"? Are you following me? Are you with me?

A Yes. I got it. I got it.

Q Okay. If you look at -- if you look at the third line in that paragraph, it says, "The offering member shall be obligated."

You understood what those -- you understood what those words meant; right?

A Yes.

Q Okay. And -- and not to beat a dead horse, but on the -- but you recognize those words are in the operating agreement that you signed; right? Yes or no?

A The words, yes.

Q Okay. Now, when you were meeting with Mr. Golshani about these rough drafts, rough draft

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one and rough draft two, he was frustrated with the process of getting this operating agreement finished; right?

A We both wanted it to get finished.

Q Didn't he tell you that he felt vulnerable because he had $4 million out there and he didn't have a piece of paper that actually showed that he was an owner? Didn't he say words to that effect to you?

A I don't recall.

Q Well, did you have any questions about --

A He was frustrated and unhappy that it was not done, and I was the same, yes.

Q And didn't he tell you that he was -- he felt vulnerable, words to that effect, because he had $4 million out and didn't have a piece of paper showing he was an owner of Green Valley or Country Club?

A I don't -- I don't recall if he said he was vulnerable, but he had the initial members list that was filed at a later date soon after the -- this had his name, too.

Q That's also not here; right? There's not evidence of that here; right?

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A No, it's not -- no, it's not here.

Q Okay. So just a couple more questions.

THE ARBITRATOR: Let me push the pause button.

Is that matter not of record?

MR. LEWIN: I believe it's of record. I --

THE ARBITRATOR: Have you done any research on --

MR. LEWIN: I don't know one way or --

THE ARBITRATOR: -- do you know whether he was shown or not?

THE WITNESS: We can provide it to you.

MR. LEWIN: I don't know one way or the other --

THE ARBITRATOR: All right. Let's go back to cross. Very well.

MR. LEWIN: I don't know one way or the other whether that's the case.

MR. GOODKIN: Well, it's public record. We can get it if you want.

BY MR. LEWIN:

Q But my point is, is that -- and you knew that you had -- that you were the experienced real estate guy, and that's where you're getting the

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additional 20 percent, to put all this together; right?

A Yes.

Q Because you had all of the mechanisms, you had all the contacts, you had much -- all the experience, or much more experience; fair enough?

A Okay.

Q Okay. Well, my question is, why didn't you -- why didn't you write these -- these drafts?

A Ben took the lead on that. He took the initiative to do it and continued doing it.

Q Okay. Fair. I'll accept that.

Oh, and when you were going over the -- the drafts of the language and actually the operating agreement, you carefully read the formula for the -- for the sale -- the disbursement on the sale; is that correct?

A The disbursement -- you're referring to Exhibit B?

Q I'm talking about the formula that is in Exhibit 29, about how the -- how the price is to be paid.

A Which page?

Q On page -- you know, in the section that we've been talking about, Section 4. There was a

formula where -- there's a formula there as to how to compute the actual price that is going to be paid depending on who buys.

Do you know what I'm talking about?

A Okay.

Q And you read that formula?

A Yes.

Q And you approved it?

A Yes.

MR. LEWIN: I have nothing else. Thank you very much, Mr. Bidsal.

THE WITNESS: Thank you.

THE ARBITRATOR: Anything on redirect?

MR. GOODKIN: Yeah, let me just clarify a couple of things.

REDIRECT EXAMINATION

BY MR. GOODKIN:

Q I want to focus now just on the 5 percent discussion you had.

You're familiar with asset management fees?

A Yes, I am.

Q And are they approximately about 1 percent of properties?

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A One or 2 percent of the properties, yes.

Q All right. In addition, people in your position sometimes make those asset management fees in addition to the property management fees?

A Yes. Basically that's the -- not off the -- it's actually off the gross number of the -- the value of the property.

Q Right. And then in addition, some people in your position get construction management fees?

A Yes.

Q And what are those typically running about?

A Construction management is about 5 to 10 percent of the amount of work you do on a property.

Q For construction?

A For construction. And if it's for a tenant improvement, our leases have another 10 percent built into the leases, in addition to the 5 percent, which we do collect both numbers.

We actually collect from our leases a 5 percent and a 10 percent, 10 percent being related to the actual material we buy or the expenditures. We collect 10 percent of that. And

then we collect an additional 5 percent management fee. Both of them goes into the pot of the LLC.

Q And let me make that clear.

With respect to the 5 percent property management fee, that's a fee you actually pass on to the tenants; right?

A Yes.

Q And that 5 percent is paid by the tenants to you?

A To the LLC.

Q And, in fact, the LLC got this 5 percent to manage the property, but you didn't get that 5 percent, did you?

A Correct.

Q And, in fact, the 5 percent is something you get each year.

So you've owned this property approximately six years. That would be 30 percent; right?

A 30 percent of the collection of the rent, correct.

Q Right. Which is greater than -- 30 is greater than 20 percent?

A I think so.

Q Yeah. And so in addition to the fact

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that you didn't get property management fees, you didn't get asset management fees, you didn't get property -- broker commissions, and you didn't get any sort of construction management fees; is that right?

A That is correct.

Q So you're incurring all of these costs to market the property; right?

A Yes.

Q And you pay them out of your own pocket; right?

A From our own operation.

Q Your operation being the -- what?

A My company, not --

Q Right. And you don't charge that to the amounts that Ben is a part of; right?

A Until very recently --

Until very recently, 2017, we weren't charging that.

Q So all these years, Ben got the benefit of all of this marketing you did, you actually came out-of-pocket and never -- and didn't charge the LLC during all these years; right?

A Correct. And then there's also a finder's fee for finding the property and go

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through the effort of converting from -- from north of bidding low and so forth.

Q And you didn't charge a finder's fee for this --

A Any of that, no.

MR. GOODKIN: Okay. No further questions, Your Honor.

RECROSS-EXAMINATION

BY MR. LEWIN:

Q Well, just a couple of wrap-up questions.

Property manager also don't get 20 percent of the gain on the sale of the property, do they? I mean, you sold some of the property; you said you made a lot of money. You took 20 percent extra on the sale of the property; right? Yes or no?

A They do.

Q Okay.

A I'm doing one right now. And I'm on the other side of the equation. I'm giving somebody 15 percent right now who is going to be my property manager/profit share in the entity.

Q So you're saying -- was -- was your --

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was your -- was any part of this part of the buy/sell agreement, whether you charge a property management fee or whether you got an asset fee or whether you got any fees whatsoever? It's not part of the buy/sell agreement; wouldn't you agree?

A Correct.

Q Okay. So is this -- is the reason you're talking about this because you want the judge to feel sorry for yourself?

MR. SHAPIRO: Objection, Your Honor. That's an inappropriate question. It's argumentative.

THE ARBITRATOR: Sustained.

BY MR. LEWIN:

Q Okay. And just so -- just to make it clear, you located a property on auction.com, but you and Mr. Golshani went and visited that property and inspected it before you put a bid on it; right?

A Of course. I have to show it to my future partner what we're buying.

Q And actually, you drove from Los Angeles in his car to inspect the properties?

MR. GOODKIN: Your Honor, beyond the

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scope of my redirect.

THE ARBITRATOR: What is it tied to on redirect?

MR. LEWIN: He says he's got some kind of finder's fee -- I'll withdraw it.

THE ARBITRATOR: Anything further? Any other questions?

MR. LEWIN: Nothing further.

THE ARBITRATOR: Anything on redirect?

MR. GOODKIN: No, thank you.

THE ARBITRATOR: Are we now at the point where we may excuse the witness?

MR. LEWIN: We may.

THE ARBITRATOR: Okay. Thank you, sir.

Any other witnesses to be called on behalf of --

MR. GOODKIN: No, Your Honor, we rest.

THE ARBITRATOR: Respondent rests.

Any rebuttal?

MR. LEWIN: No.

THE ARBITRATOR: No rebuttal. Let's go off the record.

(Discussion off the record.)

THE ARBITRATOR: Back on the record.

We've had an off-the-record conversation

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about post-evidentiary sessions briefing. We have not set any schedule at this time. The Arbitrator has had colloquy with counsel in the hearing room concerning the Arbitrator's intention after the last papers, which are anticipated to be reply papers concurrently served after opening briefs, including written closing argument initially concurrently served, which will be on dates in the schedule, taking into account the court reporter's estimated time for sending out the hearing transcripts in our matter, which she says will be 10 business days or approximately two weeks from tomorrow, May 10.

So on the basis of that, counsel will meet and confer and e-mail a joint -- preferably a joint report to the Arbitrator and case manager of a proposed schedule for the closing argument and other briefing for the opening briefs, reply briefs. And from that date, the Arbitrator intends to have in mind an intended target date of about 30 to 45 days from the last papers' day to render -- which is different from issuance of a merits order, which will not in any way be an award in our matter.

And then because the parties have

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advised the Arbitrator that there is a prevailing party attorneys' fees clause or provision, one or the other sides in our matter having been determined as a prevailing party in the merits order, which I will style as Merits Order No. 1, typically, as I mentioned off the record, there will be an order directing the counsel to immediately commence and diligently conduct, meet, and confer communications leading to a preferably joint scheduling of an application by the prevailing party for attorney fees and costs supported by substantiating documentation, being a declaration and billing records substantiating the time requested and expenses requested.

And if past is prologue, there probably will be a request for a telephonic hearing after the briefing on that is concluded, at which time you can have discussions as to whether there will be an interim or final award which will include the attorneys' fees award or whether it will be a written order on attorney fees. And then we'll decide what to do about an interim or final award after that.

But I think that conceptually was what we discussed and what is reflective of the

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Arbitrator's thinking. And going back to the difference between rendering and issuance of decisions, the Arbitrator renders written decisions by order or award typically. That means the transmission from the Arbitrator to JAMS. Issuance means the transmission by JAMS to the parties.

And typically that depends on the payment of fees, which is beyond the Arbitrator's sphere. It's just solely between JAMS and the parties. And that is what seems to be the difference, so that I think that you will see that JAMS prefers -- and the Arbitrator concurs -- that we try to get the dates of rendering and issuance the same.

But for reasons that I've just alluded to, sometimes they're not, and there's a delay in the issuance having to do with not all the fees being in, but that's just between others and JAMS and not me.

Anything that anybody wants to inquire about or comment on or suggest before we end for today?

MR. GOODKIN: The only suggestion I have is that we acknowledge that what you just said

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trumps -- because we're all in agreement on it -- the operating agreement, which has a day for the rendering of the award. And I just want to make sure everybody is clear that we're not demanding the Arbitrator to render the award in the time frame set forth in the clause.

THE ARBITRATOR: What does the provision say?

MR. GOODKIN: It says the members shall instruct --

THE ARBITRATOR: Maybe you can get me right to it.

MR. GOODKIN: Sure.

THE ARBITRATOR: Is it 29?

MR. GOODKIN: Yeah, 29.

THE ARBITRATOR: 29. And what section says that?

MR. GOODKIN: 14.1, page 8. It says, "The members shall instruct the Arbitrator to render his award within 30 days following the conclusion of the arbitration hearing." And that we're agreeing that we're not instructing you to do that.

THE ARBITRATOR: And can we have a stipulation that that provision does not govern

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anything that we just talked about? That provision has been waived.

MR. LEWIN: So stipulated.

MR. SHAPIRO: So stipulated.

MR. GOODKIN: So stipulated.

THE ARBITRATOR: Okay. With all having stipulated, and I very much appreciate that being expressly brought up and waived.

Anything further before we close our record for today?

MR. LEWIN: Nothing on our side, Your Honor.

MR. SHAPIRO: Nothing on our side.

MR. LEWIN: Except thank you.

THE ARBITRATOR: Okay. Thank you for that. And let's say thank you all.

We're off the record.

(Whereupon, the proceedings concluded at 2:47 p.m.)

* * * * *

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CERTIFICATE OF REPORTER

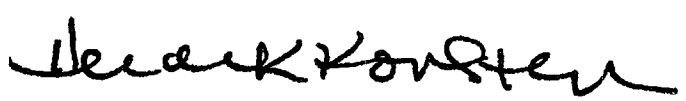
STATE OF NEVADA)
) ss
County of Clark)

I, Heidi K. Konsten, Certified Court Reporter, do hereby certify:

That I reported in shorthand (Stenotype) the proceedings had in the above-entitled matter a the place and date indicated.

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes.

IN WITNESS WHEREOF, I have set my hand i my office in the County of Clark, State of Nevada, this 25th day of May, 2018.



Heidi K. Konsten, RPR, NV CCR #845

002320

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21

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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 6**

Petitioner CLA Properties LLC ("CLA"), hereby submits its Part 6 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

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7157-Motions-Motion to vacate-Appendix Part 6

002321
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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*

002322

002322

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 6** 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:

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002323
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EXHIBIT 118

(Claimant's Closing Argument Brief)

002324

002324

EXHIBIT 118

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CLA PROPERTIES, LLC, a California limited liability company,

Claimant,

v.

SHAWN BIDSAL, an individual,

Respondent.

JAMS Ref. No. 1260004569

CLAIMANT'S CLOSING ARGUMENT BRIEF

002325

002325

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

1. INTRODUCTION.

Creating an "exit" plan for marital or business relationships where one party sets a value and the other chooses to buy or sell is hardly new. By whatever name, "forced buy-sell," or "Dutch Auction" or no name at all the critical features are the same. The party wanting out is under no compulsion to initiate a process but if he does, then the other party gets to choose whether to buy or sell, therefore having the protection that if the initiating party sets the value too high, then he can elect to sell and if the value is set too low, then he can elect to buy.

Below we demonstrate that through all the discussions and first two drafts of the "Dutch Auction" the Remaining Member had exactly that protection. Both parties acknowledged that giving the Remaining Member the option to have an appraisal was for the Remaining Member's protection. But Bidsal's position is that in gaining this additional protection the Remaining Member had to sacrifice the basic protection of the Dutch Auction, and no longer could insist on using the offered amount. For such position Bidsal identifies nothing within the Agreement as support, Bidsal identifies no e-mail in support and Bidsal offers no testimony of a conversation where such a sacrifice was ever discussed. That contention is the crux of this Arbitration.

002328

Bidsal contends that unless an offer is accepted there has to be an appraisal. This claim is without merit. The whole purpose of the mandatory buy-sell is to enable a party to extricate himself from his relationship with the other. That purpose cannot be honestly disputed. If Bidsal were correct the purpose of Section 4.2 of Article V of the Operating Agreement, the buy-sell provision, would not be met and the provision would be rendered especially meaningless.

Under Bidsal's theory if the Remaining Member accepts the offer (and value), no appraisal is required. In that instance no mandatory buyout provision would even be necessary, since a member could always make an offer to purchase the other member's interest without the need for a buyout provision.

But the claim is made by Bidsal here that (a) if the Remaining Member ("offeree ")

002328

chooses not to sell, but instead accepts the Offering Member's valuation and decides to buy, (b) the Offering Member's stated fair market value is to be disregarded and an appraisal is required to set the buyout amount. (Tr. 381:16-384:4 and RB III 5:26[1].) This assertion, not found in and in fact contradicted by the Agreement, is unsupported by any evidence other than Bidsal's self serving testimony, and is errant nonsense.

First, the Agreement clearly states that the Remaining Member has a choice to either buy or sell at the valuation set forth in the offer. Unless an appraisal is demanded by the Remaining Member, the offer sets the valuation ("fair market value").

Second, the Agreement clearly sets forth that the only party who can invoke an appraisal, is the Remaining Member. This was admitted by Bidsal. ("The safeguards, or so-called protections, was going to an appraisal." (Tr. 384:3.) "The remaining member had the option to ask for an appraisal if he chooses" (Tr. 204:17) and "the offering member did not have any rights to request an appraisal" (Tr. 202:5-8 and 258:19-22).

002329

Third, if the Remaining Member invokes the appraisal process, then no one is bound to proceed. The Offering Member gets to choose whether or not to make another offer based on the appraised valuation; the appraisal does not fix the price. In other words, the Offering Member gets to choose whether or not to proceed. In this regard the section states, "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." (Emphasis added.)

002329

In essence under Bidsal's theory, there is not a mandatory buy-sell at all; he makes an offer and unless CLA agreed to sell on his terms, there is only further negotiation. If the Remaining Member decides to buy or demands an appraisal, Bidsal, as the offeror, gets to decide other or not to proceed. If he decides not to make an offer based on the appraised price, that is the end of it; there is no mandatory compulsion for him to either

---

[1] Bidsal previously has served four briefs, Respondent' Opening Brief dated January 8th ("RB I"), Respondent'S Responding Brief dated January 19th ("RB II"), Respondent's Reply Brief dated January 25th ("RB III") and Respondent's Hearing Brief dated May 3rd ("RB IV").

buy or sell.

Below Claimant ("CLA") demonstrates that Bidsal's position is contrary to (1) the words of the Agreement, (2) the discussions and e-mails exchanged, and (3) his own offer and the grounds on which he claims an appraisal is required do not in fact support his claim.

2. BIDSAL'S OFFER TRIGGERED CLA'S RIGHT TO BUY.

Stating he was acting "pursuant to and on the terms and conditions set forth in Section 4 of Article V of the Company's Operating Agreement" Respondent, Shawn Bidsal, ("Offering Member") offered to buy the membership interest of CLA ("Remaining Member") in Green Valley Commerce, LLC based upon Bidsal's "best estimate of the current fair market value of the Company is $5,000,000.00 (the '***FMV***'), "designated in the offer as "offered price". . . "[T]he foregoing FMV shall be used to calculate the purchase price of the Membership Interest to be sold." (Exh. 30.) Note that the stated use of "foregoing FMV" is not limited to sale of "my" Membership Interest, but rather is to "the Membership Interest to be sold.]

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Section 4.2 of that Agreement (Exh. 29), to which Bidsal's offer refers, sets out what a Remaining Member may do and the impact of that decision.

> "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) 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. . .
>
> "The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then Remaining members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) . . .In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its member Interest to the remaining Member(s)." (Emphasis added.)

CLA responded that it chose option (ii) and would instead buy Bidsal's interest in Green Valley based on the same offered price. The beginning of Section 4.2 makes it

clear that the "offered price" means the FMV set out in the offer:

> "Any Member ('Offering Member') may give notice to the Remaining Member(s) that he or it is ready, willing and able to purchase the Remaining Members' Interests **for a price the Offering Member thinks is the fair market value**. The terms to be all cash and close escrow within 30 days of the acceptance. If the **offered price is not acceptable** to the Remaining Member(s), within 30 days of receiving the offer, the Remaining members (or any of them) can request to establish FMV based upon following procedure [for appraisals]" . (Emphasis added.)

There is nothing to which "the offered price" can refer other than what "the Offering Member sets out as what he or it thinks is the fair market value." Bidsal has acknowledged that what the Offering Member states as what he thinks is the fair market value is the "offered price." (8:7 of RB I and 5:8 of RB II.) The concept is that the Offering Member offer is after he does whatever due diligence he feels is necessary to present an offer, including his own appraisal if he thinks that is appropriate. Thus what the Offering Member "thinks" is the fair market value is intended to be an informed decision.

002331

Bidsal now claims that the offered price could not be used to determine the amount to be paid for his interest ("Buyout Amount"[2]), but rather an appraisal of the property was needed to determine its value. The ultimate question in this proceeding is whether under option (ii) the Agreement provides that the offered price is used to determine the Buyout Amount (as CLA contends) or the Agreement requires an appraisal to determine the Buyout Amount when the Remaining Member elects to buy instead of sell.

002331

There is a "fundamental principle that in interpreting contracts . . courts are not to insert what has been omitted." *Safeco Ins. Co. Of America v. Robert S.,* 26 Cal.4th

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[2] CLA has adopted this term especially to avoid the confusion with the term "offered price" as used in the Agreement, because "price" is not what is to be paid. Section 4.2 twice states that the actual amount to be paid to the seller of his or its Membership Interest (what we here call "Buyout Amount") is determined by a formula: "(FMV-COP) x 0.5 plus the capital contribution of the [Selling] Member(s) at the time of purchasing the property minus prorated liabilities." So the offered price or fair market value is merely one element of the formula to determine what is to be paid. Bidsal confirmed this. (Tr. 390:1-5.)

758,764 (2001).[3] As quoted above Section 4.2 in part states, "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." Bidsal in violation of that "fundamental principal" contends that the following emphasized words must be inserted at the end: **"and if the Remaining Member rejects the offer and counteroffers, then the following procedure shall automatically apply**." Only if in violation of that principle those words were deemed added, could Bidsal's position be upheld.

Bidsal testified that he sent out the offer so that he could close out this deal to get out of managing Green Valley. (Tr. 390:14-18.) But an offer to buy is the exactly the opposite of getting out of Green Valley. And if he wanted to get out of Green Valley, why did he oppose selling his interest based on the very fair market value he established?

Let there be no doubt about what happened. Within four or five months before Bidsal's offer, he had proposed additional investments with Golshani. Golshani responded that either he was not liquid or had other projects he was considering. (Tr. 107:1-108:25.) 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. If he thought his $5,000,000 was adequate, why on August 5, 2017, two days after CLA's response on August 3, 2017, did he reply to CLA's response by demanding an appraisal especially given that he testified that at all times from his offer on July 7, 2017 through August 5, 2017 (the date of CLA's election to buy) he thought the $5,000,000 was the fair market value (Tr. 331:15-333:16 ; 335:20– 25; 337:14-18 and 338:5-9). 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, and an appraisal that the Agreement never mentions

[3] 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.)

002332

002332

002332

except when requested by the Remaining Member for its protection.

Having failed at his attempt to buy CLS's interest at a low price, and take advantage of his partner, Bidsal is desperately attempting to increase the fair market value from the $5,000,000 he said was the fair market value at the time of his offer, and which he testified he thought was the fair market value at the time of CLS's election to buy. He made his bed; he must be forced to lie in it.

3. **CORE ISSUE**.

The core issue in this Arbitration is whether the parties agreed that the offered price set by Respondent could be used if CLA chose to buy as well as if CLA had chosen to sell. CLA contends that the Agreement as expressed says that CLA has that right. Bidsal argues that CLA had no right to use the offered price except if it chose to sell, which as explained above, makes the buy-sell provision meaningless. CLA contends that there is nothing within the Agreement that would support such claim, but rather the words of the Agreement are exactly to the contrary.

002333

002333

Beyond that, CLA also examines the evidence of what came before signing the Agreement to demonstrate that at all times allowing the Remaining Member to have the option to buy or sell based on the amount set forth in the offer is what the parties discussed and is what the prior drafts provided. The evidence will show that as the "forced buy/sell" or "Dutch Auction" provision went though its various drafts, **IN EVERY DRAFT THE REMAINING MEMBER HAD THAT RIGHT**, and that there is no evidence, documentary or testimony, that Bidsal ever objected to that aspect.

4. **WHAT THE AGREEMENT SAYS**.

Obviously what the Agreement says is what must govern this Arbitration. The intent of the buy-sell provision, especially given an express statement as to what it is, is clear. The critical provisions (without new quotation marks) are these (with emphasis

added):[4]

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

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. 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. [Procedure calls for two appraisers.] The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV).

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

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

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

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

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

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

[4] An enlarged photocopy of portions of pages 10 and 11 on which Section 4 of Article V appears is affixed as Exhibit "A" to this Brief.

002334

002334

Note: While this Section uses the words "offer" and "counteroffer," in fact the offeree and the offeror is each obligated to act: The Remaining Member must either accept the offer or make a counteroffer to buy instead of sell, and should he make a counteroffer, **as made clear by the concluding sentence of Section** 4.2, the Offering Member is obligated to sell his interest.

A review of this Section 4 reveals that in no possible interpretation is the Remaining Member precluded from using the offered price to determine Buyout Amount should it "counteroffer." Yet that is Bidsal's contention. (Tr. 381:16-384:4 and RB IV 9:17.) Bidsal can point to no portion of the Agreement that expresses or implies that once the Remaining Member chooses to buy, an appraisal is mandatory to determine the price. To the contrary, in two places, the Section makes clear that the offered price is used absent the Remaining Member's "request" for an appraisal. Only if the appraisal process was invoked by the Remaining Member, would fair market value be determined by an appraisal.

002335

The formula to determine Buyout Amount requires the insertion of fair market value. But absent a request by the Remaining Member for an appraisal, and there was none here, other than the offered price there is no "fair market value (FMV)" which can be the "same," so that adopting Bidsal's position makes this phrase meaningless. 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.

Option (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 option (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 set forth in option (i), here the $5,000,000 offered price. No matter how Bidsal tries to twist and convolute the meaning of ***these*** words, they cannot be any clearer.

Bidsal contends that instead the word "same" must be to the earlier mention of

appraisal to determine fair market value when appraisal is requested by the Remaining Member. The issue thus becomes 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).

002336

To avoid any possible confusion, the Operating Agreement goes on to state that "The specific intent of this provision is that . . .the Remaining Members **shall either sell or buy at the same offered price (or FMV if appraisal is invoked)** . . . In the case that the Remaining member(s) decide to purchase, then **the Offering Member shall be obligated to sell his or its member interests to the remaining Member(s)**." (Emphasis added.)

During the arbitration, Bidsal, who has been doing property investments and management for a living full time since 1996 with "elaborate infrastructure" (Tr. 346: 15-347:16) admitted that he understood what the meaning of being obligated:

> 8 Q Okay. See where the part -- see where
> 9 it says -- the paragraph that starts with
> 10 "specific intent"? Are you following me? Are you
> 11 with me?

> A Yes. I got it. I got it.
> Q Okay. If you look at -- if you look at the third line in that paragraph, it says, "The offering member shall be obligated."
> You understood what those -- you understood what those words meant; right?
> A Yes.
> Q Okay. And -- and not to beat a dead horse, but on the -- but you recognize those words are in the operating agreement that you signed; right? Yes or no?
> A The words, yes. (Tr. 407:8-23)

This portion should settle the dispute. Nevertheless, trying to avoid the result of his attempt to take advantage of his partner, Bidsal argues that under that phrase the offered price cannot be used if, as here, the Remaining Member chooses to buy rather than sell, and rather, so Bidsal continues, even if the Remaining Member does not invoke the appraisal process, nonetheless there must be an appraisal to determine fair market value. He is wrong for a variety of reasons.

First, we direct attention to the phrase **"either sell or buy at the same offered price (or FMV if appraisal is invoked)."** The term "invoked" does not mean automatic as Bidsal now contends. Under the Agreement it is the Remaining Member's option to request an appraisal.

The section further states that whether buying or selling the same fair market value must be used. If the Remaining Member had elected to have ("invoked") an appraisal, then it would have been the appraised amount. But if, as here is true, CLA as Remaining Member did not request an appraisal, then the "offered price" must be used.

So then what is the "same" amount here. Had CLA accepted the offer the amount would have been the offered price. Even Bidsal does not contend that had the Remaining Member chosen option (i) and accepted the offer, anything other than the offered price would be used. And to be the "same" when CLA instead chose option (ii) the amount has to be the same "offered price." Nowhere does the provision say that FMV is dependent on the choice by the Remaining Member, as Bidsal contends.

Next, we call attention to the use of the conjunction "or" and the conditional

002337

002337

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 price from which it is different is that obtained from the offer, the offered price. More than that, if the portion in parentheses, "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 given to the condition "if appraisal is invoked?"

It is thus clear that content of the parenthetical is used **if, and only if,** the appraisal is invoked by the Remaining Member. Otherwise, the first part of the sentence governs which says, "the same offered price".

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. 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.)

002338

Yet one looks in vain through briefs heretofore filed by Bidsal to find any meaning or effect given to the words "or" or "if appraisal invoked" above.

It does not exist because Bidsal's contention that a **different** amount is used for purchase and for sale is in direct conflict with what the Agreement provides.

Starting at RB IV 9:19 Bidsal argued that the "same fair market value (FMV)" cannot be the offered price. Yet, absent a request by Remaining Member for an appraisal, and there was none here, other than the offered price there is no "fair market value (FMV)" which can be the "same" so that adopting Bidsal's position makes this portion meaningless.

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 what he claimed in his letters. On August 5, 2017 (Exh. 32) his attorney wrote, **"Shawn Bidsal . . .does hereby invoke his right to establish the FMV by appraisal."**

Doubling down on that contention on August 31, 2017 (Exh. 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."**

So Bidsal claimed that appraisal was the Offering Member's right, not automatic as Bidsal now contends. 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.

Although Bidsal originally repeatedly claimed that he had "the right" to demand an appraisal, Bidsal has now changed tunes, and acknowledged he had no right to request an appraisal, and now claims that appraisal was automatic whenever the Remaining Member chooses to buy rather than sell. (RB III, 5:26 and Tr. 381:16-384:4.)

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 herein pointed out, it would be directly contrary to "the specific intent" of the Section obligating the parties to buy or sell using "the same offered price (or FMV if appraisal is invoked)", words that Bidsal would have the Arbitrator ignore, but which cannot be.

The fact is that Bidsal has repeatedly changed his position, not based on the truth, but when and if he determined that it would be in his interest. He claimed the Agreement

was not ambiguous, but changed his tune when he heard the Arbitrator discuss "rough justice". He claimed that he had the right to demand an appraisal, but now claims that it is automatic. He claimed that Ben Golshani was the drafter of the buy-sell provision in the agreement, and never saw what Golshani typed and sent him. Yet at the trial he was forced to admit that he had received the drafts and that he and Golshani had many discussions and that they "massaged" the language together. (See the discussion regarding Exhibits 20 and 22 in the next section). He will say anything, whether under oath or not, to try to get what he wants.

There is nothing **within the Agreement** that would justify Bidsal'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 Bidsal's contention that he can demand an appraisal before selling to CLA, or that there is an automatic requirement for appraisal.

002340

The law is clear: "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. "[P]arol evidence . . is not admissible when it is offered, as here, to give the terms of the agreement a meaning to which they are not reasonably susceptible." *Imach v.Schultz*, 58 Cal.2d 858,860 (1962). 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).

002340

5. **DEVELOPMENT OF BUY-SELL PROVISION.**

The conclusion reached from the words of the Agreement itself is further supported by a review of the development of the wording. CLA believes that resort to material beyond the wording of Section 4 of the Agreement is not required in order to determine that it is entitled to purchase based on the offered price. But examination of the evidence in this case demonstrates that was always the parties intention. At all stages

of the development of the buy-sell provision, in varying ways, the provision gave the Remaining Member the right to buy or sell based on the amount set by Offering Member, and in none is there an implication, much less expression, that should the Remaining Member elect to buy rather than sell, the Offering Member, after setting the amount in his or its offer, can insist on an appraisal to determine the Buyout Amount.

Before there was any draft, Bidsal and Golshani had already orally agreed that the Operating Agreement would include a provision "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" (Tr. 44:23-45:7, 45:17-18), and they told that to the attorney, David LeGrand, at the first meeting of the three of them (58:22-60:7, 70:7-71:1, 73:25 and 86:2-7).)

Golshani testified that from his first meeting with the company's attorney, David LeGrand on July 21st [5] (Exh. 12, Tr. 57:1-4) the parties made clear to LeGrand that they wanted an exit plan that was quick and simple by allowing the Offering Member to make an offer and there set the offered price, and the Remaining Member then have the right to sell (his interest) or buy (the Offering Member's interest) based on the offered price. "We need to have a system that if a partner doesn't to be a partner, should be able to somehow buy or sell and leave the partnership amicably." (Tr. 46:2-5.) "And I said that we are here so that you would write a provision that anytime we didn't want to be partners, we would be able to separate without having to go to court . . Bidsal said that for no reason at all . . . 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." (Tr. 59:21, see also 60:16, 72:10-25, 73:4-74:1 and 86:4-7.) None of this testimony was disputed by Bidsal!

Initially LeGrand testified that he had no recollection of the details of the

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[5] Except as otherwise stated herein, all dates are in 2011.

discussion of a buy-sell provision at that meeting (Tr. 272:21-273:6) and "believed" the concept of giving the offeree (Remaining Member) the right to either buy or sell or forced sale came up later (Tr. 273:16-274:17). But the exchange of e-mails helps place the time of the first discussion of such a provision at the July 21st meeting and supports Golshani's testimony. On July 22nd LeGrand wrote (Exh. 12 with emphasis added):

> "I am unclear as to the discussion at the end of the meeting about buy sell. I added a provision to compel arbitration in the event that the two of your reach a deadlock on a significant issue. But you may say no, if we deadlock then either one can force the other to buy at fair market value. I will draft whatever you want, but forced buy-sell because of deadlock could prove damaging to the party that has to buy. . . .
>
> "As to the buy sell, do you want the death or disability of either of you to trigger a forced buy/sell. I think that is what you decided, but then we started talking about deadlock."

And once his memory was refreshed by looking at that exhibit LeGrand acknowledged that it was in that July 21st meeting that "**the forced buy/sell, they wanted a buy/sell provision. In particular a–Ben proposed a–a style of provision that if a member made an offer, they needed to be ready to buy or sell at that offer price. That was the fundamental concept.**" (Tr. 282:5-11.)

And LeGrand further testified that the context of this was "**where a member could just make an offer for any reason**" (Tr. 282:20-25) and "**the responding member either had to buy or sell**" (Tr. 283: 1-6).

Removing all doubt as to what not only Golshani, but also Bidsal, wanted, LeGrand testified at his deposition and at the hearing that "**both Mr. Bidsal and Mr. Golshani wanted the forced buy/sell. In other words, this was something they both wanted.**" (Tr. 284:11-20 and 289:8-13.)

By August 18th LeGrand had inserted a mandatory (forced) buy/sell provision into a draft of the Operating Agreement which he characterized as "Dutch Auction." (Exh. 16.) LeGrand explained that what he then meant by that term was "**the proposition that if a member makes an offer, that is an offer to buy or sell at that price. And the**

other member could either buy or sell at that price." (Tr. 286:1-7.)

Section 7 of that draft provided that after an offer to sell an interest the Remaining Member had to choose either to buy or sell based on the fair market value of the Company's assets stated in the offer. So from the very first draft that included a buy/sell provision (Exh. 16) these elements were present: (i) the process started with an offer; (ii) regardless of the fact that the offer was stated just to sell, the offeree could then either buy the offeror's interest or sell his interest; and (iii) whatever choice the offeree made, the price would be that set out in the offer. The critical portion of Exhibit 16 read (without new quotation marks):

> Any Member ("Offering Member") may give notice to the remaining Member(s) that he or it is ready, willing and able to sell his or its Member Interest for fair market value based upon the net fair market value of the Company's assets divided by the offering Member's proportionate interest in profits and losses of the Company. The Offering Member shall obtain an appraisal in writing from a qualified real estate appraiser and provide a copy of such appraisal to the other Member(s) attached to a notice setting forth the proposed offer to sell. The other member(s) shall have ten (10) business days within which to respond in writing to the Offering Member by either (i) accepting the Offering member's offer to sell; or, (ii) rejecting the offer to sell and counteroffering to sell his or its Member Interest to the Offering Member based upon the same appraisal and fair market value formula as set forth above. The specific intent of this provision is that the Offering Member shall be obligated to either sell his or its Member Interests to the remaining Member(s) or purchase the Member Interest of the remaining member(s) based upon the fair market value of the Company's assets."

IT IS IMPOSSIBLE TO READ THIS DRAFT AS REQUIRING THE USE OF ANY AMOUNT OTHER THAN THAT IN THE OFFER SHOULD THE REMAINING MEMBER "COUNTEROFFER" (REJECT THE OFFER AND CHOOSE THE OPPOSITE).

That draft called for the fair market value used in the offer to have been already determined by an appraiser the Offering Member selected, obviously in an amount approved by the Offering Member. Of course if the appraisal came in at a figure the Offering Member did not like, he would simply not make an offer at all (or get another appraiser). That was something which LeGrand came up with. (Tr. 287:17-288:1.) But

002343

002343

it was not what the parties wanted or had discussed with LeGrand. Rather what was desired was a provision where the offeror simply set the amount, and the offeree chose to buy or sell based on that amount. (Tr. 71:16-25, 72:10-25 and 73:4-74:1.) As stated by Golshani at Tr. 86:2 **"We thought that the Offering Member should be free to make any number he is happy with, you know, because he's going to either buy or sell."**

LeGrand's e-mail of September 16th (Exh. 17) to the parties in part said "**We discussed that you want to be able to name a price and either get bought or buy at the offer price**." Yet, in the face of that written acknowledgment, Bidsal falsely testified that allowing the Remaining Member to choose to buy or sell at the offer price "was not discussed." (Tr. 383:21-384:1-2.).

There is no evidence that Bidsal ever objected to LeGrand's statement, claimed that LeGrand had misunderstood, or otherwise claimed there had been no such discussion. It went on to say, "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 the problems with "the concept of the 'Dutch Auction" to which LeGrand then and later referred was with any provision that simply set a price and both parties had to buy or sell at the same price without recognizing the differences in capital accounts.

In his September 16th e-mail LeGrand cautioned that because CLA had contributed to Green Valley so much more than Bidsal, simply setting one price for whoever buys or sells would be unfair in failing to take into account the differences in their capital contributions. Three days later he wrote to them, "I talked with Shawn [Bidsal] about the issue that because your capital contributions are so different, **you should consider a formula** or other approach to valuing your interests." (Exhibit 18.)

The upshot is that as of September 19th the situation was that the parties wanted one to be able to set a price and the other could either be bought out or buy at the price, which LeGrand characterized as "simple Dutch Auction," but LeGrand called their attention to the fact that they had to vary a "simple Dutch Auction" to take into account their capital contributions, and he proposed a formula to do so.

002344

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002344

LeGrand's next attempt the next day was in Exhibit 19 (§ 5 of Article V). Regardless of the fact that the offer there was still stated solely as one to "sell," it again provided that the Remaining Member could force the Offering Member to use the price in the offer either to buy or sell, meaning the Offering Member could end up being required to do the opposite of what his offer said. Again the critical portion read:

> "Upon receipt of the Notice, each of the other members shall have the first right and option to agree to purchase all (subject to Article 5 hereof) of the Offering member's Interest proposed to be transferred at the price set forth in the Notice . . .In the alternative, each of the Other Member's [sic] shall have the right to sell their interests to the Offering Member on the terms set forth in the Notice and at the same price as set forth in the Notice . . ."

So here too once an offer was made the Remaining Member could either buy or sell using the offered price, and in this instance appraisal was not either mandatory or an alternative.

ONCE AGAIN IT IS IMPOSSIBLE TO READ THIS DRAFT AS REQUIRING THE USE OF ANY AMOUNT OTHER THAN THAT IN THE OFFER SHOULD THE REMAINING MEMBER "COUNTEROFFER" (REJECT THE OFFER AND CHOOSE THE OPPOSITE).

But Golshani and Bidsal discussed that this draft was not satisfactory because Section 5 bound only the Offering Member and not the Remaining Member, and the language regarding ratio of capital language was unclear to them (Tr. 80:12-81:22). Again this was not denied by Bidsal.

With the elapse of so much time and both Golshani and Bidsal testifying they wanted to get the Agreement completed, the two of them decided to try to draft something that LeGrand could then review and after making such changes as he felt necessary could then use. They had discussions, and based on those discussions Golshani typed a proposal in writing and sent it to Bidsal for his comments. (Tr. 81:23-85:3, 86:25-94:19, 146:2-8, 151:18- 152:15 and 378:21-379:18 and Exh. 20, hereinafter "Rough Draft 1".)

Bidsal falsely claimed that he had not received two different e-mails from Golshani containing regarding Exhibits 20 and 22, and even created and then cited an

exhibit to prove his claim, but at hearing conceded, that it was not true that he had not received them. At 3:15 of RB IV Bidsal refers to Exhibit 20/316 and says "Bidsal never received it. *[See Ex 351]."*

So not only did Bidsal falsely deny receipt, but he created an exhibit (Exh. 351) purporting to show a record of all e-mails he had received, and relied upon it to prove he had not received Exhibit 20. But when questioned at the hearing, he conceded he had received it (Tr. 179:11-180:2)!

In significant measure this Rough Draft 1 was still the product of LeGrand or to satisfy his suggestion to insert a formula. (Tr. 85:17-86:7 and 140:16-143:11.) The section stating the specific intent of the provision came largely from the words used by LeGrand in the August 18th draft. It too gave the Remaining Member the option to buy or sell. But it introduced another option for Remaining Member: he or it could require multiple appraisals with the medium of those appraisal becoming the fair market value rather than the offered price. Bidsal's suggested this provision to protect against an offer being made at an unreasonably low amount, and the Remaining Member then not having the money to buy rather than sell; thus the right to demand an appraisal. This gave the Remaining Member, who might not have the cash available to buy within the 30 day time limit, protection against have to sell at an artificially low number (Tr. 82:19-83:6). Otherwise this draft closely tracked what LeGrand had provided back in August including a provisions stating:

> "The specific intent of this provision is that the Offering Member shall be obligated to either sell his or its Member Interests to the remaining member(s) or purchase the member Interest of the remaining member(s) based upon the fair market value established above."

Rough Draft 1 included a formula to satisfy the point that LeGrand had raised. As to the provision giving the Remaining Member the right to request an appraisal instead of using the offered price Bidsal testified, " If the remaining member is not satisfied, he can always have an appraisal done" and "The remaining member had the option to ask for an appraisal if he chooses." (Tr. 201:23 and 204:17.) Since the appraisal was not

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mandatory and was solely at the Remaining Member's "option " because he was "not satisfied," the appraisal was for his protection. But if he did not so request, then notwithstanding that the offer was still stated to be one to sell, the Remaining Member was, just as in the prior drafts, entitled to use the offered price either to buy or sell, and the Offering Member was obligated to comply with that choice. There was no provision that if the Remaining Member rejected the offer and chose to sell instead of buy, that an appraisal was required.

Before addressing the next draft we note that the following has been established: Prior to Exhibit 20, the September "Rough Draft 1", previous drafts from LeGrand gave the Remaining Member the right to buy or sell using the offered amount. The insertion of the right to alter the amount by appraisal solely for the Remaining Member was therefore for the Remaining Member's benefit and protection. Yet Bidsal relies on that insertion to claim that if the Remaining Member chooses to "counteroffer," then even though Remaining Member never elects that right, nonetheless, there must be an appraisal. There is no evidence that either party or LeGrand ever wrote, said, hinted at or otherwise intended that the insertion of this additional protection for the Remaining Member should or would forfeit his right to counteroffer at the offer amount. And not only is there nothing in succeeding drafts that would change that fact, but Bidsal has contended that the changes were minor.

Bidsal wanted changes to the Rough Draft 1 and he and Golshani discussed the changes many times. (Tr. 87:21-88:17.) Using comments by Bidsal (Tr. 87:7-89:9, 99:19-100:3) the language of the Rough Draft 1 was, as admitted by Bidsal, "massaged" by both Bidsal and Golshani: "So we massaged the language in our conversations." (Tr. 383:8-9).

Golshani retyped what he had prepared to satisfy those comments and sent Rough Draft 2 (Exhibit 22) to Bidsal for review and approval. (Tr. 91:20-96:21).

At Tr. 378:9-379:20. Bidsal, when questioned by his own counsel, admitted that the joint composing of Rough Draft 2, (Exh. 22) spanned several meetings and many

conversations:

BY MR. GOODKIN:

Q Now, referring to Exhibit 22/319, the exact same paragraphs that we're talking about before with respect to the -- the Rough Draft, now we're going to talk about Rough Draft two.

And in that first line where we said "willing to sell," it now says "is willing to purchase."

Do you see that?

A Yes.

Q Now, going down to the next paragraph, do you see where it says "Who offers to purchase"?

A Yes.

Q And if you go to the first page of Exhibit 319 or Exhibit 22, there's an e-mail that says, "Shawn, here is the agreement we discussed."

Do you see that?

A Yes.

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Q And the changes made in Rough Draft two from Rough Draft one were as a result of your conversation; right?

A We had conversations, yes.

Q Okay. And then you said you had conversations with Ben about the terms of the buy/sell provision. So I want to -- instead of going through the specific language here, just I want to explore what your conversations were.

When did you have conversations with Mr. -- with Ben about the terms of the buy/sell provision?

A We had it over a course of, like, a few months towards the end of 2011.

Q Where were those conversations?

A Either on the phone or in my office.

Q Was there a way of estimating how many conversations you actually had?

A I would say a few on the phone and two or three in person in my office.

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Q And how did you have a conversation with Ben about the hard copy version of the buy/sell?

A Of the buy/sell or the –
Q The buy/sell.
How did you bring it up? Would you discuss it by way of what is -- how did you discuss it?
A We discussed it, about different rights of the parties under different scenarios, the so-called -- we called it what if this happens, what if that happens, how would you -- how would you approach it.
(TR: 378/8-381/15)

Despite these facts Bidsal at RB IV 3:21 falsely claimed that he never received Exhibit 22/319, and once again cited his created Exhibit 351 to prove his claim. But when cross examined at the hearing he conceded he "might have received it, yes" (Tr. 180:18-1) and **only after** being shown emails between him and LeGrand did Bidsal finally admit that he had in fact receive Rough Draft 2 (Tr. 193:22- 194:15 and 195:23-196:8):

Q Okay. Will you please take a look at Exhibit 23.
A Okay.
Q Did you receive this e-mail from David LeGrand?
A I probably did, yes.
Q So it says, "Shawn, I received a fax from Ben and am rewriting it to be more detailed and complete and will send it out to both of you shortly."
Now, did you -- did you -- so does that refresh your recollection that you had received the -- that you had received the e-mail -- the October 26th e-mail from Mr. Golshani?
A What's the exhibit number on that?
Q That's 22. And 22 has the rough draft too on it, Mr. -- the rough draft two from Golshani.
A Probably received it, yes.
(Tr. 193:22- 194:15)

Q In the e-mail to Mr. LeGrand on

> 24 Exhibit 23, it says, "Shawn, I received a fax from
> 25 Ben, and" -- "and am rewriting it to be more
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> 1 detailed and complete."
> 2 A Okay.
> 3 Q Did you ask Mr. LeGrand to send you what
> 4 Ben had sent you -- had sent him?
> 5 A I don't recall.
> 6 Q Did you ask Ben to send you what he had
> 7 sent to LeGrand?
> 8 A He already did that, yes.
> (195:23-196:8)

It is abundantly clear that Bidsal as much as Golshani was the composer/drafter of Rough Draft 2. (Tr. 93:3-7.) Who actually typed the document is not relevant.

Rough Draft 2 changed the initial offer from being one to sell to being one to buy. Since in either instance the Remaining Member could choose to buy or sell, it truly did not matter whether the initial offer was to buy or sell. Golshani explained the reason for the change as follows. If the offer remained as one to sell, and the Offering Member failed to take into account the right of the Remaining Member to choose to have the opposite done, the Offering Member could find himself in a position where he had to buy, but not have the funds to do so. On the other hand, if the provision were changed to call for an offer to buy, then even though the Remaining member choose the opposite, the Offering Member would always be able to comply with selling his interest. (Tr. 93:21-94:15.)

In addition, to satisfy Bidsal's comments regarding the Rough Draft 1, the formula was changed and the number of appraisers (if appraisal requested by Remaining Member) was reduced. (Tr. 88:5-89)

Significantly, Rough Draft 2 continued to provide that the Remaining Member could use the offered price either to buy or sell. But after Bidsal's input it became even clearer that absent the Remaining Member's electing to have an appraisal, the offered price would be so used. The "specific intent" provision was changed to read:

> "The specific intent of this provision is that once the Offering member presented his or its offer the Remaining Members have the right to either sell or buy **at the same offered price** and according to the above manner. In the case that the

Remaining Member(s) decide to purchase the Offering Member shall be obligated to sell his or its Member Interests to the remaining Members." (Emphasis added.)

This fact cannot be overlooked: even after Bidsal's massaging the language and receipt and review of Rough Draft 2, and the numerous meetings and conversations with Golshani, Rough Draft 2 ***STILL*** **set forth the "Specific Intent" of the parties and what their agreement was, that the Remaining Member can use the offered price either to buy or sell, and the Offering Member must go along with that choice!!** If that was not Bidsal's understanding of what he and Golshani wanted and had agreed upon, surely that would have been changed or deleted as well other changes!

The fact that the language setting forth their mutual "specific intent" still remained in Rough Draft 2 and in the final operating agreement (Exh. 29) reflects their mutual understanding and agreement and ***is fatal*** to Bidsal's false contentions.

What takes place thereafter is indisputable. After Rough Draft 2 was extensively discussed and massaged by Golshani and Bidsal and approved by Bidsal, at Bidsal's instruction, Golshani then sent it on to LeGrand for LeGrand to "take care of it." (Exh. 23, Tr. 96:16-24). In Exhibit 23 LeGrand confirmed that Bidsal had received Rough Draft 2 and then proceed to review and revise it to clarify the language in order to assure that it reflected what he had been told by the Bidsal and Golshani what the deal was supposed to be. (Exh. 23 and 24, "Draft 2".)

After the changes made by LeGrand in Draft 2 (Exh. 24), it still provided that the Remaining Member was entitled to use the offered price either in a sale or purchase, and appraisal was limited to where it was requested by the Remaining Member. This Draft 2 by LeGrand was sent on November 10th to both Bidsal and Golshani for their review (Exh 24) . The very next day, on November 11th , Bidsal responded that "it looks good" and asked LeGrand to complete the operating agreement and send it to them for signature (Exh 24).

Later LeGrand injected with modifications what was Section 7 of his Draft 2 into the full agreement as Section 4, and still the only mention of appraisal was an alternative

to the Remaining Member. (Exh. 26.) And still it provided that the Remaining Member had the right either to buy or sell using the offered price. And this was in accordance with what Bidsal and Golshani had told LeGrand was their agreement. (Tr. 295:19-296:5.) Here there was a change to the specific intent portion. It read:

> "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 above manner. In the case that the Remaining member(s) decide to purchase the Offering Member shall be obligated to sell his or its Member Interests to the remaining Members."

In this version, LeGrand inserted "(or FMV if appraisal is invoked)." The insertion recognized that there were two ways in which the FMV could be determined. **IF** the Remaining Member elected to have ("invoked") an appraisal, then the appraised amount would be the FMV. If the Remaining did not so elect, then the offered price would be used to determine the FMV in the formula for the Buyout Amount.

Bidsal has latched onto this inserted parenthetical addition to claim that it distinguishes "offered price" from FMV and therefore the "offered price" can never be the fair market value. Nonsense! The FMV is the offered price unless the Remaining Member "requests" an appraisal. If an appraisal was requested by the Remaining Member, then the FMV would be determined by appraisal. Since in this case the appraisal was not requested, the parenthetical addition is inapplicable and can be ignored. We are left with the exact same result as was true from the very beginning: Whatever amount the Offering Member included in his offer could be used by the Remaining Member either to sell or to buy.

On November 29th LeGrand sent the operating agreement of the parties with buy sell language. Bidsal hold on to the agreement, telling Golshani that he is going to review it (Tr. 101:9-103:9) and told LeGrand that he is going to revise it (Tr. 297:21-298:2) . On December 10th LeGrand asked Bidsal if "he finished the revision?" Bidsal responded on December 12th that the operating agreement is finished and signed (Exh. 41).

The signed agreement, Exhibit 29, even after Bidsal was finished with it still

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APPENDIX (PX)001011

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contained the same language reflecting the "specific Intent" of the parties. So even if one went beyond the actual language of Section 4, the history of its development shows that never was there a statement made by anyone to anyone else that the offered price could not be used by the Remaining Member to buy as well as to sell, and on that separate basis CLA's position as well as LeGrand's stated understanding based on his conversations with the parties should be upheld.

6. BIDSAL'S ARGUMENT IS BELIED BY HIS OFFER.

Bidsal argues that the offered price cannot be the fair market value, or at least not if the Remaining Member elects to buy. Here is Bidsal's claim:

> Okay. So we massaged the language in our conversations, and that was -- there were meetings about that. So going back to where I started, if somebody wants to buy it, he makes an offer, the other side wants to sell at that number, we are done, it's over.
>
> If the other side says, no, I'm going to make a counteroffer to you, I disagree with you, then we go to an appraisal process to determine the FMV, the fair market value, by appraisal. And that was the procedure put in to have two appraisers to create a happy medium and go to that number. So that way parties are protected.
>
> (Tr. 383:8-20)

Not only do the words in the Agreement not say that, Bidsal's very offer contradicts such claim. Bidsal's offer prepared by his attorney in part stated:

> "By this letter, SHAWN BIDSAL (the '*Offering Member*'"), owner of Fifty Percent (50%) of the outstanding Membership Interest in Green Valley Commerce, LLC, a Nevada limited liability company (the '***Company***') does hereby formally offer to purchase CLA Properties, LLC's (the '***Remaining Member***') Fifty Percent (50%) of the outstanding Membership Interest in the Company pursuant to and on the terms and conditions set forth in Section 4 of Article V of the Company's Operating Agreement.
>
> "The Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***"). Unless contested in accordance with the provisions of Section 4.2 of Article V of the Operating Agreement, the foregoing FMV shall be used to calculate the purchase price **of the Membership Interest to be sold**." (Emphasis added.)

The definitions in the Agreement apply to the terms used in the letter. (Tr. 332:1-15.) We emphasize that what Bidsal's offer said was (1) his best estimate was "the 'FMV'" and (2) it would be used "to calculate the purchase price of the Membership Interest to be sold." We note that as to item (2) he did not limit his statement to the price for sale of Membership Interest of CLA. No, his statement applied regardless of whose interest was being sold. His current argument is, therefore, in two separate respects in contradiction to what he wrote. The offered price can be the FMV and it applies to the purchase by the Remaining Member just as much as to the purchase by the Offering Member.

The formula to determine the Buyout Amount to be paid by the Offering Member is, "(FMV-COP) x 0.5 plus capital contribution of the Remaining Member(s) at the time of purchasing the property minus prorated liabilities." Bidsal now argues that the $5,000,000.00 that he called "FMV" in his offer was not really the FMV. But he then said that "the foregoing FMV **shall be used to calculate** the purchase price." So then for which element of the formula is the "forgoing FMV" to be used? Bidsal has not claimed that it is the "COP" (cost of the property); Bidsal has not claimed that it is CLA's capital contribution; the Operating Agreement shows the capital contribution and it was not $5,000,000. Finally, Bidsal has not claimed that the $5,000,000 are the prorated liabilities. That leaves as the only other element of the formula for which "the foregoing FMV shall be used" the "FMV."

002354

And the offer does not restrict the use of "the foregoing FMV" to a purchase by Bidsal. So when Bidsal wrote that the $5,000,000 shall be used to calculate the purchase price, he could only have meant that the $5,000,000 would be used as the FMV within the formula to determine the purchase price.

At RB IV 13:6 Bidsal cited authority to support the claim that "The conduct of the parties after execution of the contract and before any controversy has arisen as to the its effect affords the most reliable evidence of the parties' intentions." Well, here the conduct was the offer and what it said, and it said the $5,000,000.00 was the FMV as used

002354

in Section 4, and "shall be used to calculate the purchase price of the Membership Interest to be sold."

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

7. THE BASES ON WHICH RESPONDENT RELIES DO NOT SUPPORT HIS CONTENTIONS

Based on what is stated above, it is beyond dispute that there is no expression within the Operating Agreement or in the history of its development that supports Bidsal's claim that CLA had to obtain an appraisal and use that appraised amount to calculate the Buyout Amount. Rather, as shown by his Hearing Brief, Bidsal raises three points to support his claim: (1) he claims that one particular sentence establishes that the fair market value is only that obtained by appraisal, (2) he claims that no one would make an offer if the amount included in the offer (offered price) could be turned around and become the fair market value for purchase by the Remaining Member, and (3) he claims that Golshani drafted Section 4 of Article V of the Operating Agreement and therefore it should be construed against him. We do not know which, if any of these, he will now pursue. Therefore, we treat each of them briefly to demonstrate that none of the points is valid.

As a matter applicable to all three points, none can succeed unless at a minimum the Agreement is susceptible to the interpretation urged by Bidsal. See *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 107 Cal.App.4th 516,524, 132 Cal.R.2d 151,157 (2003), *supra*. No reading of Section 4 can lead to the conclusion that the Remaining Member cannot use the offered price to calculate the amount to be paid to the Offering Member, but instead must buy at an amount not known at the time of his commitment because it is based on an appraisal to be conducted after he his commitment.

7.1. The One Sentence Bidsal Relies on Does Not Say What He Claims:

After describing the process to obtain two appraisals if requested by the Remaining Member Section 4 continues, "The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." Based on that, Bidsal argues that the only definition of FMV is the medium of the two appraisals. (Tr. 391:8-11 and RB IV 10:7-10.) (In RB II he said it eleven times.[6]) For multiple reasons he is wrong, and therefore, each of his arguments fails.

A. The Sentence That Bidsal Relies upon Only Applies If the Remaining Member Requests an Appraisal

The sentence on which Bidsal relies is wholly dependent on the condition which makes it applicable, to wit: "If the offered price is not acceptable to the Remaining Members, 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, did not find the offered price unacceptable, so what followed regarding appraisal, including that sentence, was never applicable. The provisions regarding appraisal never came into being because the Remaining Member (CLA) never made such a request.

002356

B. Meaning of Phrase "FMV".

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

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[6] 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.

002356

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.

C. Bidsal's Contention Makes Application of Section Impossible.

As before noted, there has to be a determination of FMV to determine Buyout Amount. But if there is no appraisal, what can possibly be that FMV other than the amount included in the offer? 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 because there would never be a FMV. 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? **Actually Bidsal himself provided the answer, "[I]t would be the $5 million as a price, fair market value**." (Tr. 261:19-25.) By his own testimony, Bidsal established that fair market value is the offered price absent an appraisal.

002357

So while the FMV can be 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.

D. The Offered Prices is FMV absent Appraisal

Similarly, 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, contrary to what he said in his offer, now argues is not "FMV." (RB II, 6:2.) That contention is without support. Once again Bidsal ignores that the formula requires the insertion of FMV. And the only amount that could then be FMV is the offered price.

Finally, and damming to Bidsal's claim, Bidsal ignores the provision stating the intent of the parties: "The specific intent of this provision is that once the Offering

002357

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."

7.2 Bidsal's Claim that No One Would Agree to Be Bound to Sell Instead of Buy is Not True and Was Proven False.

Bidsal testified that the Agreement cannot be understood as permitting the Remaining Member to force the Offering Member to sell instead of buy because "A party would never make an initial offer to buy if that offer could be transformed into an offer to sell."

> 19 Q Mr. Bidsal, would you -- well, let me
> 20 ask you, first of all, if you agree with this –
> 21 with this sentence in -- in your -- in your trial
> 22 brief. It's on page 10, lines 17 through 18.
> 23 It's at -- and it's under the heading "Under
> 24 collapse interpretation, no buy/sell would ever
> 25 occur."
> P.226
> 1 And it says, quote, "A party would never
> 2 make an initial offer to buy if that offer could
> 3 be transformed into an offer to sell," end quote.
> 4 Do you agree with that?
> 5 A Yes. (Tr. 225: 19-226:1-5.)

Turning an offer to buy into an offer to sell is just what a forced but/sell or "Dutch Auction" provision is. At Tr. 181:23-182:5 Bidsal testified he was not even familiar with a format where after the offer from one party the other has the option either to buy or sell (the reciprocal of which, of course, is that forces the offeror to do the opposite). **FALSE!** He was then asked regarding his other limited liabilities companies if any had "a provision where they–one member can make an offer to buy and the other member had to either buy or sell." (Tr. 183:2-5, 226:21.) Bidsal did acknowledge that he signed the Cheyenne Technology Operating Agreement with Mr. Tabankia around 2003. (Tr. 228:8 229:14-22.) When asked whether under Section 3.2 of that agreement the receiving party of an offer to buy or sell has the option to buy or sell at the figure used in the offer (Tr. 229:23), he

failed to answer (Tr. 230:2 and again at 230:17).[7]

So the Arbitrator directed him to look at the provision beginning "And non-offering members shall elect."[8] That provision is part of Section 3.2 which in part reads (without new quotation marks):

> 3.2. Buy/Sell of Member Interest. Any Member ("Offering Member") may, at any time such Member is not in default pursuant to this Agreement, offer by written notice ("Notice") either to sell such Member's interest in the Company to the other Member(s) ("Non- Offering Members") or to buy a Non-Offering Member's interest in the Company. The Notice shall specify the Offering Member's appraisal of the value of the Property owned by the Company net of loans from Members and third parties ("Company's Value"), and also payment terms. The Non-Offering Member(s) shall elect, no later than thirty (30) days after receipt of the Notice, either to purchase the Company's interest of the Offering Member or to sell the Non- Offering Member's interest to the Offering Member on the same payment terms.

Now obviously the language is not the same as that in the Green Valley Agreement, but it provides that the Non-Offering Member has the right either to sell his interest or buy the interest of the Offering Member . But what cannot be denied is that not only would some party enter into such an agreement, but this party, Bidsal, had himself done so before!

002359

7.3 Bidsal's *Repeated* Assertions That Golshani Was the Draftsman Is False And Irrelevant.

Before addressing two other points we highlight our point above that, even were Golshani the draftsman, that fact is irrelevant unless Bidsal can otherwise show that the

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[7] Instead he attempted to avoid answering this question by claiming that he "had buy/sell agreements, but not in the same format as Green Valley Commerce is," even though the question said nothing about format or Green Valley, (Tr. 183:2-13) or that he "had buy/sell agreements" without answering that they resulted in an offering party being forced to buy or sell based on the amount in his offer.) (Tr. 226:21-227:7.)

[8] The words "non-offering members shall elect" appear in that portion, but the first word appears as "The" rather than "and." CLA cannot determine whether the reporter got the word wrong or the Arbitrator mis-spoke. But there can be no doubt as to the provision to which the Arbitrator referred. The pending question referred to Section 3.2 of the Cheyenne Operating Agreement. The Arbitrator stated "I think you've made your point and we don't need to repeat it again . . .I think you can refer to the testimony that we've just concluded on this point" (Tr. 232:5-11). Based on those comments and the Arbitrator's directing the witness to this section we argue based on what it says. However, just to cover all the bases Claimant has filed a motion for reconsideration of the ruling denying admission of Exhibit 39. Your Honor ruled that yo would rule on that motion concurrently with your decision in this Arbitration.

002359

Agreement is susceptible to an interpretation that CLA is not entitled to buy Bidsal's interest except based on an appraisal. In addition, CLA submits that where a party relies on his counsel to review something the party prepares, and the attorney demonstrates he made such review by repeatedly making changes in further drafts, the party cannot be considered the draftsman. Rather it is the attorney.

Regardless, and conclusively, our discussion above regarding the Rough Draft 1 and Rough Draft 2 cites the transcript portions where Bidsal acknowledged that what Golshani typed was actually the product of the two of them. And thereafter it was reviewed by their attorney who made further changes. The fact that Golshani may have typed what Bidsal and he discussed and agreed to does not make Golshani the drafter.

Further, an examination of the critical features of Section 4 reveals that the concept itself of an Offering Member (name first given by LeGrand) making an offer and the Remaining Member choosing to buy or sell based on amount in offer, was first stated in a LeGrand draft. The format with choices labeled "(i)" and "(ii)" was first done by LeGrand. The inclusion of an expression of the specific intent of the parties started with LeGrand and remained virtually the same throughout.

002360

The principle of construing an agreement against draftsman where the agreement is ambiguous and either interpretation is possible (and CLA contends that Bidsal's is not) arises under (and is found in the annotations to) California Civil Code Section 1654. That section provides, "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." Given the facts just stated and especially that the parties jointly composed Rough Draft 2 and thereafter relied upon their attorney to make certain their agreement was properly reflected, it is not possible to claim that Golshani (as opposed to LeGrand) "caused the uncertainty (if any) to exist."

What appears in Rough Draft 2 was the result of joint preparation by the parties and was not "Golshani's language" any more than it was Bidsal's. So if Bidsal's claim that the signed agreement is virtually the same were true, it means that it is not Golshani's

002360

language any more than it is Bidsal's language.

For any one of the foregoing reasons, Golshani's participation along with Bidsal's and LeGrand's cannot be a basis for interpreting the buy-sell provision in a way in which it is not susceptible on the grounds that Golshani was the draftsman. That claim has always been false and proven to so be at the trial.

8. CONCLUSION.

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

002361

With all the e-mails and all the testimony, there is no evidence, none, that anyone, not Mr. Golshani, not Mr. Bidsal and not Mr. LeGrand ever said to anyone else that if the Remaining Member chooses to buy rather than sell, but did not request an appraisal, then an appraisal was nonetheless required to establish the price. For sure, the Agreement itself says no such thing, and it is not a necessary conclusion from what it does provide. Yet that is the crux of Bidsal's position in order to attempt to avoid the affect of his decision to offer only $5Million Dollars for CLA's interest.

And the question remains; why did Bidsal, who testified that his reason for making his offer was because he no longer wanted to manage the property, make the offer to begin with? And why has he refused to proceed with the sale for the price which he, with full knowledge of the Property, testified was the fair market value, not only when he made the offer, but also when CLA elected to buy rather than sell?

The answer is obvious; he gambled that Golshani would not be able to buy and

002361

attempted to force Golshani to sell at a reduced price. He lost that gamble and since then has tried every which way to avoid the consequences thereof , making convoluted and false claims about what the Agreement intended and says. To do so he has prevaricated about virtually every important fact until he was forced to admit the truth.

He even contradicted the contentions in own briefs filed in this case, suggesting that he was untruthful to his counsel as well. Glaring examples of such chicanery include (i) the contention that Bidsal had not received Exhibit 20 and 22, or (ii) the contention that he would never have made an offer to buy if that offer could be transformed int an offer to sell. Under cross examination Bidsal was forced to admit that both of these contentions were false.

And his sworn testimony about how he set the 5 million dollar purchase price was unbelievable and certainly false. One thing is certain; the very experienced Bidsal would not make an offer to buy without knowing the real fair market value of the property. His testimony to the contrary is affront to this tribunal

002362

Bidsal was repeatedly evasive and not credible; his testimony concerning the appraisal process should be disregarded.

002362

CLA has proved its case not by a preponderance of the evidence but beyond a reasonable doubt. Bidsal must not be rewarded and allowed to thwart CLA's purchase of his interest based on Bidsal's offer. He had all the time he wanted to figure out what the price should be; he made his offer (divided up the cake so to speak) and now must be forced to accept the consequences of his actions.

Dated: June 28, 2018.

RESPECTFULLY SUBMITTED,

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

By: _____
RODNEY T. LEWIN

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EXHIBIT A

APPENDIX (PX)001022

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EXHIBIT "A"

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ibution. Members may be subject to additional contributions to capital as determined by the 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 agement 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 me, 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 bers 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

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

002365

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

If the offered price is not acceptable to the Remaining Member(s), within 30 days o receiving the offer, the Remaining Members (or any of them) can request to establish FMV based or 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 tc 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 tc 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.

002366

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

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

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

The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (o 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 Membe 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

Barbara Silver

From: Roslynn Hinton [RHinton@jamsadr.com]
Sent: Thursday, June 28, 2018 3:41 PM
To: barb@rtlewin.com; Stephen Haberfeld
Subject: RE: CLA Properties LLC 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, June 28, 2018 3:17 PM
To: Stephen Haberfeld <SHaberfeld@JAMSADR.com>
Cc: Roslynn Hinton <RHinton@jamsadr.com>
Subject: CLA Properties LLC v. Shawn Bidsal - JAMS Ref. No. 1260004569

002367

Attached is Claimant's Closing Argument Brief.

002367

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Tele: 310-659-6771
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E-Mail: barb@rtlewin.com

Barbara Silver

rom:	Barbara Silver [barb@rtlewin.com]
Sent:	Thursday, June 28, 2018 3:17 PM
To:	'shaberfeld@jamsadr.com'
Cc:	'rhinton@jamsadr.com'
Subject:	CLA Properties LLC v. Shawn Bidsal - JAMS Ref. No. 1260004569
Attachments:	20180628134343660.pdf

Attached is Claimant's Closing Argument Brief.

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Barbara Silver

rom:	Barbara Silver [barb@rtlewin.com]
Sent:	Thursday, June 28, 2018 3:20 PM
To:	'jshapiro@smithshapiro.com'
Cc:	'dgoodkin@goodkinlynch.com'; 'Louis Garfinkel'
Subject:	CLA Properties LLC v. Shawn Bidsal - JAMS Ref. No. 1260004569
Attachments:	20180628134343660.pdf

Attached is Claimant's Closing Argument Brief.

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EXHIBIT 119

(Respondent's Post-Arbitration Opening Brief (RPAOB)

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EXHIBIT 119

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JAMS

CLA PROPERTIES, LLC, a California limited liability company, Claimant, vs. SHAWN BIDSAL, Respondent.	**Reference #:1260004569** Arbitrator: Hon Stephen E. Haberfeld (Ret.) Date: May 8-9, 2018

002371

RESPONDENT SHAWN BIDSAL'S POST-ARBITRATION OPENING 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 Post-Arbitration Opening Brief, as follows:

I.

PRELIMINARY STATEMENT

As demonstrated during the Arbitration Hearing conducted on May 8-9, 2018, this dispute boils down to whether Claimant CLA Properties, LLC ("***CLAP***") is entitled to purchase the membership interest of Respondent Bidsal 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, but also ignores and deviates from Bidsal's and Benjamin Golshani's ("***Golshani***") course of conduct, which was described at the Arbitration Hearing, as well as the intent of the parties that the protection of an

002371

appraisal process would police any transaction between them. Instead, CLAP now seeks to press an unfair advantage over Bidsal by seeking an *additional* protection never discussed or agreed-to between them; that being a one-sided forced-sale of Bidsal's membership interests to CLAP based upon an initial estimate of company value.

Further, while the evidence at the Arbitration Hearing supports Bidsal's interpretation of the buy-sell provisions of the OPAG, CLAP vigorously argued an alternate theory. Yet to the extent of any ambiguity, Bidsal must prevail because, as Golshani was ultimately forced to admit, Golshani and CLAP were the drafters of the language at issue.

Finally, the evidence showed that Bidsal acted with openness, fairness, and good faith in all of his dealings with Golshani and CLAP. Yet the same cannot be said of Golshani and CLAP, who are attempting to take advantage of their long time partner.

II.

STATEMENT OF FACTS IN EVIDENCE

A. BIDSAL'S INVESTMENT AND MANAGEMENT HISTORY.

Since November 1996 (a period of over twenty (20) years), Respondent Shawn Bidsal ("***Bidsal***") has been investing in and managing real property on a full-time basis. (TR. 346:15-20) As a result of Bidsal's business activities and extensive experience, he has developed a strong infrastructure to facilitate the purchase, management and sale of real property. For example, Bidsal has a full accounting department and specific software to handle rent rolls, collections, CAM reconciliations, and the creation of ledgers. (TR. 346:21 – 347:3).

Further, Bidsal has developed strategic relationships with the real estate broker community which allows him to efficiently lease and sell his properties. (TR. 347:6-8). Similarly, he has developed meaningful business relationships with lenders, allowing him to obtain financing for properties. (TR. 347:6-10). Finally, through the operation of his business, he has carefully cultivated positive business relationships with contractors and subcontractors to allow him to obtain repair work to his properties, as well as perform tenant improvements to purchased spaces, thus making them more valuable and lease-ready. (TR. 347:10-13).

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

1. Bidsal's Infrastructure And Experience At Work.

Claimant Benjamin Golshani ("***Golshani***") is Bidsal's cousin with a background in the textile industry. (TR. 349:14-16 and 359:1-8) Recognizing the opportunities available in real estate (an area that Golshani did not have any experience in), in 2009-10, Golshani approached Bidsal about investment opportunities. (TR. 349:18-23). Bidsal had formed investment partnerships in the past where passive investors, like Golshani, would invest funds, while Bidsal would invest less cash, but make up the difference through management of the properties (i.e., "sweat equity"). (TR. 350:22 – 351:8). This allowed both parties to jointly benefit from Bidsal's knowledge, experience and infrastructure. *Id.* Thus, Bidsal agreed to partner with Golshani.

Bidsal's infrastructure was already in place when Golshani first approached him, and, over a period of time, they formulated terms of a joint investment. (TR. 350:4-8 and 351:9-17). Ultimately, Golshani invested with Bidsal in Green Valley Commerce, LLC ("***Green Valley***") because of Bidsal's expertise, experience, knowledge, and infrastructure. (TR. 395:3-9)

2. Bidsal's Sweat Equity.

Golshani and Bidsal agreed that Golshani would put up more money than Bidsal due to the fact that Bidsal would be putting in sweat equity in the form of the management of the property.

For example, Bidsal would typically charge a management fee of 5-6% of gross income for managing real property. Yet Bidsal never charged or received any management fee with respect to Green Valley. (TR. 395:16-19 and 414:1-9). Further, Bidsal would typically receive a fee of 6% of the gross rents paid by a tenant for marketing and leasing fees. Yet Bidsal never charged or received this fee with respect to Green Valley. (TR. 396:18-20). Likewise, Bidsal did not charge any asset management fees (typically 1-2% of the asset value) to Green Valley or Golshani. (TR. 411:21-412:1). Finally, with rental real estate, tenants would typically pay construction management fees of 5-10% of the amount of work done on a rental space, but Green Valley, and not Bidsal, received those sums from tenants. (TR. 412:8-15 and 413:11-14). In fact, in the six (6) years that Green Valley owned the Green Valley Commerce Center, property management fees, marketing and

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leasing fees, construction management fees and asset management fees, would have amounted to 30% of the collected rent. (TR. 413:17-24).

3. Golshani Willingly Agreed To Green Valley's 50/50 Profit Sharing Even Though He Initially Capitalized Green Valley With 70% Of The Capital.

During the Arbitration Hearing, although not identifying any significance, Golshani suggested that Bidsal had fraudulently altered the operating agreement they ultimately executed from a 70/30 membership split to a 50/50 membership split. (TR. 167:14-168:4 and 169:18-25). However, there was no evidence to support Golshani's rash claim. (TR. 209:3-7). Rather, the evidence showed, and Golshani admitted, that he was more than willing to invest 70% of the funds needed, but that the profit would be split 50/50. (TR. 51:6-12). Further, Golshani readily admitted that the compensation that Bidsal was to receive was for "sweat equity" equal to the cash that Golshani put in. (TR. 115:3-6). In fact, the evidence showed that from the beginning the parties agreed to a 50/50 split. (TR. 216:9-13). Consequently, Golshani was the one who corrected the final version of the OPAG to reflect that. (TR. 216:20-24) In fact, there was no evidence whatsoever that Bidsal had his hand in physically drafting any portion of the OPAG.

C. THE FORMATION OF GREEN VALLEY COMMERCE.

1. Bidsal Found The Green Valley Commerce Center.

Once Bidsal and Golshani agreed to partner up, Golshani asked Bidsal about how they could maximize the profit in buying a property. (TR. 351:18-22). Because the country was still in an economic recession, Bidsal informed Golshani that he was registered with a number of auction platforms, including auction.com, and they could purchase properties at auction at lower prices than on the open market. (TR. 351:22 – 352:11). Some of these properties were subject to defaulted secured notes or bank-owned "REO" properties that had already been foreclosed upon. Id.

Because Bidsal was registered with the auction platforms, he identified properties for Bidsal and Golshani to bid on. (TR. 352:16-24). If they liked the properties, Bidsal and Golshani would bid. Id. Over the course of that activity, Bidsal found the commercial real property at issue in this case, located at 3 Sunset Way, Henderson, Nevada 89014 (the "***Green Valley Commerce Center***"). (Tr. 353:6-8). The Green Valley Commerce Center was subject to a defaulted note, which was an

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exceptional value because there is greater risk with a note that is subject to potential defenses before it is foreclosed, and there is a great deal of process involved in converting the note to fee simple title. (TR. 353:14-354:2).

In order to bid, Bidsal and Golshani needed a deposit, either an indemnity agreement, credit card deposit, or cash deposit.[1] (TR. 354:3-14). If the winner did not exercise its right to buy, then the deposit was forfeited. (TR. 354:15-20). Bidsal and Golshani also had to create a formal business entity. (TR. 354:25-355:1). Bidsal and Golshani also needed proof of funds and to fill out of the necessary forms. (TR. 355:2-3). Fortunately, Bidsal was already qualified to bid. (TR. 355:3-9). To that end, on May 26, 2011, Bidsal formed Green Valley for the purpose of bidding on the Green Valley Commerce Center. *[Ex 1/301]* (TR. 356:13 – 357:5).

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2. Title To Green Valley Commercial Center.

Ultimately, Bidsal and Golshani were successful in purchasing the note secured by a deed of trust against the Green Valley Commerce Center. (TR. 357:21-358:6). Bidsal then engaged the borrower to see if they could convert the note into a deed-in-lieu of foreclosure. Id. Part of the process involved a detailed formal letter to satisfy CMBS loan criteria, which Bidsal took care of. (TR. 358:7-2 and 359:9-18). Bidsal conducted extensive negotiations with Chris Child, an attorney for the borrower, and the borrower's principal, Mr. Paulson. (TR. 363:16-19). Golshani acknowledged that Bidsal handled these negotiations. (TR. 113:22-24).

Ultimately, they obtained title to the Green Valley Commerce Center by a deed-in-lieu of foreclosure, or "friendly foreclosure." (TR. 358:4-6 and 363:20-25). At the same time, Bidsal managed to negotiate the collection of a fair amount of back rents and other fees from the borrower for Green Valley, possibly between $70,000.00 and $200,000.00. (TR. 364:7-365:2). On September 22, 2011, Green Valley obtained title to the Green Valley Commerce Center. *[Ex 355].*

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[1] Golshani testified that Bidsal did not put up the deposit because Bidsal purportedly said that he was "short on cash". (TR. 49:11-15). However, this was false. (TR. 198:5-9 and 201:5-8). Bidsal never said that. Id. Rather, Golshani simply provided the deposit as part of the funds the two agreed he was investing. (TR. 355:10-356:5)

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

1. The Initial Draft OPAG.

One of the commercial real estate brokers with whom Bidsal had developed a business relationship, Jeff Chain ("***Chain***"), and who had assisted Bidsal in finding different opportunities, provided Bidsal and Golshani with a form Operating Agreement ("***OPAG***") for Bidsal and Golshani to use with Green Valley. *[Ex 303]* (TR. 360:11-18). Chain also introduced Bidsal and Golshani to a transaction attorney, David LeGrand ("***LeGrand***"), to assist them in drafting the OPAG for Green Valley. (TR. 360:23-361:8).

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's 303, 7/304 & 10/305].*

2. LeGrand's Initial OPAG Drafts.

LeGrand's first couple drafts of the OPAG did not contain any language even remotely similar to Section 4. *[See Ex's 7/304, 10/305, 5/6/11/306].* 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 12/307, at DL00137 & 148-150].*

On August 18, 2011, LeGrand introduced new buy-sell language which LeGrand referred to as "Dutch Auction" language (the "***Dutch Auction language***")[2]. *[Ex 16/311, at 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 16/311, at DL00211] (emphasis added).* LeGrand testified that this language did not end up in the final executed OPAG. (TR. 316:12-15). Rather, the parties continued to negotiate the terms of proposed OPAG, and in LeGrand's September 16,

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

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2011 draft of the OPAG (the 5th iteration), the Dutch Auction buy-sell language had been removed, leaving only the ROFR language. *[See Ex 17/313].*

On September 19, 2011, LeGrand sent an email expressing his opinion that "[a] simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offered price **does *not* appear sensible to me**." *[See Ex 18/314, 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 that email 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 19/315 at DL00301 (emphasis added)].* LeGrand testified that Golshani and Bidsal wanted a buy-sell provision in the OPAG, but LeGrand refused to confirm that it was a "forced buy/sell" even after counsel for Golshani pressed him to do so. (TR. 273:8-13). Rather, LeGrand stated that he was trying to draft a "vanilla style" buy-sell provision. (TR. 274:15-17). Beyond that, however, LeGrand could not recall specifically what was discussed between Bidsal and Golshani. (TR. 289:6-11).

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

On September 22, 2011, Golshani emailed Bidsal some buy-sell language that Golshani proposed and identified as a "ROUGH DRAFT", and which, after some modifications, ultimately ended up in Section 4. *[See Ex 20/316 and Ex 29/337, pages 10-11]* On October 26, 2011, Golshani emailed Bidsal a revised version of his earlier "ROUGH DRAFT", which Golshani identified as "ROUGH DRAFT 2". *[See Ex 22/319]*

The changes between ROUGH DRAFT and ROUGH DRAFT 2 are important in helping understand the negotiations and intent of the parties. There is no dispute that Golshani drafted the ROUGH DRAFT, nor that he made all of the changes to ROUGH DRAFT 2. One of the changes made by Golshani was intentionally changing the triggering event for a buy-sell transaction from an offer by one member "***to sell his or its Member's Interest*** in the Company to the other Members" to an offer by that member "***to purchase the Remaining Member's Interest*** in the Company." *[See Ex's 20/316, 22/319, & 358].* (TR. 376:17-25 and 377:6-8; 378:13-17; 379:1-4). It is also

002377

significant to note that there is no draft that includes both "sell" and "purchase" in the same sentence.

A short time later, Golshani sent a fax to LeGrand containing his ROUGH DRAFT 2 buy-sell language. *[See Ex 320]* (TR. 318:7-9). LeGrand then made a few minor changes to Golshani's ROUGH DRAFT 2, renamed it "DRAFT 2", and circulated the DRAFT 2 to Bidsal and Golshani. *[See Ex's 22/319, 321, & 29/337]* (TR. 318:10-14 & 318:23-319:5). However, the differences between ROUGH DRAFT 2 and DRAFT 2 are nominal. *[See Ex's 29/337 & Ex 360].* (TR. 320:11-17 & 321:19-22). Rather, LeGrand simply took Golshani's language and inserted it almost untouched into the Operating Agreement. Id.

4. Golshani Added An Appraisal Process To The Buy-Sell For Fairness Purposes.

During the course of their discussions, both Bidsal and Golshani wanted to have protections for both parties in equity and fairness. (TR. 381:18-22). Consequently, an appraisal process was added to the buy-sell provision. (TR. 31:8-14).

The evidence showed that Bidsal and Golshani discussed the what-ifs while the OPAG was being prepared and that the buy-sell procedure would begin when one member makes an offer to purchase. (TR. 381:16-25).

Bidsal explained the mechanics of what they discussed: the initial offer is made on the member's estimate of value. (TR. 382:1-5). The other side looks at it. (TR. 382:6-7) If he is willing to sell at that number, they are done. Id. If he is not happy with the number, they go to an appraisal process. (TR. 382:12-15). Initially, they talked about three appraisers, but it was too cumbersome so they went with two appraisers. (TR. 382:12-383:1).

If the other side decided to make a counteroffer, then they would go through the appraisal process to determine FMV, fair market value, by appraisal. (TR. 383:14-17). At the same time, there was no scenario where one side made an offer to purchase and the other side twisted it around and make a counteroffer to purchase at that number. (TR. 227:13-19 and 383:21-25). Not only was that not discussed, but Golshani's changes from ROUGH DRAFT to ROUGH DRAFT 2 intentionally made it clear that the triggering event would be an "offer to *purchase*..." as opposed to

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002378

"an offer to <u>sell</u>...". *[See Ex's 20/316, 22/319 & 358].* (TR. 226:1-5, 376:17-25; 377:6-8; 378:13-17; 379:1-4; 384:1-4).

Further, while the OPAG contained a paragraph at the end that states the "specific intent of this provision," the only testimony regarding this statement was that it was referring to and is to be read in conjunction with the paragraphs immediately above it, only. (TR. 256:6-21) *[Ex. 29/337].* As more fully described below, if the Remaining Member chose the first option (roman numeral "i"), by accepting the Offering Member's offer to purchase, then they would go to the specific intent provision. (TR. 257:11-24) *[Ex. 29/337].* If the Remaining Member chose the second option (roman numeral "ii"), by making a counteroffer, then they would go through the appraisal process and go back to the same specific intent provision. (TR. 257:25-258:16) *[Ex. 29/337].* As soon as the Remaining Member made an election to make a counteroffer, they would have to continue with the rest of the sentence and complete an appraisal based on FMV. (TR. 262:15-19) *[Ex. 29/337].* FMV is a defined word in Section 4.2 as the medium of two appraisals, and it is further defined in Section 4.1 (which refers back to Section 4.2). (TR. 263:20-24) *[Ex. 29/337].* This interpretation is the only logical interpretation and explains why the last paragraph of Section 4.2 uses "this <u>provision</u>" and separately the phrase "...according to the procedure set forth in <u>Section</u> 4." It also explains why the "specific intent" language appears at the end of the buy-sell procedure contained in Section 4.2 as opposed to appearing at the beginning of Section 4.

All told, Bidsal, Golshani, and LeGrand spent more than 6 months negotiating the terms of the proposed OPAG and produced at least seven different revisions before it was ultimately signed. *[See Ex's 7/304, 10/305, 5/6/11/306, 12/307, 14/308, 16/311, 17/313, 18/314, 19/315, 25/323, and 29/337].* Bidsal never drafted any of the revisions. (TR. 208:6-7, 384:18-23, 387:13-15). Rather, Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. (TR. 385:8-12 and 19-21). To the extent any changes were not made by LeGrand, they were made by Golshani. (TR. 152:20-22).

By August 3, 2012, the OPAG had been signed by Bidsal and Golshani. *[Ex's 332 and 29/337].* (TR. 213:22-25) While the language of Section 4 in the signed OPAG was slightly different than Golshani's ROUGH DRAFT 2, the changes are minor and were made by Golshani

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prior to signing. (TR. 214:4-11) *[See Ex's 22/319 & 29/337].* More importantly, the intent of the parties that the initial offer ***not be*** an offer to buy or sell, but solely an offer to buy, remained.

B. THE MANAGEMENT AND OPERATION OF GREEN VALLEY.

1. Bidsal Rehabilitated And Subdivided Green Valley Commerce Center.

After Green Valley acquired the Green Valley Commerce Center, Bidsal and Golshani worked with Bidsal's contact, Chain, to lease Green Valley Commerce Center and sell off some of its buildings. (TR. 365:3-7). Because it was difficult to sell a partially-leased complex, Bidsal began the process of subdividing the Green Valley Commerce Center into separate buildings, creating a building association, conducting a reserve study for the building association, and commissioning survey work. (TR. 365:18 – 366:11). Golshani admitted that Bidsal did "most of the work" in handling the subdivision process and working with the surveyors. (TR. 114:9-15). Golshani also admitted that Bidsal, alone, handled the management and leasing of the Green Valley Commerce Center. (TR. 114:19-21).

2. Bidsal Marketed And Sold Buildings In Green Valley Commerce Center.

Once the buildings were subdivided and leased, Chain and Bidsal discussed selling them. *[Ex. 333-36].* As part of that process, Chain produced a broker's opinion of value for each building ("***BPO***"). (TR. 368:10-12)*[Id.]* Even though Golshani was not involved in the process, Bidsal shared the BPOs with Golshani. (TR. 368:22 - 369:2) *[Ex. 333-36 & Ex. 356-57]*

Ultimately, Bidsal, as part of his management activities, was able to sell buildings B, C, and E of the Green Valley Commerce Center for a nice profit for both him and Golshani.[3] (TR. 369:4-5). As Golshani admitted, Bidsal kept him up to date throughout the process. (TR. 173:10-13). Further, when the buildings sold, the proceeds from one of the properties were used to purchase a new property through a 1031 exchange. (TR. 369:17-370:1). The proceeds from the sale of the other two buildings were paid to Golshani and Bidsal for their respective capital percentages. Id. In other words, Golshani received a higher pay-off because he had invested 70% of the initial start-up

[3] The buildings was originally purchased for $50.00 per square foot. (TR. 369:6-16). Yet, one of the buildings sold for $121.00 per square foot and the other two for $100.00 per square foot. Id.

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capital. (TR. 370:8-17 & 373:2-4) The formula used to determine the allocation of proceeds is contained in Exhibit B of the OPAG. (TR. 389:19-24) *[Ex. 29/337].*

Even though Golshani took a very limited personal role in the sale of a property, every sale was done with Golshani's approval. (TR. 373:18-20). Golshani admitted that Bidsal would send him emails with information about the properties and their values "all the time." (TR. 175:19-23) *[Ex. 333-36].* Following the sales, Green Valley still owns five buildings in the Green Valley Commerce Center, and another property in Arizona. (TR. 370:18-23).

C. MISSION SQUARE.

If there was any doubt left as to who drafted Section 4 of the OPAG, that doubt was resolved in early 2013. In April 2013, Golshani[4] 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 1 (emphasis added)]* LeGrand's reference to "Ben's language" is based, in part, on the fact that Golshani, over the course of several drafts, perfected the buy-sell language and spearheaded the corrections with LeGrand. (TR. 389:8-14). No testimony was presented by Golshani to undermine the parties' understanding at that time.

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

The evidence at the Arbitration Hearing showed that consistent with ROUGH DRAFT 2, on July 7, 2017, Bidsal made a written offer ***to purchase*** CLAP's Membership Interest in the Company pursuant to Section 4, at a price based upon an estimate of the Company's total value of $5,000,000.00, which Bidsal *thought* was the fair market value, derived without the benefit of a formal appraisal (the "***Initial Offer***"). *[Ex 30/346]* (TR. 331:15-20). The $5,000,000 value was Bidsal's estimate of the value of Green Valley. (TR. 333:10-12, 390:1-5 & 390:21-22). Bidsal initiated the process to buy Green Valley because he wanted to finish the deal and move on. (TR. 390:14-20). Bidsal did not obtain an appraisal before making the offer. If Golshani was not

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

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interested in selling, his protection was that he could have made a counteroffer according to Section 4.2 and trigger the appraisal process contained in the second paragraph of Section 4.2. (TR. 339:19-24 and 340:8-10).

Notwithstanding Bidsal's openness to Golshani during the entire ownership period, behind the scenes, on July 31, 2017, Golshani obtained an appraisal from Petra Latch, MAI of Green Valley's property, indicating that the Green Valley Commerce Center was worth more than originally thought. *[Ex. 353]* (TR. 156:7-10). Golshani admitted that he was able to easily obtain such an appraisal within only 11 days, and that he did so because Bidsal "wanted to buy me out, and I had to get money." (TR. 158:15 – 159:2). During that time period, upon Golshani's request, Bidsal had been sending Golshani information from Green Valley's past history. (TR. 391:13-17). Specifically, Bidsal furnished Golshani with financials for Green Valley and information relating to the condition of the Green Valley Commerce Center, including deferred maintenance information. (TR. 245:17-22 and 392:13-23).

Notwithstanding the fact that Golshani specifically changed the language of Section 4 from an offer to <u>*sell*</u> to an offer to <u>*purchase*</u>, Golshani next attempted to take advantage of Bidsal by trying to twist Bidsal's offer to <u>*purchase*</u> into an offer to <u>*sell*</u>. *[See Ex's 20/316, 22/319, & 358].* (TR. 376:17-25 and 377:6-8; 378:13-17; 379:1-4). Specifically, on August 3, 2017, Golshani / CLAP provided a response in which Golshani inappropriately attempted to convert Bidsal's Initial Offer to *purchase* into an offer by Bidsal to *sell* Bidsal's membership interests in the Company without the benefit of Bidsal obtaining an appraisal. *[Ex 31/347].*

Because Golshani had specifically agreed that the Initial Offer would not be an offer to <u>*sell*</u>, but instead, solely an offer to <u>*purchase*</u>, on August 5, 2017, Bidsal sent a letter back to CLAP, requesting that the appraisal process contemplated from the beginning be utilized. *[Ex 32/348].* He informed Golshani that he needed to initiate the appraisal process because if a counteroffer is made, then they need to go to the FMV and it is defined as the medium of two appraisals in Section 4.2. (TR. 391:4-11).

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002382

002382

Sometime in August, after Golshani obtained the appraisal from Latch, Golshani and Bidsal met in a coffee shop.[5] (TR. 391:18-25). At the meeting, Bidsal asked for a copy of Golshani's appraisal, but Golshani refused to provide it to him. (TR. 393:1-7). Golshani admitted that he never gave it to Bidsal. (TR. 159:11-19, 160:25-161:4). Rather, on August 28, 2017, Golshani and CLAP sent another letter to Bidsal, continuing to insist on an option not contemplated by Section 4 of the OPAG. *[Ex 35/349].*

CLAP then initiated this Arbitration Proceeding to force Bidsal to sell his membership interests in Green Valley. On May 8-9, 2018, the Arbitrator heard the testimony and arguments of the parties.

For the following reasons, if CLAP is permitted to purchase Bidsal's membership interests in Green Valley, then the appraisal process in Section 4.2 of the OPAG must be followed before CLAP can do so.

III.

STATEMENT OF AUTHORITIES

E. THE PARTIES INTENTIONALLY CHANGED THE TRIGGERING EVENT TO AN OFFER TO PURCHASE.

Under Nevada law, in interpreting an agreement, the court may not modify it, or create a new contract. A court is not at liberty to revise agreement while professing to construe it. *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). 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, 470 P.2d 424 (1970). In construing an ambiguous contract, the court should place itself as nearly as possible in the situation of the parties. *See,* Barringer v. Gunderson, 81 Nev. 288, 402 P.2d 470 (1965).

[5] Golshani attempts to accuse Bidsal of taking advantage of him by making the July 7, 2017 Initial Offer only after Golshani informed Bidsal that he had a heart problem. However, the evidence showed that Golshani only told Bidsal he had heart problems during the coffee shop discussion which was several weeks after Bidsal made his offer. (TR. 237:1-3).

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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, 424 P.2d 101. 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 solution. *See,* Eversole v. Sunrise Villas VIII Homeowners Association, 112 Nev. 1255, 925 P.2d 505 (1996).

F. GOLSHANI'S CHANGES FROM ROUGH DRAFT TO ROUGH DRAFT 2 MUST BE GIVEN MEANING.

In addition to the above legal principles, the dispute could be resolved simply by the changes made between ROUGH DRAFT and ROUGH DRAFT 2. Pursuant to California Code of Civ. Proc. § 1858, a party may not delete words in a contract and thereby alter the parties' obligations. Rather, 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.

Similarly, in the very recent matter of Walt Disney Parks and Resorts U.S., Inc. v. Superior Court of Los Angeles County, 21 Cal. App. 5th 872 (2nd Dist., Feb. 28, 2018), the court recited the near-identical analysis that applies to the interpretation of a statute. As with contracts, when

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002384

different words are used as part of the same scheme, those words are presumed to have different meanings. Id. at 879. (*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, 26 Cal. 4th 63, 73 (2001)).

In the instant case, when Section 4 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. 20/316].* 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 . . ." *See Ex. 22/319. See also Ex. 358* showing the redline comparison between Golshani's initial "ROUGH DRAFT" and his "ROUGH DRAFT 2". These changes were made as a result of negotiations between the parties. (TR. 136:9-138:7).

This is critically significant because it places the emphasis upon the desire of the first party to initiate a break-up of the entity to ***buy-out*** the remaining member, not sell its interests to the remaining member. If a ***sell-off*** by the member initiating the break-up was the intended course of conduct, then Golshani and Bidsal would have kept that procedure intact or add both sell and purchase in the same paragraph after Golshani created his ROUGH DRAFT. However, they did not do so, thus signaling their intent to emphasize that a break-up was to begin with the initiating member ***purchasing*** the other member's interest.

By specifically changing the word "sell" to "purchase", the parties were acknowledging and consummating the agreement that an offer to buy is ***not*** an offer to sell. Therefore, there is no basis to Golshani's claim that an offering member could put itself in peril of having to sell its membership interest in Green Valley at the offered price, simply by the remaining member making a counteroffer

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without an appraisal to determine FMV. Rather, the emphasis was on ***purchasing*** the remaining member's interest after offering what the Offering Member thought was the fair market value, and any counteroffer had to follow the strict requirements of procuring what the parties agreed would be a fair price based upon the medium of two appraisals.

G. BECAUSE GOLSHANI DRAFTED THE BUY-SELL PROVISIONS AT ISSUE, ANY AMBIGUITIES SHOULD BE CONSTRUED AGAINST HIM AND IN FAVOR OF BIDSAL.

While Bidsal maintains that the buy-sell provisions of the OPAG clearly support his interpretation, in the event that the Arbitrator concludes that the buy-sell provisions of the OPAG are ambiguous, such ambiguities must be construed against Golshani and in favor of Bidsal.

The Nevada Supreme Court has made it clear that: "[a]n 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 (2015) *citing to* Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215–16, 163 P.3d 405, 407 (2007).

In harmony with this principle, at the Arbitration Hearing, the Arbitrator observed that if "something isn't perfect equipoints, who the drafter is or isn't may tip the balance." (TR. 15:13-15)

1. Golshani's Declaration That He Never Drafted Section 4 Of The OPAG Was Patently False.

Throughout this case, Golshani and CLAP have strongly asserted that the buy-sell language in the OPAG was drafted by David LeGrand[6]. However, the evidence paints a completely different truth.

During the Arbitration Hearing, however, Golshani was questioned about his Declaration. (TR. 161:24 – 162:3) *[Ex. 359].* When asked if he averred that ***he did not draft*** Section 4 of the OPAG, he waffled, responding with: "[w]ell it depends on what you mean by 'draft'... " (TR.

[6] On January 19, 2018, Golshani executed, under penalty of perjury, a Declaration in support of his Claimant's Response to Respondent's Opening Brief and Declaration of Benjamin Golshani (the "***Declaration***"), in which Golshani swore that: "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 . . ." *[Ex. 359]*

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163:22-25) He then squarely refuted his own sworn declaration, admitting that he "wrote some draft, rough draft." (TR. 164:2-3).

Moreover, ***multiple times*** during the Arbitration Hearing, Golshani admitted that he drafted the language contained in Section 4 the OPAG, including, more specifically, the formulas and appraisal provisions (TR. 85:13-16, 88:22-89:2, 92:20-23, 138:3-5), the entire ROUGH DRAFT *[Ex. 20/316]* (TR. 91:15-18, 136:22-25, 138:22-24, 140:1-11), the entire ROUGH DRAFT 2 *[Ex. 22/319]* (TR. 91:20-23 and 147:13-15), the change in the triggering event from an offer to sell to an offer to purchase (TR. 93:11-17, 93:24-25, 151:6-9), the third paragraph that begins with "the remaining member" (TR. 145:10-15), and insertion of the word "FMV" into the counteroffer provision in Roman numeral II (TR. 146:10-16 and 147:1-11).

Based upon the forgoing two points become very clear. First, Golshani perjured himself when he executed the Declaration and frankly his testimony throughout the Arbitration is thus suspect. Second, Golshani was, in fact, the drafter of Section 4.

2. <u>David LeGrand Did Not Draft The Critical Language.</u>

Nonetheless, Golshani attempted to argue at the Arbitration Hearing that Article XIII of the OPAG conclusively determined, as a matter of law, that LeGrand was the drafter of Section 4 of the OPAG. (TR. 11:17-12:6) *[Ex. 29/337].* However, the Arbitrator wisely concluded that the "thrust of the recitation [that the OPAG was prepared by LeGrand] is not to foreclose that anybody else may have had a hand in the drafting of that . . . the provision is more in the nature of what appears to be self-protection of the drafts person." (TR. 19:17 – 20:6)

Further, LeGrand admitted that Golshani ***sent him*** some language that Golshani was proposing, which was reflected in DRAFT 2. *[Ex. 321]* (TR. 318:7-14). He also admitted that the second and third pages of Exhibit 22/319 (ROUGH DRAFT 2) was a document that he received from Golshani. (TR. 318:23 – 319:5). LeGrand took Golshani's ROUGH DRAFT 2 and made minor revisions to it; however, there were no significant changes to ROUGH DRAFT 2. *[See Ex's 22/319, 321, & 29/337].* Rather, LeGrand simply took Golshani's language and inserted it almost untouched into the Operating Agreement. *[See Ex. 29/337]* (TR. 321:19-22).

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This was further illustrated at the Arbitration Hearing in Exhibits 360 and 361. LeGrand admitted that Exhibit 360 was a fair rendition of the changes made from ROUGH DRAFT 2 to DRAFT 2. (TR. 320:14-16). Similarly, LeGrand admitted that Exhibit 361 was a fair rendition of the changes made from DRAFT 2 to the final OPAG. (TR. 320:11-17).

3. LeGrand's Emails Referenced The Critical Language As "Ben's Language".

Further, the evidence showed that in April 2013, LeGrand was assisting Golshani and Bidsal with drafting an OPAG for Mission Square, which, according to LeGrand was "**based upon the GVC OPAG *that has Ben's language on buy sell***." *[Ex. 343, at 1 (emphasis added)].*

4. Bidsal Did Not Draft The OPAG.

Even though Golshani attempted to make an argument that Bidsal drafted the OPAG, the evidence actually showed that Bidsal never drafted any of the revisions. (TR. 208:6-7, 384:18-23, 387:13-15). Specifically, Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. (TR. 385:8-12 and 19-21). Golshani was the one making changes on his computer. (TR. 152:20-22). By August 3, 2012, the OPAG had been signed by Bidsal and Golshani in Bidsal's office. *[Ex's 332 and 29/337]* (TR. 213:22-25). Golshani simply brought it in to Bidsal's office for signature. (TR. 214:4-11).

Therefore, the evidence at the Arbitration Hearing demonstrated that Golshani drafted the critical buy-sell language in this case, and if there are any ambiguities in its interpretation, they should be construed against CLAP and Golshani.

H. HOW SECTION 4 OF THE OPAG IS CORRECTLY INTERPRETED AND APPLIED.

1. Background of Section 4 Of The OPAG.

As is outlined above, Section 4 of the OPAG was not contained in the original OPAG provided to LeGrand, nor in LeGrand's first few iterations. Further, from the moment that LeGrand introduced buy-sell language, it was contemplated that the sales price would be set through a formal appraisal. *[See Ex 311, at DL00211].* This concept continued through the final version of the Green Valley OPAG.

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Thus, to the extent that there is any question about the intent of Section 4, the conduct of the parties, both before the Green Valley OPAG was signed, as well as after, makes it clear that an appraisal process was always supposed to be part of the buy-sell language.

With the background of Section 4 in mind, and much like Section 7 of the Mission Square OPAG which can only be triggered upon the death or dissolution of a Member, Section 4 can only be triggered in one way, as outlined in the first paragraph of Section 4.2. Once Section 4 has been properly triggered, there are four different ways that the transaction can go. This was explained by Bidsal during the Arbitration Hearing. (TR. 382-383).

The entirety of Section 4 of the OPAG is reproduced immediately below, with each paragraph or provision of Sections 4.1 and 4.2 identified as Nos. 1 through 4 and Nos. 1 through 7, respectively, for ease of reference:

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.

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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 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.

[Ex. 29/337: pages 10-11] (emphasis added).

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002390

2. Step 1: Initial Offer.

If a member desires to trigger the buy-sell language in Section 4, there is one, and only one, way that the process can be initiated and that is by one of the members (defined as the "***Offering Member***"[7]) making an offer "*to purchase*[8]" the other member's (defined as the "***Remaining Member***"[7]) membership interest "for a price that the Offering Member *thinks* is the fair market value" (which is referred to as the "***offered price***"[9]) (the "***Initial Offer***"). *See* provision① of Section 4.2. (TR. 382:1-5).

Further, provision ① of Section 4.2 sets forth specific parameters that the Initial Offer must comply with. For instance, the offered price is "a price the Offering Member *thinks* is the fair market value." *See* provision ① of Section 4.2 (emphasis added). Thus, pursuant to the plain terms

[7] *See* provision ① of Section 4.1 and provision ① of Section 4.2

[8] *See Exs. 20/316, 22/319, and 358*: this term was ***expressly negotiated*** into the buy-sell provisions. In the initial "ROUGH DRAFT" written by Golshani, the triggering event was a willingness and offer on the part of one member "to sell" to the other members, which was modified to an offer "to purchase" the Remaining Member's Interest in the Company.

[9] *See* provision ① and ② of Section 4.2.

002390

of the OPAG, 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. *Id.* The reason for this is obvious. While the parties always contemplated that a formal appraisal would be used, if the Remaining Member is in agreement with the price, then the parties could save the time and expense associated with a formal appraisal. However, Section 4 was written so that if *both* parties did not agree to skip the appraisal process, then the appraisal process would be used. This is confirmed by the language of provision ① of Section 4.2. Under provision① of Section 4.2, the Initial Offer is not an offer to sell, but only an offer "*to purchase*." While the wording was originally drafted by Golshani to reach "an offer to *sell*," it was subsequently changed to "an offer to *purchase*," which change must be given meaning. See Mirpad, LLC, 34 Cal. Rptr. 3d 136; Burnett, 20 Cal. Rptr. 3d 562; Walt Disney Parks and Resorts U.S., Inc., 21 Cal. App. 5th at 879.

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

As illustrated in Exhibit "A" in Bidsal's Opening Brief submitted to the Arbitration in relation to Claimant's JAMS Rule 18 Motion, once Section 4 has been triggered by an Initial Offer, the Remaining Member has four choices and protections: (1) do nothing, (2) accept the offer at the offered price, (3) request an appraisal and then accept the Offering Member's purchase offer, or (4) make a counteroffer.

a. Option 1: Do Nothing.

The first option the Remaining Member has is to do nothing. (TR. 382:6-7) If the Remaining Member does nothing, then under Section 4.3 of the OPAG, 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 the offered price. Id. Thus, by its silence, the Remaining Member is agreeing to skip the formal appraisal process.

b. Option 2: Accept the Initial Offer to sell.

The second option the Remaining Member has is to accept the Offering Member's Initial Offer to sell. *See* provision ⑤(i) of Section 4.2. (TR. 382:6-7) Under the second option, because Remaining Member is signaling its consent to skip the formal appraisal process

always contemplated by the parties and agreeing to sell its membership interest to the Offering Member at the offered price set forth in the Initial Offer. Id.

c. Option 3: Request an Appraisal.

The third option the Remaining Member has is to request an appraisal. *See* provision ② of Section 4.2. (TR. 382:12-15) Under provision ② of Section 4.2, "[i]f the offered price is not acceptable to the Remaining Member(s), within 30 days of receiving the offer, the Remaining Member(s) (or any of them) can request to establish FMV based upon ...." *[Ex 29/337]* As Golshani already demonstrated, an appraisal can be obtained in less than 2 weeks. *[See Ex 353].*

Under provisions ③ and ④ of Section 4.2, once the FMV has been established by appraisal, the Offering Member is deemed to have made an offer to purchase the Remaining Member's membership interest at the FMV. *See* provisions ③ and ④ of Section 4.2. (TR. 382:12-15). At which point, the Remaining Member gets to decide whether to sell its membership interest to the Offering Member at FMV or buy the Offering Member's membership interest at FMV. *See* provision ⑤ of Section 4.2.

d. Option 4: Make a Counteroffer.

The fourth and final option the Remaining Member has is to make a counteroffer which is governed by provisions ⑤(ii) and ⑥ of Section 4.2. (TR. 382:12-15 and 383:14-17). However, under this scenario, Golshani's language requires that the appraisal process be used. This should come as no surprise because his legal counsel admitted to the Arbitrator that an appraisal process is intended to provide protection to the members. (TR. 31:8-13). Further, even when LeGrand was initially attempting to create buy-sell language for the OPAG, an appraisal procedure was contemplated as part of the process. *[See Ex 16/311, at DL00211] (emphasis added)*

Specifically, while provision ⑤(i) of Section 4.2 allows the Remaining Member to accept an offer either at the offered price or at the FMV, provision ⑤(ii) of Section 4.2 specifically states that any ***counteroffer*** must be based upon the "same fair market value (FMV) according to the following formula...." *[Ex. 29/337].*

The use of the defined term "FMV" is important. As is illustrated in provision ② of Section 4.2, whenever the amount identified in the Initial Offer (which is the amount the Offering Member

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thinks is the fair market value) is referenced, it is referenced as the "offered price". Further, any time the defined term FMV is used, it is referencing the last sentence of provision 4.2② of Section 4.2, which states: "[t]he medium of these 2 appraisals constitutes the fair market value of the property **which is called (FMV)**." *[See Ex. 29/337].* Golshani, himself, admitted that he had inserted the word "FMV" into the counteroffer provision in roman numeral ii (i.e. provision ⑤(ii) of Section 4.2). (TR. 146:10-16 and 147:1-11).

Thus, under provision ⑤(ii) of Section 4.2, the Remaining Member does not have the option of purchasing the Offering Member's membership interest at the "offered price". Such a scenario was never discussed by Golshani and Bidsal. (TR. 227:13-19, 383:21-25, and 384:1-2) In fact, a party would never make an initial offer if that were so. (TR. 226:1-5). Thus, there was a safeguard of going to an appraisal process. (TR. 384:2-4).

Instead, if the Remaining Member makes a counteroffer, then it must be at the FMV, as that term is defined in provision ④ of Section 4.1 and provision ② of Section 4.2. *[See Ex. 29/337]* Thus, even if the Remaining Member did not previously request an appraisal, then by making a counteroffer, the Remaining Member still triggers the appraisal process outlined in provision ② of Section 4.2, as that is the only way to establish the FMV, which under provision ⑤(ii) of Section 4.2, is the price that he Remaining Member must pay[10] to purchase the Offering Member's membership interest.

I. CLAP'S MISCHARACTERIZATION OF SECTION 4 WAS BASED UPON MULTIPLE FLAWED PREMISES AND NOT SUPPORTED BY THE EVIDENCE PRESENTED AT THE ARBITRATION HEARING.

CLAP's case was based upon the following false premises: (1) that an offer to purchase equals an offer to sell, and (2) that if the Remaining Member did not invoke the appraisal process then the offered price equals the FMV. However, CLAP is incorrect on all fronts and the evidence presented at the Arbitration Hearing did not support CLAP's interpretation.

[10] This is confirmed by the language of provision ① of Section 4.2, which clearly states that the Initial Offer is only an "offer to purchase" and not an offer to sell as originally drafted by Golshani. *See* provision ① of Section 4.2.

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1. Under CLAP's Interpretation, A Buy-Out Would Never Occur.

As a practical matter, if CLAP's premises were correct then no party would ever make an initial offer based on what he "thinks" for fear of having an offer to purchase twisted into an obligation to sell. That would render the word "thinks" in provision ① of Section 4.2 a nullity. According to CLAP, under the language of Section 4.2① (which is the one and only way to initiate the buy-out procedure), the Offering Member does not have the option of establishing the FMV by appraisal. However, if the Remaining Member could reject the Initial Offer, but force the Offering Member to sell at the offered price, then no member would ever make an Initial Offer.

Thankfully, from the moment the buy-sell language was first introduced, it was clear that the default position would be to set the sales price using a formal appraisal. *[Ex. 16/311]*. This intent was continued in the language of Section 4, which limits a counteroffer to the FMV, as that term is defined in provision ④ of Section 4.1 and provision ② of Section 4.2, thereby giving the Offering Member the ability to make an Initial Offer without the benefit of an appraisal in order to keep the initial costs low, but without worrying that the Initial Offer can be turned against the Offering Member. *[Ex. 29/337]*. The bottom line is that the purpose of the initiating offer by Bidsal was to start the process and, unless CLAP desired to avoid the expenses of conducting the appraisals and was willing to sell based upon the initiating offer figure, became only a beginning benchmark.

2. Provision ⑦ of Section 4.2 Does Not Support CLAP's Position and CLAP's First Premise, That That An Offer To Purchase Equal An Offer To Sell, Runs Contrary to the Plain Language of Section 4 and the Conduct of the Parties with Respect to Previous Transactions Between Them.

CLAP's first premise, that an offer to purchase equal an offer to sell, is not only not supported, but directly refuted, by the plain language of Section 4, and runs contrary to the clear intent of the parties that any buy-sell process utilize a formal appraisal unless both parties agreed otherwise.

a. The Plain Language of the OPAG does not Support CLAP's Position.

While it can trigger a counteroffer, the Initial Offer is only an offer to purchase, not to sell. Provision ① of Section 4.2 states:

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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. (emphasis added)

As provision ① of Section 4.2 makes clear, the Initial Offer is only an offer "to *purchase* the Remaining Member's Interests". Nowhere in provision ① of Section 4.2 does it state that the Initial Offer is an offer by the Offering Member to sell his membership interest to the Remaining Member. While Section 4 as originally drafted by Golshani stated that the Offering Member initiated the process by making an offer to sell, that language was replaced by Golshani by the current offer to purchase language. If provision ① of Section 4.2 is to be given its plain meaning, particularly in light of Golshani's original changes to Section 4, then the Initial Offer is simply and solely an offer "to *purchase* the Remaining Member's Interests…".

This is not to say that the Remaining Member cannot make a counteroffer. However, by its very nature, a counteroffer means that the Remaining Member does not agree to establish the sales price without an appraisal. As such, the intent of the provision that an appraisal process be used if both parties cannot agree kicks in and any counteroffer is governed by provision ⑤(ii) of Section 4.2 which requires the counteroffer to be "based upon the same fair market value (FMV)" and cannot be based upon the offered price.

Nothing in Section 4 allowed CLAP to twist Bidsal's Initial Offer ***to purchase*** pursuant to provision ① of Section 4.2 into a counteroffer to sell at the offered price. *[Ex. 29/337].* That language simply does not exist anywhere in Section 4, runs contrary to Golshani's specific changes, and runs contrary to the clear intention of the parties from the very beginning that, unless both parties agreed, the sales price would be set using a formal appraisal. *[Ex. 16/311].*

Nonetheless, CLAP seized upon the words "either sell or buy" and "at the same price" in provision ⑦ of Section 4.2 for the claim that it can flip Bidsal's ***offer to purchase*** into an ***offer to sell*** at a price based upon the Initial Offer. This was sometimes referred to as the "specific intent" provision of the OPAG. *[Ex. 29/337].*

Aside from the fact that Golshani's intentional changes to this language preclude this interpretation, CLAP has no support for its claim that it can simply jump from provision ① to

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002395

provision ⑦ of Section 4.2, without first going through the provisions of the intervening paragraphs. This is evident from the August 3, 2017 letter and actually conceded in the arguments of CLAP in its Rule 18(a) Motion which maintained that CLAP considered its response was a counteroffer "in accordance with section 4, Article v" of the OPAG (i.e. provision ⑤ subparagraph (ii) of Section 4.2). *[Ex 31/347]* and CLAP's Rule 18 Motion at 3:14-17, 4:1-15, 5:7-11, and 7:2-3. This is also evident from provision ⑦ of Section 4.2, which mandates that a buying or selling transaction must be "according to the procedure set forth in Section 4." *[Ex 29/337].*

To further expand and make provision ⑦ of Section 4.2 clear; the word "either" in "either "sell or buy" in provision ⑦ can only give one of the following two options to the Remaining Member through provisions ⑤(i) and (ii) of Section 4.2:

(1) if the Remaining Member decides to sell without invoking the right to an appraisal, the Remaining Member would have selected the option described in provisions ⑤(i) and ⑦ of Section 4.2 would read as follows:

> 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 sell*** at the same offered price ***according to the procedure set forth in Section 4***. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s).

(2) if the Remaining Member decides to buy, the Remaining Member would have selected the option described in provisions ⑤(ii) and ⑦ of Section 4.2 would read as follows:

> 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 buy*** at FMV ***according to the procedure set forth in Section 4***. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s).

The upshot is that in exercising either option, CLAP must go through provisions ⑤(i) and (ii) of Section 4.2, before reaching provision ⑦ of Section 4.2. CLAP cannot simply skip over those sections at its own leisure.

In fact, those sections are really intended to be read together. This was all explained clearly by Bidsal during the Arbitration Hearing. (TR. 256:6-21 and 257:11 - 258:16) This is also clear from the plain language of other provisions of Section 4.2. For example, provision ⑤(i) of Section 4.2 deals with a scenario without any appraisals or determination of "FMV". Thus, provisions ②

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through ⑥ of Section 4.2 are relevant in both "FMV" and non-"FMV" situations. This is also clear from CLAP's own analysis and contention that CLAP's August 3, 2017 was a counteroffer "in accordance with section 4, Article v" of the OPAG (i.e. provision ⑤ subparagraph (ii) of Section 4.2). CLAP had to go through provision ⑤ subparagraph (ii) of Section 4.2 to arrive at its intended destination. Thus, CLAP's own analysis demonstrates the necessity of considering provisions ② through ⑥ of Section 4.2 in every instance (i.e. "FMV" and non-"FMV"), and not simply glazing over them and jumping to the general policy language set forth in provision ⑦ of Section 4.2 which do not contain the mechanics of a buy-out transaction.

b. <u>The Conduct of the Parties does not Support CLAP's Position.</u>

As explained earlier, the prior conduct of the parties evidenced a transparency when it came to financial transactions between them and the necessity of formal appraisals. For example, Bidsal freely shared with Golshani the communications relative to the potential sale of properties by Green Valley, including disclosing the BPOs for the separate buildings in the Green Valley Commerce Center that they were selling. *[Ex. 333-36, 356-57].* Further, even while Golshani was seeking an appraisal of the Green Valley Commerce Center by Latch, Bidsal freely shared information regarding the finances and physical condition of the Green Valley Commerce Center with Golshani. (TR. 175:19-23, 245:17-22, 368:22-369:2, 391:13-17, and 392:13-23). Bidsal did so, assuming that Golshani was mulling over whether to sell CLAP's membership interest to Bidsal based on the estimated $5,000,000.00 company value for Green Valley, or to invoke the appraisal process in the OPAG. Golshani refused to share the Latch appraisal with Bidsal, but Bidsal had no idea that Golshani intended to stab him in the back by trying to assert a right to force Bidsal to sell his interests to CLAP once Golshani secretly confirmed that Green Valley's properties were likely worth more than Bidsal's rough initial estimate.

c. <u>Golshani's Counter-Arguments were Without Merit.</u>

Nonetheless, Golshani attempted to argue, without evidentiary support, that the "specific intent" section, consisting of the seventh paragraph of Section 4.2 of the OPAG, supports his argument that (1) a counteroffer can be made at the Offering Member's initial estimated

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002397

offered amount and (2) the offering member is bound to sell to the remaining member based on that figure.

In support of his contention, Golshani claims that he had a meeting with Bidsal on July 21, 2011 and that the two discussed the mechanism of how the buy-sell would operate. (TR. 58-60). Golshani claimed that he and Bidsal discussed that a member "would offer to buy the interest of the other member, and within a certain time, that member has to either sell his interest at that price or buy the interest of the first person at that price." (TR. 59:15 – 21). The person who was making the offer "for sure researches about how much he should offer so that either way, it would be fair." (TR. 59:23-25).

However, if such a procedure was clear at the outset, it does not explain why the parties went through more than seven different drafts of the OPAG before it was final. *[See Ex's 7/304, 10/305, 5/6/11/306, 12/307, 14/308, 16/311, 17/313, 18/314, 19/315, 25/323, and 29/337]* It, likewise, does not explain why Golshani, himself, had to create the ROUGH DRAFT and ROUGH DRAFT 2 and send them to LeGrand, a seasoned transactional lawyer, so that he could get it right. It, similarly, does not explain why Golshani changed an initiating offer ***to sell*** into an offer ***to purchase*** between ROUGH DRAFT and ROUGH DRAFT 2. Further, it does not explain why LeGrand's recollection of their discussions were so vague or why he testified after questioning by Golshani's counsel that "I don't believe our conversation addressed the concept you just described of a compulsory sale following an offer by a member." (TR. 274:10-13).

Moreover, if the person who was making the offer "for sure researches about how much he should offer so that either way, it would be fair," as Golshani contended, it does not explain why the parties added an appraisal process into the OPAG. (TR. 59:23-25). If the Offering Member was expected to conduct an appraisal beforehand, then it implies that the offered price would be fair and no appraisal process would be needed. Certainly, under the facts presented at the Arbitration Hearing, Bidsal shared every appraisal or BPO that he had with Golshani so Golshani would have had that information should Bidsal present an opening offer. Rather, contrary to Golshani's false spin on the mechanics of Section 4 of the OPAG, an appraisal process benefitting all parties was created and Golshani admitted that in his discussions with Bidsal, Bidsal liked Golshani's drafts of

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Section 4 of the OPAG because "the appraisal worked, because both parties would seek the appraisal." (TR. 88:18-25).

However, there really was no clear discussion between the parties way back on July 21, 2011 as Golshani testified. That was something Golshani crafted after the fact as part of his attempts to take advantage of his long time business partner.

Rather, Bidsal gave the correct rendition of what they discussed, and they never discussed any scenario where the Offering Member had to sell at a price based upon an initial offer. (TR. 227:13-19 and 383:21-25). Rather, Bidsal explained that the "specific intent" of the buy-sell provision was to be read in conjunction with the paragraphs immediately above it. (TR. 256:6-21) *[Ex. 29/337].* If the Remaining Member chose the first option (roman numeral I), by accepting the Offering Member's offer to purchase, then they would go to the specific intent provision. (TR. 257:11-24) *[Ex. 29/337].* If the Remaining Member chose the second option (Roman numeral II), by making a counteroffer, then they would go through the appraisal process and go back to the same specific intent provision. (TR. 257:25-258:16) *[Ex. 29/337].* As soon as the Remaining Member made an election to make a counteroffer, they would have to continue with the rest of the sentence and complete an appraisal based on FMV. (TR. 262:15-19) *[Ex. 29/337].* FMV is defined word in Section 4.2 as the medium of two appraisals, and it is further defined in Section 4.1 (which refers back to Section 4.2). (TR. 263:20-24) *[Ex. 29/337].* Therefore, the "specific intent" provision set forth in provision ⑦ of Section 4.2 does not provide a basis for CLAP to purchase Bidsal's membership interest at a price based upon Bidsal's initial estimate of the value of Green Valley.

3. <u>CLAP's Second Premise, That If The Remaining Member Did Not Invoke The Appraisal Process Then The Offered Price Equals The FMV, Also Runs Contrary to the Plain Language of Section 4.</u>

CLAP's second premise, that if the Remaining Member did not invoke the appraisal process then the offered price equals the FMV, also runs contrary to the plain language of Section 4.

a. <u>CLAP Ignores Provision ④ of Section 4.1.</u>

In making its arguments, CLAP utterly ignored provision ④ of Section 4.1. Section 4.1 set forth the definitions of certain key words, phrases and acronyms used throughout Section 4. One of the acronyms defined in Section 4.1 was "FMV" and, as explained in the legal

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authority cited above, meaning must be given to all portions of Section 4, including provision ④, of Section 4.2, which must be interpreted consistent with each other. Provision ④ of Section 4.1 defines "FMV" as the "'fair market value' obtained as specified in section 4.2." The *one and only* place in Section 4.2 which specifies what the "FMV" is, is found at the end of provision ② of Section 4.2, where it states "[t]he medium of these 2 appraisals constitutes the fair market value of the property which is called (FMV)." Thus, interpreting provision ④ of Section 4.1 consistent with Section 4.2, the *one and only* definition of FMV is "[t]he medium of these 2 appraisals" as outlined in provision ② of Section 4.2.

b. <u>The "Same" FMV Meant What it Said.</u>

In support of its argument that if the Remaining Member did not invoke the appraisal process then the offered price somehow magically became the FMV, CLAP focused upon the word "same" in "based upon the <u>*same*</u> fair market value (FMV)" as found in provision ⑤(ii) of Section 4.2. Provision ⑤(ii) of Section 4.2 is immediately preceded by provision ⑤(i) of Section 4.2, which references the "Offering Member's purchase offer." CLAP argued that the word "same" in provision ⑤(ii) of Section 4.2 can only refer to the "purchase offer" amount identified in provision ⑤(i) of Section 4.2.

There are three fatal flaws with this argument. *First*, CLAP's argument requires the Arbitrator to rewrite provision ⑤(ii) of Section 4.2 to state that the Remaining Member (CLAP) could make "a counteroffer to purchase the interest of the Offering Member based upon ***the same purchase offer.***" However, that is not what provision ⑤(ii) of Section 4.2 states. To the contrary, provision ⑤(ii) of Section 4.2 clearly states: "based upon the same fair market value (FMV)…", clearly referencing the defined acronym FMV referenced in provision ② of Section 4.2.

Second, while the word "same" logically refers to something written previously, that does not mean it can only be referencing provision ⑤(i) of Section 4.2. Provision ④ of Section 4.1 and provision ② of Section 4.2 also precede provision ⑤(ii) of Section 4.2 and therefore, the word "same" can just as easily reference the FMV defined in provision ② of Section 4.2. Further, because provision ⑤(i) of Section 4.2 does not use the acronym FMV or even the phrase "fair market value," while Section provision ② of Section 4.2 not only uses the acronym FMV, but

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defines it, under normal English usage rules, the word "same" in provision ⑤(ii) of Section 4.2 refers to the acronym FMV defined in provision ② of Section 4.2 and does not refer to anything in provision ⑤(i) of Section 4.2, which does not contain the defined acronym FMV or even the phrase "fair market value."

Third, the word "same" is defined as "1. identical with what is about to be or has just been mentioned. 2. being one or identical though having different names, aspects, etc. 3. agreeing in kind, amount, etc.; corresponding: 4. unchanged in character, condition, etc." *See* http://www.dictionary.com/browse/same, (January 24, 2018). If the word "same" means "unchanged in character, condition, etc…" and the acronym FMV is defined to mean the medium of 2 appraisals, then the use of the word "same" next to FMV cannot, under any logical interpretation, turn the defined term FMV into anything but the medium of 2 appraisals.

If all of Section 4 is interpreted in a manner that is internally consistent, then the definition of the acronym FMV, as provided for in provision ④ of Section 4.1 and provision ② of Section 4.2, must be consistently applied throughout Section 4, including provision ⑤(ii) of Section 4.2. To ascribe a different meaning to the acronym FMV in provision ⑤(ii) of Section 4.2 than the one defined in provision ④ of Section 4.1 and provision ② of Section 4.2 not only violates general rules of construction in the English language, but also violates the rules of construction to be employed when interpreting contractual provisions.

4. Golshani Admitted That The Appraisal Process Was Critical For Protection Of The Parties.

As Golshani's counsel admitted to the Arbitrator at the Arbitration Hearing, the key purpose of the appraisal was for protection. (TR. 31:2-12) Golshani further testified that if you gave a member a right to appraise, "he would be protected." (TR. 84:8-9) Moreover, Golshani admitted that in his discussions with Bidsal, Bidsal liked Golshani's drafts of Section 4 of the OPAG because "the appraisal worked, because ***both parties would seek the appraisal.***" (TR. 88:18-25) (emphasis added). Thus, the undisputed evidence, including Golshani's own testimony, establishes that an appraisal process was drafted into the OPAG so that both parties could be protected from being force to sell their respective membership interests for too-low of a price.

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Consequently, all of Golshani's references to "low-ball" offers serve no real purpose other than to inject emotion where it is not warranted and obfuscate the real legal analysis at issue.

F. THE COURSE OF DEALING BETWEEN BIDSAL AND GOLSHANI DEMONSTRATED THAT THEY INTENDED AN APPRAISAL PROCESS TO PROTECT THEIR RESPECTIVE INTERESTS.

As stated earlier, 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))[11]

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. The evidence at the Arbitration Hearing showed that Jeff Chain and Bidsal discussed selling some of the buildings which were fully leased, once the buildings were subdivided. *[Ex. 333-36 & 356-574].* On each building, Chain produced a broker's opinion of value ("***BPO***"). (TR. 368:10-12). Even though Golshani did not assist Bidsal in determining an appropriate listing sales price and took a very limited role in the sale of property, Bidsal shared the BPOs with Golshani and every sale was conducted with his approval. (TR. 368:22 - 369:2 and 373:18-20). Golshani even admitted that Bidsal would send him emails with information about the properties and their values "all the time." (TR. 175:19-23) *[Ex. 333-336].*

Consequently, Golshani and CLAP were never locked into selling CLAP's membership interests to Bidsal based upon some initiating "estimated value." They always had the option to either sell at that price (if they thought it sounded reasonable and did not want to incur the time and

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[11] 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")

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expense of a formal appraisal), or invoke the appraisal process, just like they had regularly sought and shared appraisals and BPOs in the past. Unfortunately, through this Arbitration Proceeding, Golshani is attempting a "heads I win, tails you lose" maneuver, by pretending that the OPAG was intended to be a one-sided agreement in his favor.

G. GOLSHANI AND CLAP ARE VIOLATING THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

Further, 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.[12] 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).; Aluevich v. Harrah's, 99 Nev. 215, 220, 660 P.2d 986, 988 (1983).

In this case, CLAP and Golshani are attempting to breach the implied covenant of good faith and fair dealing by twisting the meaning of the OPAG to take advantage of Bidsal. As explained above, the evidence showed that the parties had always used appraisals for protection of their respective rights, and an appraisal protection was negotiated into the OPAG. Pursuant to that same OPAG, Bidsal's July 7, 2017 initial offer was based upon a good-faith estimate for the value of Green Valley. *[Ex. 30/346]*. However, the evidence showed that Bidsal's initial offer did not force CLAP to sell its membership interests in Green Valley to Bidsal. Rather, it was just the triggering event that commenced the buy/sell process.

Thus, CLAP was never obligated to sell to Bidsal at a price based upon that initial estimated value. Instead, when presented with the initiating offer, CLAP had the freedom to do one of four

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[12] Ironically, at the Arbitration Hearing, it was Golshani that tried to accuse Bidsal of bad faith by trying to claim that the deal between them was unfair because Golshani put up more of the initial capital. The evidence, however, which is described in more detail in the Statement of Facts, above, showed a number of things including: (1) Bidsal had developed an elaborate infrastructure for investing in, and managing properties, along with professional ties to lenders, brokers, and contractors (TR. 346-47, 352-53); (2) Bidsal contributed substantial sweat equity to Green Valley, including subdivision work, management, leasing, and marketing of the Green Valley Commerce Center (TR. 114, 365-69); (3) Bidsal could have charged Green Valley (but did not) certain customary fees for property management, leasing, asset management, and construction management (TR. 395-96, 411-415); (4) Golshani readily agreed to the 50/50 profit sharing, admitted that the difference in their profit sharing was for Bidsal's sweat equity (TR. 51:6-12 and 115:3-6), and his higher initial capital contributions were credited when buildings were sold (TR. 370-73).

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things: (1) sell to Bidsal at a price based upon the ball-park estimate and avoid the expense of conducting a formal appraisal, (2) remain silent and do the same thing as #1, (3) invoke the right to have two formal appraisals conducted by MAI professionals to fix an accurate Company value and sell at that price, or (4) make a counteroffer to purchase Bidsal's membership interests based on FMV. *[Ex. 29/337].*

However, CLAP is claiming that Bidsal ***is compelled to sell at the initial estimate*** and would not be afforded the same protection as CLAP (i.e. being able to invoke the appraisal of professionals before he parted with his ownership interests). Such injustice and unfairness goes against the intent and spirit of the OPAG and injures Bidsal's right to receive equal benefits of the contract. It is also particularly acute and indicative of CLAP and Golshani's bad faith when Golshani sought to take unfair advantage of Bidsal by forcing Bidsal to sell at a price which Golshani and CLAP knew was not established by an appraisal because Golshani secretly obtained the Latch appraisal before he responded to Bidsal's July 7, 2017 opening offer, which showed that Green Valley was likely worth more than Bidsal's initial estimate.[13] *[Ex. 30/346 & Ex. 353].* Initiating this Arbitration to force Bidsal to sell his membership interests to CLAP exacerbates CLAP's bad faith.

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002404

IV.

CONCLUSION

The evidence has shown that the intent of the parties under the OPAG is that CLAP's August 3, 2017 letter can only constitute a counteroffer as provided for in provision ⑤(ii) of Section 4.2, which means CLAP is entitled to purchase Bidsal's membership interest for FMV, which is defined as the medium of two appraisals. Being drafted by Golshani, the buy-sell provisions at

[13] Golshani's maltreatment of Bidsal was extended throughout this Arbitration Proceeding. During the hearing, (1) Golshani suggested that Bidsal knew he had a heart condition and tried to take advantage of him, even though the evidence showed that Golshani did not complain about his heart until after Bidsal made his initial offer (TR. 236-37), (2) Golshani suggested that Bidsal knew money was tight for Golshani when he made his offer but the evidence showed that Golshani showed proof of funds in the amount of $3,000,000.00 within weeks of Bidsal's offer (TR. 237) and *[Ex. 35/349]*, and (3) Golshani suggested that Bidsal had altered Exhibit B to the OPAG even though the evidence showed that Golshani willingly agreed to the 50/50 profit-sharing and Bidsal never drafted any portion of the OPAG but merely signed what Golshani brought to his office. (TR. 51, 167-69, and 209). Further, Golshani blatantly lied in his declaration that he had not drafted Section 4 of the OPAG, tried to introduce documents that had missing Bates Stamp numbers, and tried to use documents never produced in the case. (TR. 186:9-15, 187:18-24, 199:12-17, 232:13-18, and 240:16-19).

002404

issue should be construed against Golshani and CLAP. CLAP's opposing interpretation of the OPAG was not be borne out by the evidence.

Moreover, when all is said and done, the evidence has shown that CLAP was attempting to violate the implied covenant of good faith and fair dealing by not affording Bidsal equal protection. CLAP should not be rewarded for doing so. Consequently, the Arbitrator should order CLAP and Bidsal to complete the appraisal process identified in provision ② of Section 4.2.

DATED this 28th day of June, 2018.

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002405

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 28th day of June, 2018, I served a true and correct copy of the forgoing **RESPONDENT SHAWN BIDSAL'S POST-ARBITRATION OPENING BRIEF**, by emailing a copy of the same, with Exhibits, to:

Individual:	Email address:	Role:
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/s/ Vanessa M. Cohen
An employee of Smith & Shapiro, PLLC

002405

EXHIBIT 120

(Claimant's Closing Argument Responsive Brief)

002406

002406

EXHIBIT 120

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CLA PROPERTIES, LLC, a California limited liability company,

Claimant,

v.

SHAWN BIDSAL, an individual,

Respondent.

JAMS Ref. No. 1260004569

CLAIMANT'S CLOSING ARGUMENT RESPONSIVE BRIEF

002407

002407

002407

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CODES

002409

002409

002409

1. **INTRODUCTION**.

The whole purpose of a buy-sell is to enable a party to extricate himself from his relationship with the another in a quickly and easily basically by setting a price at which the other party then can elect either to buy or be bought out at that price. This is the essential feature of ~~a buy-sell,~~ (herein "**core element**"). That essential feature is present here as it was in at least one other agreement entered into by Bidsal, such as in the operating agreement for Cheyenne Technologies of which Respondent was a member, and is the feature that was specifically discussed with the parties' attorney, David LeGrand, as he repeatedly testified. (Tr. 282:5-11, 282:20-25, 283:1-6, 284:11-20, 286:1-7 and 298:8-13 and Exh. 17.) The drafting attorney, David LeGrand, in 2011 called it a "Dutch Auction," an appellation Claimant CLA likewise here uses. (LeGrand in 2011 and at his deposition also referred to it as "forced buy-sell" but at the hearing decided that the word "forced" implied that an offer had to be made and chose to refrain from using it further.)

It is all but axiomatic that in setting a price the disenchanted party wanting an end to the relationship would want to set a low figure if he ends up buying and a high figure if he ends up selling. In an ideal situation the party making the offer would select a price equal to the actual value; but the entire concept is that the party wanting "out," wants it bad enough that he is willing to subject himself either to paying more or receiving less than otherwise he would pay or accept, unless of course if his intent is to attempt to take advantage of his partner.

Under Section 4 of the Green Valley Commerce, LLC Operating Agreement, that price is set by the Offering Member and is labeled what he "thinks" is the fair market value[1]. But truly the inclusion of "thinks" is meaningless because there is absolutely no

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[1] Bidsal acknowledged that what the Offering Member states he thinks is the fair market value is the "offered price." 8:7 of *RB I* and 5:8 of *RB II*. But the fair market value or price or offered price is not what is paid for a membership interest. That amount is determined by a formula. That is why Claimant has used the words "Buyout Amount" for the amount to be paid for a membership interest. This is amplified in N. 2 on page 4 of Claimant's Closing Argument Brief.

right or remedy to any member if the Offering Member does not truly believe it is the fair market value. But as everyone agrees the phrase "what the Offering Member thinks" was created by the lay parties so one need not be too harsh in critiquing that draftsmanship. What is significant, however, is the amount that the Offering Member inserts as what he thinks is the fair market value, the offered price. That does have an effect.

This issue in this Arbitration boils down to what the Agreement actually says, and if there is any ambiguity, what did the parties intend. That the parties intended to have a buy sell agreement with that "core element" cannot be seriously disputed; that is exactly what the agreement says in the final paragraph of Section 4.2 reading:

> "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)."

This should be the end of it; however, to avoid the consequence of what Bidsal read, signed and agreed to, Bidsal has engaged in a shell game to try and create confusion and distraction, all in an effort to draw attention away from, and ignoring, the actual evidence presented.

But the facts cannot be avoided; if there is one common theme present throughout this transaction, it is that the parties wanted a buy-sell with the **core element** so that if one party makes an offer stating some amount, then the other party either buys or sells based on that amount. That an additional level of protection was given to protect an "offeree" who may not have sufficient liquidity to buy within the short 30 day time period provided does not change the essence of what the parties wanted from the very beginning.

While we re-emphasize what the Agreement actually says, since that ought to control the outcome, since the hearing went way beyond that, we also cover other matters, and we below we will respond to points made in Respondent's Post-Arbitration

Opening Brief ("*RPAOB*" *or* "*RB V*"[2]). Since closing arguments are in writing Claimant believes that it is not necessary (or helpful) to repeat all of what it laid out in Claimant's Closing Argument Brief ("*CCAB*"). So, except where Respondent's *RPAOB* compels it, we refrain from such repetition. Such restraint should not be construed as an abandonment of the positions set forth in our *CCAB*.

We note that the testimony by the parties was in part diametrically opposed to one another. One of them has not given an accurate portrayal, and below we show that the one giving a false picture and whose testimony is not credible is Respondent (Bidsal).

Unfortunately, even in the most insignificant of matters Bidsal's *RPAOB* is not reliable, and one must check the cited material to see if it truly supports what Bidsal claims. For example, at 6:4 he states "Jeff Chain . . .provided Bidsal and Golshani with a form Operating Agreement" for which he cites Exhibit 303 and Tr. 360:11-18. Exhibit 303 not only shows it was sent solely to Bidsal and not provided to Golshani, but there is a redaction for which Bidsal gives no explanation. And nothing at all about providing a form agreement is said at Tr. 360:11-18. This and the other misstatements in Bidsal's brief, as we point out below, can only be attributable to the Bidsal campaign to distort and distract from the actual facts.

002412

2. OFFERED PRICE AS FAIR MARKET VALUE IS DETERMINATIVE

There is one simple point that ought to resolve the Arbitration in favor of Claimant therefore making all else moot. While Respondent Bidsal raises many points, the slightest of reviews reveals that his claim that the **core element** (Remaining Member's right to buy at offered price[3]) does not exist in Section 4 of the Agreement is predicated

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[2] This year Bidsal previously has served four briefs, Respondent' Opening Brief dated January 8th ("*RB I*"), Respondent'S Responding Brief dated January 19th ("*RB II*"), Respondent's Reply Brief dated January 25th ("*RB III*") and Respondent's Hearing Brief dated May 3rd ("*RB IV*").

[3] Claimant's Response to Respondent's Opening Brief Etc. Dated January 19, 2018 starting at 6:20, Reply In Support of Claimant's Rule 18 Motion dated January 25, 2018 starting at 8:13, Section 5.5.3 of Claimant's Hearing Brief dated May 3, 2018 and Section 7.1.C on page 30 of *CCAB*.

002412

on his claim that the sole definition of "FMV" is that obtained from appraisal, and virtually everyone of his points is dependent on that claim. Proof that is the lynchpin of Bidsal's position is seen from the number of times and in connection with each of Bidsal's arguments it is found: *RPAOB* 9:13, 12:25, 21:1, 22:27, 23:2, 23:13, 24:12, 29:16, 29:17, 29:28, 30:3, 30:7, 30:22, 30:26, 30:27, 31:2, 31:3, 31:9, 31:11, 31:12 and 31:16. Bidsal's claim of that definition is the sole point he makes in his conclusion (34:21) regarding interpretation of Section 4.

Claimant has before set out several different reasons, and below sets out more why absent a request for appraisal by the Remaining Member the FMV is the "offered price," and therefore Bidsal is just plain wrong. (See Sections 3, 5, 6 and 7 below and from 8:6 through 13: 21 and Section 7.1 starting on page 29 of *CCAB*.) Rather than repeating them, we simply ask the Arbitrator to read that portion as our response. Enough forests have been felled in this Arbitration so we do not repeat all of that again here. We emphasize this point because it is so clearly demonstrates that Bidsal's claim is wrong.

But one of those reasons is simple and makes the matter point, game, set and match over in favor of Claimant, so that it would render concentrating on the other reasons unnecessary, and therefore, we segregate it into this Section. Here it is: The two formulas included in Section 4 for determination of the Buyout Amount (the amount to be paid for membership interest) are the same with the identity of seller (either the Offering Member or Remaining Member) being the sole difference. With emphasis added those formula state, "(**FMV**-COP) x 0.5 plus the capital contribution of the [Selling[4]] Member(s) at the time of purchasing the property minus prorated liabilities." As can be seen an essential element in those formula is the determination and insertion of FMV (fair market value). Without quantifying FMV, the formula cannot be applied, and therefore the Buyout Amount cannot be determined.

So CLA has challenged Bidsal to state what the FMV is if the Remaining Member

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[4] 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.

accepts the offer (alternative (I) in Section 4.2) or fails to respond (§4.3) since in neither instance will there be any appraisal even under Bidsal's contention. And it is not as though Bidsal could not have known he should address this challenge if he had any answer (he doesn't). No, in fact Claimant has made this point in four different briefs[5]. Following the first three of those briefs Bidsal has filed three briefs, *RB III, IV* and *V*. **YET BIDSAL HAS NEVER RESPONDED TO THIS CHALLENGE IN ANY OF THEM BECAUSE HE CAN'T.**

All Bidsal has done is argue that in those instances there is no need to determine FMV because then the offered price is used, but, so he claims the offered price is still not FMV. (*RPAOG* 21:1-2.) **THAT RESPONSE DOES NOT ADDRESS THE CHALLENGE BECAUSE IT IGNORES WHAT THE FORMULAS REQUIRE. THEY REQUIRE THE INSERTION OF FMV TO DETERMINE THE EXCESS OVER "COP" AND DO NOT MENTION OFFERED PRICE.**

Bidsal chooses to ignore this. Why because he cannot.

The FMV is by necessity determined in one of two ways:

First FMV is initially determined by the offer; if the Remaining Member accepts the offer or fails to respond, then by necessity the offered price becomes FMV for the purpose of completing the transaction.

Second, if a request for appraisal is made by the Remaining Member, then (and only then) FMV will be set by the appraisal process.

This must be so because if the Remaining Member accepts the offer there is no other way to determine "FMV" to use in the formula.

Thus Bidsal's entire house of cards collapses. His inability to explain how the formula can be applied when the offer is accepted or ignored should settle the matter; his contention is just plain wrong. Therefore, CLA is entitled to purchase Bidsal's

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[5] Claimant's Response to Respondent's Opening Brief Etc. Dated January 19, 2018 starting at 6:20, Reply In Support of Claimant's Rule 18 Motion dated January 25, 2018 starting at 8:13, Section 5.5.3 of Claimant's Hearing Brief dated May 3, 2018 and Section 7.1.C on page 30 of *CCAB*

002414

002414

002414

membership interest based on Bidsal's $5,000,000 offered price.

3. SECTION 4 IS A DUTCH AUCTION PROVISION AND ONLY A REMAINING MEMBER'S REQUEST CAN TRIGGER APPRAISAL

Section 4.2 in part states, "*If the offered price is not acceptable to the Remaining Member(s), within 30 days of receiving the offer, the Remaining Member(s) or any of them can request to establish FMV based on the following procedure*" following which the appraisal procedure is laid out. Section 4 affords the Remaining Member three choices, either (I) to accept, (ii) to reject selling elect to buy ("counteroffer"), or (iii) to request an appraisal.

Bidsal contends that when the Remaining Member elects to buy rather than sell must be an appraisal. That would mean that the portion of the sentence quoted above which gives the Remaining Member the ***option*** to have an appraisal rendered meaningless and would insert an entirely new and different term therein (i.e. that if the Remaining Member chooses to buy rather than sell an appraisal is mandatory).

Both parties have cited case authority that the law prohibits changing the meaning by such dramatic insertion. "[I]n the construction of a contract, the office of the court is simply to ascertain and declare what, in terms or in substance, is contained therein, and not to insert what has been omitted or omit what has been inserted." *Jensen v.Traders & General Insurance Company,* 52 Cal.2d 786,790, 345 P.2d 1 (1959). But by necessity if Bidsal's position were adopted that insertion (i.e. mandatory appraisal) would have to be made.

Appearing in a section captioned "Golshani Added An Appraisal Process To the Buy-Sell For Fairness Purposes" Bidsal includes a discussion of what Bidsal claimed the parties discussed which is in direct conflict to what Golshani testified and wholly inconsistent with what was stated by LeGrand in his e-mails and testimony. He argues at *RPAOB* 8:22 that if the Remaining Member makes a counteroffer, then there must be an

appraisal citing his well-coached, but nonetheless totally convoluted testimony purporting to explain of what Section 4 says. Nothing in Section 4 supports what Bidsal's claim that rejection of the offer triggers appraisal. Of course, he is met, among other things making his explanation at odds with the language with the final paragraph of Section 4.2 reading:

> "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)." (Emphasis added)

Starting at *RPAOB* 9:3 Bidsal argues that words "sell or buy at the same offered price" do not mean sell or buy at the same offered price, but rather mean only "sell at the same offered price," and never can be "buy at the same offered price. In Sections 2 and 4 of Claimant's Closing Argument Brief we thoroughly addressed how ridiculous that claim is and the many reasons why Bidsal's contention is unsupported by the Agreement they signed.

He argues that if the Remaining Member decides to buy rather than sell then first there is an appraisal and then "go back to the same specific intent provision." (*RPAOB* 9:8.) What that means is a mystery. If he claims that the parties agreed that the parties agreed that they would be forced to either buy or sell at some unknown price with the closing all cash within 30 days that is absurd (see discussion in § 10.2, below at).

He continues (9:10) that if counteroffer election made by Remaining Member, "they would have to continue with the rest of the sentence and complete an appraisal based on FMV." What sentence is he talking about? What needs to be completed? Where is the sentence that says if the Remaining Member rejects the offer to sell and decides to buy ("counteroffers") under option (ii), then there must be an appraisal? Answer: **NOWHERE**!

Here is one of the times Bidsal argues that FMV is solely defined as the medium of two appraisals. (*RPAOB* 9:13.) One of the reasons why Bidsal is wrong is spelled out in the portions of Claimant's Closing Argument Brief (from 8:6 through 13: 21 and Section

7.1 starting on page 29). Before there was any dispute, Bidsal's offer WRITTEN BY HIS ATTORNEY said (admits) that his offered price was the FMV. We could not adequately respond to Bidsal's contention without a repetition of all of that. Instead we simply ask the Arbitrator to read that portion as our response. To that we simply once again call attention to this portion of Bidsal's offer signed by his attorney:

> "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."

What did he say was the FMV? The $5,000,000. Did he limit it to being the FMV only if he bought? **NO!** Was the FMV contested? **NO.** Per the offer, unless the FMV "was contested" i.e. by the Remaining Member requesting an appraisal Bidsal's offer stated that "the foregoing FMV shall be sued to calculate the purchase price of the Membership Interest to be sold." Did he say that was only true if the offer was accepted? **NO**! Bidsal should be estopped to now deny that when CLA elected to buy at the $5,000,000.00 price set by him that became FMV for the purpose of completing the transaction.

Bidsal continues at 9:14 that his claim "explains why the last paragraph of Section 4.2 uses 'this provision' and separately the phrase ' . . .according the procedure set forth in Section 4." Even assuming that we should give a different meaning to "provision" from procedures set forth in Section 4, how does that relate to Bidsal's claim that the Remaining Member cannot "buy at the same offered price?" What different meaning does Bidsal ascribe to the two words? One can comb all the briefs by Bidsal and his testimony and one would never find an answer to those questions. At 9:16 he adds that the difference in those words explains why the specific intent is at the end rather than beginning of Section 4. WHAT? These statements by Bidsal are just another part of Bidsal's Confusion and Distraction Campaign discussed below.

Starting at *RPAOB* 19:9 Bidsal finally gets around to discussing the language of Section 4. Once again he refuses to quote or insert what it actually says except by adding

002417

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002417

confusion with his own amplifications by way of encircled numbers. (Contrast the actual photocopy affixed as Exhibit A to *CCAB*.) He then purports to state the sequence of events putting in bold italics the terms in the Section, and therefore misleading all to believe that "***Initial Offer***" (20:20) is one of them; its not. Curiously in Fn. 8 he claims that the words "to purchase" were "***expressly negotiated***" (his double emphasis). Contrast that with his statements that all of the Rough Drafts in which the words first appeared were the product of Golshani alone. (See discussion in Section 9, below.)

At *RPAOB* 21:13-17 Bidsal totally misstates what CLA's options were after receiving the offer. He says the first is do nothing. CLA agrees. The second he says is accept the offer. CLA agrees. The third he says is "request an appraisal," (and so far so good) "and then accept the Offering Member's purchase offer." Bidsal then claims that once the appraisal comes in the Offering Member "is deemed to have made an offer to purchase the Remaining Member's membership interest at the FMV." (*RPAOB* 22:9-11.) That means the offer is deemed to have been made when the price has not yet been established by the appraisal. That would lead to the absurd result that for the first time under any hypothesis both parties, would be committed to buying or selling, with an all cash closing within 30 days while ignorant of the price.

Section 4.2 is exactly the opposite. After setting forth the procudere for the appraisal it states" "[T]he 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." (Emphasis added.)

When Bidsal turns to discussing the fourth "choice" (the Remaining Member's election to buy) starting at *RPAOB* 22:15, he again reveals that nothing he says or writes can be believed. He says, without any logic or authority, that if the Remaining Member elects to buy, then the appraisal process ***must be used***. For support he says "this should come as no surprise because his legal counsel admitted to the Arbitrator that an appraisal process is intended to provide protection to the members. For this he cites Tr. 31:8-13. But a look at that portion reveals that what CLA's counsel acknowledged was that "the

appraisal is to protect the **remaining** member." (Emphasis added.) And this difference between protecting just the Remaining Member and protecting all the "members" in the plural as Bidsal falsely claimed CLA's counsel acknowledged is critical. Because without it Bidsal loses all basis for claiming that the appraisal is automatic in order to protect the Offering Member when the only intended beneficiary of the appraisal is truly just the Remaining Member.

Perhaps most telling is the portion of *RPAOB* starting at 26:8. There he sets out the meaning of portion of last paragraph of Section 4.2 providing that "Remaining Member shall either sell or buy at the same offered price . . ." He then goes on to claim that the "same offered price" is not the same if Remaining Member buys rather than sells. To reach that conclusion he sets out what that portion "would read." That is just the point. What he lays out IS NOT WHAT THE SECTION ACTUALLY READS!

Starting at *RPAOB* 30:23 Bidsal argues that the word "same" in choice "(ii)" for the Remaining Member there does not mean the amount in choice (i) immediately above (the offered price). From *CCAB* 8:24 to 9:22 CLA lays out why that is the only possible meaning.

As noted above once the appraisal process is invoked the **option to offer** to purchase the Remaining Member's share at FMV as determined by Section 4.2. If upon the Remaining Member's election to buy instead of sell an appraisal is mandatory (as Bidsal claims), then there is no mandatory buy-sell; after the appraisal the Offering Member has the **option** to make an offer based on appraised price, and if he chooses not to make an offer, that is the end of it. In other words if the offer is not accepted the Offering Member is not bound to do anything except pay for an appraisal. The whole purpose of the buy-sell provision is thus defeated and rendered meaningless; not only is there no evidence supporting this, but also it was surely not the parties intent. No buy-sell provision is necessary for a member to make an offer; its very existence must be given meaning.

The only conclusion that can be logically reached is that Section 4 is a buy-sell

provision including the **core element**. Unless a Remaining Member requests an appraisal, the FMV is the offered price and there is no automatic appraisal as Respondent now argues.

4. **WHY THE APPRAISAL AND WHAT IT WAS INTENDED TO PROTECT.**

To support his position of a mandatory appraisal, Bidsal repeatedly attempts to mislead the Arbitrator with attributions of what the parties intended when they referred to a provision being inserted for "protection." (*RPOAB* 1:28,2:2, 8:12, 21:15, 22:20, 31:19, 31:22, 233:15, 33:16, 34:7 and 35:4.) The **core element**, that is the protection of the responding party by having the right either to buy sell at the offered price, would be gone under Bidsal's contention.

Bidsal claims, (with emphasis added) that "[T]he Remaining Member does not have the option of purchasing the Offering membership interest at the 'offered price.' Such a scenario was **never** discussed by Golshani and Bidsal." (*RPAOB* 23:7-9; see also Tr. 383:21- 384:4). Yet there can be no doubt that it existed in LeGrand's two drafts (Exhibits 16 and 19) and referred to in his e-mails (Exhibits 12, 16, 17 and 18) and confirmed in his testimony (Tr. 281:18-22, 282:5-11, 282:19-283:5 and 285:11-20).

Thus Bidsal's claim that the **core element** was never discussed is not only contrary to what Golshani testified, it is contrary to what LeGrand testified and what the exhibits show. In the very first meeting with LeGrand on July 21st, as recited by LeGrand the next day, they discussed a "forced buy/sell" (Exh. 12). That the **core element** was part of the discussions from the very beginning and continued throughout LeGrand's drafting is shown at length at Claimant's Closing Argument Brief 15:3-20:19. Noteworthy is that there is no evidence that Bidsal ever objected to the e-mails from LeGrand reviewed in that brief which referred to the "forced buy/sell" and "Dutch Auction," which he described as "[I]f a member makes an offer, that is an offer to buy or sell at that price. And the other member could either buy or sell at that price." (Tr. 286:1-7.)

On another note, given Bidsals contention that the **core element** was "never

discussed," it is not surprising that there is no testimony, **NONE**, that there was ever any discussion that this **core element** protection should be removed either (a) in connection with the addition of the right of Remaining Member to request an appraisal, or (b) in connection with the Remaining Member's election to buy instead of sell.

We therefore know that Bidsal's claim that inclusion of the **core element** was never discussed is wrong, and since there is no evidence of any discussion after July 21st to remove it, it still exists in the signed agreement.

Now we turn to the intended protection achieved by appraisal.

The initiating party (here the Offering Member) needs no protection because he simply makes no offer if he does not want to be involved in the Dutch Auction process. He has all the time he wants to come up with a price and get his finances in position to be able to close in 30 days. The same is not true for the Remaining Member. He must act within 30 days.

(1) The Remaining Member is protected against too low an offer to buy and too high an offer to sell, by his right to reverse the process, that is his buying in response to offer to buy and his selling in response to offer to sell. That is at the **core element** of any Dutch Auction provision. It was clearly present in LeGrand's first two drafts with any buy/sell provision at all, Exhibits 16 and 19.

(2) But what if the offer is way too low (whether to buy or sell doesn't matter), and the Remaining Member is illiquid and just cannot commit to be able to acquire the cash to buy within the short time allowed, here 30 days. He would be then "forced" to sell at an unfairly low price. Thus the provision for an appraisal which would protect the Remaining Member from having to sell for the artificially low price. He still could be forced to sell but then at the appraised price not the unfair low price.

The Offering Member needs no such protection. If he wants to be sure he does not have to sell at a deflated amount, he does whatever research he thinks proper and then offers a fair price. And if his getting a divorce from his partner is not sufficient inducement to pay a fair price, then he simply does not make any offer at all.

The parties differed in their explanation of the purpose for providing that Remaining Member could request an appraisal. But in considering who is more credible these facts are relevant. Golshani's explanation that it was to provide added protection against too low an offer while Remaining Member lacked resources to buy makes perfect sense and is consistent with what they wrote. (See Golshani's uncontradicted testimony at Tr. 82:19-83:6.) Bidsal did not contradict such purpose since he did not remember why it was inserted. (Tr. 201:25-202:3.)

And even more telling is what they wrote. If they had intended that not only would the Remaining Member have that right to so request, but also such appraisal would be automatic if the Remaining Member rejected the offer, then the predicate for having appraisal would not have been limited to when requested by a Remaining Member.

At *RPAOB* 11:26-12:3 Bidsal argues that if CLA did not want to sell, his "protection" was a counteroffer (which he did) but that would trigger appraisal. For that he there relies only on citations to *his testimony* as to what the Agreement says. But even more telling is this: Bidsal's claim means that the parties' insertion of this added protection of appraisal was to eliminate the core protection to the Remaining Member that he could buy instead of sell. That **core element** was present in the first two versions of Dutch Auction. There is no evidence in this Arbitration that there was ever a written communication or an oral communication in which anyone ever said that by this addition of protection by appraisal, the Remaining Member's **core element** protection was being eliminated. A review of all the citations Bidsal makes as he repeatedly makes this claim proves that in none of them is there a reference to such elimination, and surely the language in making appraisal dependent on the Remaining Member's "request" does not do so. And of course Bidsal continues to ignore the final sentence of 4.2 which very clearly spells out what the procedure and intent was.

(3) But that left the Offering Member at risk that while he could afford to buy based on the amount he designated, with an appraisal there was the risk that he could not afford any more should it turn out that the offered price is lower than the appraised

amount. So in return for protection (2) given the Remaining Member the Offering Member was protected by providing that after the appraisals came in, he then could decide ("has the option") whether or not to offer based on that amount. The two sentences concluding the discussion of appraisal following request for same by Remaining Member (and that is the only provision for appraisal in the Agreement) state:

> "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."

Given that Bidsal's position would in effect nullify the whole purpose of the buy-sell the conclusion is inescapable; Golshani's testimony of why the appraisal the inserted and what it was designed to protect is the only credible testimony.

5. CHANGE FROM "SELL" TO "PURCHASE" DOES NOT SUPPORT RESPONDENT'S CLAIM FOR A MANDATORY APPRAISAL.

Over and over Bidsal notes that after several discussions between Golshani and Bidsal Rough Draft (which we have called, and will call "Rough Draft 1") was changed in having the initial offer be one to purchase rather than sell, and that this change shows that there had to be an appraisal unless the offer was accepted. Bidsal is wrong for a few different reasons.

Before getting to those reasons there are some things that Bidsal said that need attention drawn to them in regard to this issue. Starting at *RPAOB* 7:28 Bidsal said: "It is also significant to note that there is no draft that includes both 'sell' and 'purchase" in the same sentence. How about this from the last paragraph of Section 4 with buy and sell emphasized:

> "The specific intent of this provision is that once the Offering member presented his or its off to the Remaining members, then the Remaining Members shall either **sell** or **buy** at the same offered price (or FMV if appraisal is invoked) . . ."

Similar language is included in most of the drafts as well.

Next, before alluding to the reduction of the number of appraisers in Rough Draft 2 from Rough Draft 1 at *RPAOB* 8:14 Bidsal says that "Bidsal and Golshani discussed ... that the buy-sell procedure would begin when one member makes an offer to purchase." That would mean that offer to purchase was always anticipated and the change from sell to buy was merely to accomplish what was always the intent, and it had no other significance. In truth, that is not the real explanation which we state below.

Bidsal cites the LeGrand August version (Exh. 18) to support his claim that a mandatory appraisal at all times was included. But that simply is false. The September version by LeGrand had no appraisal provision. (Exh. 19.). And as to the August version, the appraisal occurred before any offer, and it was rejected by the parties because that was not what Bidsal and Golshani had discussed with LeGrand. Instead, "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, but or sell, and offer it." (Tr.72:19-24.) Golshani complained about that to Bidsal, "I told him that these are not what we discussed, and he said he would talk to him [LeGrand] and he would take care of it." (Tr. 73:11-13.) As stated by LeGrand (Exh. 17 and Tr. 281:18-282:11) they had told him they want to be able to set a price and the Remaining Member either buys or sells at that price. Bidsal did not contest that testimony. What LeGrand wrote was, "We discussed that you want to be able to name a price and either get bought out or buy at the offer price."

LeGrand's testimony and e-mail show that there was no intended difference in legal effect between an offer to sell and an offer to buy. But of greater significance is that there is no logical correlation between a change from sell to buy and a requirement that there be an appraisal if the Remaining Member chooses to himself buy in response to an offer to buy its interest.

The **sole testimony** of the reason for the change was given by Golshani. It was to avoid the risk that an Offering Member even though offering to sell might "forget" that he could end up having to buy if the offer were rejected, and then be financially unable to

complete such a purchase. (Tr. 94:2-15.) But with the change, the Offering Member is at once alert to the fact that he needs to have the cash because that is what his offer is. But if the Remaining Member chooses instead just to buy, the Offering Member cannot possibly be put in an unanticipated position where he cannot meet his obligations; he can always sell. So the evidence includes the sole reason for the change, and one does not need to search for some unstated reason. Golshani's testimony on this issue was not contradicted by Bidsal.

Therefore, the change of the offer being one to buy rather than sell had nothing to do with appraisal. What is more **an examination of the testimony Bidsal cites in support of this argument shows that no one testified that the reason for the change had anything to do with appraisal.**

Starting at *RPAOB* 12:14 Bidsal moans that even though Golshani changed the offer from selling to buying he had the nerve to "take advantage of Bidsal by trying to twist Bidsal's offer to *purchase* into an offer to *sell*." CLA did no such thing. Its response was that it elected to reject the offer, just as option (ii) in Section 4 provides and therefore buy instead of sell. Bidsal's offer triggered CLA's right to buy; CLA's response did not "twist" anything. The offer remained one to purchase but it gave rise to the right of Remaining Member to buy instead of sell.

But from that argument we learn that in Bidsalese doing what a contract permits is taking advantage. Do we need to know more about his position?

6. BIDSAL'S CLAIM THAT CORE ELEMENT NOT DISCUSSED IS NOT CREDIBLE

To support his assertion that there was never any discussion regarding the Remaining Member not having the right to purchase the Offering Member's interest at the offered price. Bidsal refers to alleged conversations with Golshani regarding to the reduction of number of appraisers and from offer to sell to offer to buy. Bidsal's testimony regarding such alleged conversations is demonstrably false.

In talking about the reduction of the number of appraisers Bidsal necessarily places those changes only from Rough Draft 1 to Rough Draft 2 (Tr. 382:12-18). One must wonder how Bidsal purports to remember such conversations so well when before the hearing he not only claimed he never even received Rough Draft 1 or Rough Draft 2, but he even created an Exhibit 351 to prove his false assertion that he had never received them. (See discussion of these false claims at Claimant's Closing Argument Brief 18:27-19:7 and 22:8-13.) Claimant avoids extravagant claims and does not compare the creation of that false exhibit with "The Alamo," "The Maine," or "Pearl Harbor," but in this Arbitration CLA suggests that we "remember" Exhibit 351.

Turning back to the credibility of Bidsal's claim, while the first "Dutch Auction" draft by LeGrand (Exh. 18) had the Offering Member get an appraisal to his liking before making an offer, and then basing the offer on it, Golshani testified that was not what they had told LeGrand (Tr. 71:16-72:13) and Bidsal did not contradict him. Of equal significance is that just as Claimant has contended, in that draft the Remaining Member's rejection enabled the Remaining Member to reverse what the Offering Member offered, the very notion Bidsal now claims was never discussed. In any case the appraisal process in that draft bears no resemblance to what the signed Agreement provides; it was solely the Offering Party's appraiser.

But second, we are not reliant upon testimony more than six years later. As we above noted, LeGrand on September 16th wrote to the parties, "**We discussed that you want to be able to name a price and either get bought or buy at the offer price.**" (Exh. 17.) There was no mention of appraisal at all. There is no evidence that Bidsal ever objected to that statement.

Bidsal at *RPAOB* 7:6 says, "Consistent with the first buy-sell language that required an appraisal, LeGrand's email [*Exh. 18*] confirmed that the 'Dutch Auction' concept was not sensible nor what the parties were looking for." That statement in addition to being confusing is deceptive in at least two respects.

Claimant cannot ascertain what the opening phrase referring to "consistent with"

means. But of greater significance is that here he omits the vital qualification, "simple," after he just quoted the provision including that word. It was not that LeGrand found a Dutch Auction not sensible. It was what he characterized as a "simple Dutch Auction" in which a price was stated and it was the same for both Members that he found objectionable. What LeGrand meant is abundantly made clear by the preceding sentence of Exhibit 18: "I got Ben's voice mail Saturday regarding Buy-sell and I talked with Shawn about the issue that because your capital contributions are so different, you should consider a formula or other approach to valuing your interests." It was in that context that LeGrand said "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." (We pause to note that LeGrand there made clear what he meant by a Dutch Auction, and it includes the **core element**.)

In characterizing LeGrand's comment, Bidsal deleted the qualifier "simple." That is like reading a health official's statement that "over eating is bad for one's health" and then characterizing the statement as saying "eating is bad for one's health."

Additionally, at no place did LeGrand say or imply that a Dutch Auction was not what "the parties were looking for." That Bidsal makes that up out of whole cloth. To the contrary LeGrand repeatedly said it was exactly what they wanted. Bidsal's statement here is reminiscent of his making up Exhibit 351 to prove his false claim that he never received "Rough Draft 1" (Exh. 20) or "Rough Draft 2 (Exh. 22). *Remember Exhibit 351.* But here LeGrand made clear what a Dutch Auction, in his parlance, was: "either of you can make an offer to the other and the other can elect to buy or sell at the offered price."

And just to cap it off, after stating his objection, LeGrand wrote, "But you are both the clients, and I will write it up as you jointly instruct." To accept Bidsal's testimony one would have to believe that LeGrand came up with that sentence out of the blue. That is simply not believable. Rather it is wholly consistent with Golshani's testimony that the Dutch Auction concept had been given to LeGrand as what they

wanted. He was simply alerting them to the unfairness of it (actually unfair to CLA) and therefore "you should consider a formula or other approach to valuing your interest." Note: He never said or implied that they should discard the notion of the Remaining Member getting to choose to buy or sell using the offered price. No, what he said was that there had to be some recognition of the difference in capital contributions.

But the Dutch Auction notion was clearly on the table having been presented by "both the clients." And Bidsal never objected to this e-mail.

Once again, starting at *RPAOB* 7:10 Bidsal totally mis-characterizes LeGrand's testimony saying,

> "LeGrand testified that Golshani and Bidsal wanted a buy-sell provision in the OPAG, but LeGrand refused to confirm that it was a 'forced buy/sell' even after counsel for Golshani pressed him to do so. (Tr. 273:8-13). Rather, LeGrand stated that he was trying to draft a 'vanilla style' buy-sell provision. (Tr. 274:15-17)."

What LeGrand really said was "I don't know what you mean by a forced buy/sell." And at Tr. 282:5-12 he explained that while he used that term back in 2011, he now thinks that the word "force" means a compulsion to make an offer. As he testified:

> "Again, you know, the introduction of this descriptor, the forced buy/sell, they wanted a buy/sell provision. In particular a –Ben proposed–a style of provision that if a member made an offer, they needed to be ready to buy or sell at that offered price. That was the fundamental concept. I mean there's no force here. There's no compulsion for anybody to make that offer."

That is what LeGrand meant as "vanilla style," "if a member made an offer, they needed to be ready to buy or sell at that offered price. That was the fundamental concept." That is just what Claimant claims this Agreement provides: the Remaining Member can force the Offering Member "to buy or sell at that offered price." That is exactly the opposite of what Bidsal argues.

Starting at Tr. 284:11 LeGrand's deposition testimony was read:

> "Question: Was it your understanding that both Mr. Bidsal and Mr. Golshani wanted the forced buy/sell. In other words, was this something they both wanted, correct?
>
> "Answer: Correct–I mean yes."

After LeGrand acknowledged that had been his testimony he interjected, "I still

don't like the use of the word 'forced.'" While at the hearing LeGrand may have soured on the label "forced buy/sell," it is how he characterized the Dutch Auction back in 2011 and even a few months earlier at his deposition. So LeGrand never said he was against a Dutch Auction or forced buy/sell, much less that the parties said they were against it. On reflection he simply decided that the word "forced" implied a requirement to make an offer. That is not what "forced" meant to the parties or LeGrand back in 2011. Claimant has never suggested that there had been any discussion or agreement that the provision "force" someone to make an offer. Bidsal made an offer, and Claimant agrees he was not "forced" to do so.

Then at *RPAOB* 7:13-15 Bidsal states, "LeGrand could not recall specifically what was discussed between Bidsal and Golshani. (Tr. 289:6-11)." But even assuming that he meant page 288 he mis-characterizes the testimony by leaving out the essential qualifier. He there said "most of the time" he could not remember specifically what was discussed, and not in conversations between Bidsal and Golshani but between him and other parties.

Next, the September 20th draft by LeGrand had a Dutch Auction provision (§ 5 of Exh. 19), and there was no mention of appraisal at all. At *RPAOB* 7:9 Bidsal says that the buy/sell provision was "not even close to what ended up in Section 4." So what! The sole reasons it was rejected were stated by Golshani and Golshani alone. They were that "if he [the offeree] doesn't do anything, the person who made the offer cannot enforce it" (Tr. 81:13-15) and "also it talked about the ratio of capital that we hadn't discussed and was not very familiar" (Tr. 81:18-20). There was no evidence of any objection to the inclusion of the **core element**, and Bidsal did not refute that testimony.

Summarizing the, the foundation for Bidsal's claim relies on Bidsal's testimony of conversations with Golshani. Part of what he testified to were changes from Rough Draft 1 to Rough Draft 2. But these are the very documents the receipt of which Bidsal in *RB IV* not only denied, but made up a writing (*remember Exhibit 351*) to prove that he had not received them. So to accept these fictional conversations one would have to

believe that after denying the receipt of the documents in regard to which the conversations occurred Bidsal for the first time, after four prior briefs and his declaration suddenly at the hearing remembered what was then said. That is simply not believable, especially in the face of the e-mails from LeGrand in August and September that repeatedly refer to a Dutch Auction as being what the parties wanted.

7. INVOKED MEANS REQUESTED NOT REQUIRED

The concluding paragraph of Section 4.2 states: The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then Remaining members shall either sell or buy at the same offered price (or FMV ***if appraisal is invoked)*** . . .(Emphasis added.) A synonym for the word "invok(ed)" is request(ed). www.thesaurus.com./browse/invoke and https://www.vocabulary.com/dictionary/invoke. Here, while Section 4 enabled the Remaining Member to request, or "invoke" the process for, an appraisal, the Remaining Member did not do so. Bidsal's argument is that the terms of Section 4 require an appraisal whenever the Remaining Member chooses to buy rather than sell. But "invoked" does not mean "required" or "automatic." Neither of those words is a synonym for "invoked."

8. SPECIFIC INTENT NEVER REMOVED AND BIDSAL'S FINAL REVISIONS

Curiously starting at *RPAOB* 4:3 Bidsal commences a long discussion of portion of testimony which he properly characterizes as being without known "significance," all for the supposed purpose of saying that Golshani's "suggestion" that Bidsal made changes from what LeGrand sent him on November 29th was a "rash claim". What is significant is that (1) even after Bidsal's review to make revisions and his acknowledgment that he had finished them (see Exh. 27 and 41) the last paragraph of Section 4.2 setting out the specific intent which set forth in very clear language that if the Remaining Member chose to buy at the offered price, the Offering Member was obligated

to sell remained, and (2) Bidsals denial of making the final revisions shows that he will say anything regardless of the truth.

At the portion of the transcript to which Bidsal there refers Golshani testified that because (1) all the drafts coming out of LeGrand's office showed the Percentage Interests in Exhibit B as 70-30 to reflect the capital contributions and (2) he change to 50-50 did not occur until after Bidsal had told LeGrand that he was revising the Agreement (see Exh. 27). But even on what Bidsal labels as insignificant matter he mis-portrays the facts. He argued that the reason for the change was that Golshani had conceded that the profits were to be split 50-50. But that has as much to do with who made this change as the price of cheese in China. Exhibit B already showed that the profits were to be split 50-50 and Golshani never objected to it, and indeed so testified. So then there would have been no reason for Golshani also to reduce his Percentage Interest.

Furthermore, Bidsal's conduct is inconsistent with his argument that at all times his percentage interest was supposed to be 50%. Golshani testified that in discussing Rough Draft 1 Bidsal complained of the portion of the formula for determining price reading "(FMV-cost of purchase stated in the escrow closing statement) x interest percentage of [selling] member(s)." Bidsal said the emphasized portion should be 50%, and it was so changed in Rough Draft 2 (Tr. 88:18-89:19 and 92:14-18). **Bidsal never contradicted that it was he who demanded that change.** But the point here is why would he have complained about using the "percentage interest" and demanded instead using 50 % if his percentage interest was also supposed to be 50%? For that he has no answer.

Bidsal concludes (4:14) that there was "no evidence" that Bidsal changed the Percentage Interests. FAR from the truth. But Bidsal confirmed (Tr. 218:21 to 219:12) that in the first draft the Golshani's Percentage Interest was 70% (Exh. 5), and it so continued in Exhibit 6 and Exhibit 10 on June 27th (at which time LeGrand had never yet even spoken with Golshani so the only input had to come from Bidsal, Tr. 55:18-56:1). The percentages stayed the same in the drafts sent in August, September (Exh. 16, 17, 19

and November (Exh. 26, 341 and 344), including the last draft sent by LeGrand on November 29th (Exh. 26), which had mistakes in Section 4. Then on December 10th LeGrand wrote to Bidsal asking "did you ever finish the revisions" (Exh. 27) to which Bidsal responded two days later (Exh. 28) saying the Agreement was "finished and signed," never refuting that he had informed LeGrand that he was going to revise what had been sent to him on November 29th. And the signed Agreement had corrected the typos.

An examination of Exhibits 343 and 344 demonstrate that those changes had not have been made by LeGrand, and as before noted, Golshani would have had no motive to alter the percentage interests.

Exhibit 343 presented by Bidsal are from his records including an e-mail from LeGrand to Golshani and Bidsal from June 19, 2013. In it LeGrand transmits "a new OPAG for Mission Square." He adds, "This revised version is based on the GVC OPAG that has Ben's language on buy sell. I am attaching that document as well, just for clarity." An examination of the Green Valley (GVC) Operating Agreement that was attached starting at Bidsal bate stamp 150 shows that it is the version LeGrand sent out on November 29th (Exhibit 26) containing the same mistaken cross reference on page 10 in Sections 4 and 4.1 (at bate stamp 166) which were later corrected by Bidsal in the final and signed version (Exhibit 29). (The cross-reference are to Section 7.1 and 7.2 because the provision had previously appeared in Section 7 rather than Section 4. The correct cross-references should have been to Section 4.1and 4.2.) In addition the percentage interests in the signed version are 50-50 while in this attachment they are still 70-30. The signed version (Exhibit 29) corrects the cross-references in Section 4 and changes the profit percentages to 50% each.)

Bidsal then re-transmitted this version to Golshani on October 2, 2013 saying, "This is the last revised operating agreement that David sent to both of us." (Exhibit 344.)

The point is there could be no explanation for LeGrand's sending out in June of

2013 his November 29th version including the erroneous cross references if then he had the signed version. Rather, the only reasonable inference is he thought the version he had sent on November 29, 2011 had been used and that after he sent out the November 29th version (Exhibit 26) someone else made changes to it.

So while Golshani did not see Bidsal make the changes, given that LeGrand sent e-mail asking if he, Bidsal, had completed revisions to which Bidsal never responded by saying he made none, given that there was no need to change Percentage Interests just to give Bidsal 50% of the profits since that was at all times independently stated and given that there was no possible reason for Golshani to reduce his Percentage Interest, and in any case he testified that he did not participate even as typist after Rough Draft 2. What the evidence tells us is that it was Bidsal who revised the agreement correcting the typos as he said he would.

But more important is the fact that while Bidsal was revising the Agreement the part that he did not revise has tremendous significance, that is the last and final sentence of paragraph 4.2, which once again states:

> "The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) 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)."

9. BIDSAL'S AUTHORITIES ARE INAPPLICABLE

In Section III.F of *RPAOB* Bidsal says that the changes from Rough Draft 1 to Rough Draft 2 resolve the dispute. He first then cites authority that "a party many not delete words in a contract and thereby alter the parties' obligations." But he never discloses what words CLA purportedly has deleted because there are none. Nor does he in fact identify the changes, so we assume he was intending to refer to the change from offer to sell to offer to buy. But that change is not a deletion of anything.

He goes on to refer to two cases which interpreted contract language to avoid having language become meaningless. So in *Mirpad, LLC v. California Insurance*

Guarantee Association, 132 Cal.App.4th 1058 (2005) the court which held that when the contract used both the phrase "person and organization" and simply the word "person" the word "person" would be construed as only a natural person. And in *Burnett v. Chimney Sweep,* 123 Cal.App.4th 1057 (2004) the court held that when the contract both referred to "Lessor and its agents" and separately just to "Lessor" the latter would not include Lessor's agents. Bidsal argues that the principle of those cases apply to construing statutes and CLA does not dispute that.

But Bidsal does not identify any portion of Section 4 that fits into the scenario of those cases BECAUSE THERE IS NONE! Starting at *RPAOB* 15:9 he claims that the change from "willing to sell" to "willing to buy" fits that category. He cites Tr. 136:9-138:7 as support for his claiming that the change was the result of negotiation. NOTHING THERE SAYS ANY SUCH THING. Now the reason he makes such mis-statement is because he began this section by alluding to the impact of "language changes though negotiation" (14:14.) Apparently Bidsal forgot that he previously claimed that all the changes were in these drafts were done solely by Golshani who "spearheaded" them without one mention or implication of "negotiation." (*RPAOB* 7:23, 8:8, 9:22 and 11:14.) But in any event as shown in Section discussing change from "sell" to "purchase" above, the true fact is that the change was made to avoid the Offering Member's overlooking that his offer to sell could result with his having an obligation to come up with money to buy.

In any even that change in no way involves the use of a phrase in one part and only one word of the phrase in another as is true under the cases on which Bidsal there relies. Its like apples and oranges. Those cases, whose principles CLA does not dispute, have nothing to do with a change from offer to sell to offer to buy.

But by claiming that the change from "sell" to "buy" was the reason appraisal was required when Remaining Member rejected offer, by necessity Bidsal must concede that where it was an offer to sell, as late as Rough Draft 1, the **core element** was present. Thus the fact that Rough Draft 1 already included the right of the Remaining Member to request an appraisal did not eliminate the **core element** or require an appraisal whenever

the offer was rejected.

Bidsal continues at 15:25 that by the change "the parties were acknowledging and consummating the agreement that on offer to buy is ***not*** an offer to sell." That is tautological. And CLA has never contended the opposite. What it ignores however, is that the **core element** of every buy/sell provision is that the responding party gets to choose whether to buy or sell at the price stated in the offer, and thus it never matters (except to alert the offering party as discussed above) whether the initiating offer is one to buy or sell. So long as the Remaining Member has the right to reject the offer and "counteroffer to purchase the interest of the Offering Member based upon the same fair market value . . .then the Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s)," as Section 4 states, then whether the offer is to buy or sell has no legal impact.

Without citation to authority or transcript or exhibit Bidsal concludes this section with the claim that the change to offer to purchase means "any counter offer had to follow the strict requirement of procuring what the parties agreed would be a fair price based upon the medium of two appraisals." Wrong. There is no requirement (strict or otherwise) of procuring appraisals. The Section makes the offered price the amount to be used in determining the Buyout Amount unless the Remaining Member requests an appraisal.

In Section III.G. Bidsal cites cases that where an ambiguous "contract is susceptible to more than one reasonable interpretation" the ambiguity should be construed against the draftsman whom Bidsal charges is Golshani. We address that claim of draftsmanship below. But even assuming Golshani alone wrote all of what became Section 4 (which we know is false) Bidsal's claim that there is an automatically requirement for appraisal if the Remaining Member elects to counteroffer is an interpretation that just is not reasonable or even possible for the many reasons discussed throughout Claimant's Closing Argument Brief and in part again above.

10. BIDSAL'S OTHER ARGUMENTS MAKE NO SENSE

10.1. 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* (1996) 112 Nev. 1255." (*RB I* 6:17.)

10.2. Bidsal's Argument Results in Members Being Obligated Without Knowing the Price or Remaining Member Having No Choice.

We above have noted that Bidsal's position that if the Remaining Member elects to buy the Offering Member's interest instead of selling his own interest, then he cannot use the offered price to calculate the Buyout Amount, but rather must obtain an appraisal has one of two equally absurd results. One is that the Remaining Member's right to buy is meaningless. The other is that it creates the one and only instance where the parties become committed to buy or sell without knowing the price.

The first provision in any draft by LeGrand in which there was a forced buy or sell was sent out on August 18th (Exh. 16). Section 7 thereof provided that the Offering Member would set out the amount in his offer so he knew amount before offer, and the Remaining Member would know it when the offer was received. So each knew the amount before being committed to buy or sell. That never changed in any of the drafts. There is no evidence that in their discussions, to which both Golshani or Bidsal testified, either ever said that there should or could be a situation where a party might have to buy or sell without knowing the price before being committed.

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As we have also above noted, if the Remaining Member requested an appraisal, then the Offering Member had the option whether to make an offer based thereon, so once again he would know the Buyout Amount before making this offer and the Remaining Member would likewise know the amount when deciding whether to accept or reject that offer.

There is no exhibit or testimony that at anytime there was ever a comment that one or more of the seven versions of the buy-sell language had changed or was supposed to change the principle that both the Offering Member knew the price before deciding to offer and the Remaining Member knew the price before deciding to buy or sell.

Bidsal as above noted claims that the Remaining Member's election to buy automatically requires an appraisal and the Offering Member becomes obligated to buy at that price and the Remaining Member must pay that price. On the other hand were he to change horses and contend that instead the sentence giving the Offering Member the option after appraisal requested by Remaining Member applied, then the Remaining Member's right to buy instead of sell becomes illusory.

Therefore, Bidsal's contention that a rejection triggers appraisal results in one of two equally absurd results: Either the Remaining Member's right to counteroffer is meaningless or the parties are required to buy or sell without knowing the price before commitment.

10.3. **Bidsal's Confusion and Distraction Campaign.**

Seemingly Bidsal's dwelling at such length (from *RPHOB* 2:9 though 5:28 and then again in Section B starting at 10:3) on all the work he did is intended to show his entitlement at least to knighthood and perhaps sainthood. But of course that is why he got a 50% interest in profits even though he put up only 30% of the capital. And there is no issue in this Arbitration about whether Bidsal because of how much he worked was entitled to more than 50% of the profits. But whether Bidsal wishes to be called Mr., Sir or St., how does his work bear on what Section 4 says and whether the parties agreed to

002437

abandon the **core element** of buy/sell? Answer: Not at all. So then for what purpose is it inserted: Answer: Part of a campaign to inject confusion and distraction, herein referred to as "Confusion & Distraction Campaign."

Bidsal complains (*RPAOB* 12:4-13) that Golshani did not provide him with the appraisal Golshani paid for, and brags that he shared with Golshani appraisals he obtained in anticipation of selling off company property with Golshani"even though Golshani was not involved in the process." (*RPAOB* 10:15-18.) Wrong! CLA was involved. Bidsal was about to sell of company property and he better well have shared vital information regarding such sale with his co-owner co-manager.

First, the sharing by Bidsal was in connection with activity of Green Valley to which as a co-owner and co-manager CLA through Golshani was entitled, and indeed required. But the appraisal Golshani obtained had nothing to do with any transaction by Green Valley. It was in connection with a buyout of one Member's interest by the other.

Second, Golshani never hid the fact that he was going to get an appraisal in response to Bidsal's offer. Before CLA's response to the offer Golshani wrote to Bidsal and told him he was getting an appraisal. (Exh.42.)

Third, by the time the appraisal was done Bidsal's offer had already been made. There was nothing he could do about it and he had no right or obligation to alter it. Beyond that Golshani testified that he told Bidsal about the appraisal and gave him the results orally and Bidsal never asked for the appraisal, contrary to Bidsal's claim that he asked for it (*RPAOB* 13:2). (Tr. 159:8-19 and 160:25-161:9.)

So once again the questions are asked and the answers are the same: How does that bear on what Section 4 says? Answer: Not at all. So then for what purpose is it inserted: Answer: Part of Bidsal's Confusion & Distraction Campaign."

At *RPAOB* 10:22-11:2 Bidsal boasts that he shared the proceeds of sale with CLA in accordance with the Agreement. Now exactly how does that relate to how Section 4 should be interpreted? Answer: Not at all. To top it off at (*RPAOB* 11:3) Bidsal has the gall to brag, "Even though Golshani took a very limited personal role in the sale of a

property, every sale was done with Golshani's approval." The fact is had he not done so he would have been in violation of their Agreement. Article IV, Section 2(h) provides, "Manager shall not pledge, mortgage, sell or transfer any assets of the Limited Liability Company without the affirmative vote of at least ninety percent in Interest of the Members." Obviously Bidsal could not gather 90% without Golshani's approval.

So here is another, and maybe the most outrageous example of Bidsal's Confusion and Distraction Campaign. What possible relevance to the interpretation of Section 4 could there to his getting Golshani's approval for sale of company property? Answer: Absolutely none!

10.4. **Bidsal's Conduct (Offer) Inconsistent With His Position**

Bidsal at has argued (and cited authority to support) that one should look to the parties' conduct before any dispute to determine what the agreement means *(RB IV* 13:6 and RPAOB §b on page 27). While he has cited no conduct by Golshani inconsistent with CLA's claim, the fact is that Bidsal's conduct, his offer, is inconsistent with his argument. In fact if we look at conduct, Bidsal's offer is relevant since. As we have explained it actually proves that when CLA elected to buy. The $5,000,000.00 price set by Bidsal became the FMV.

In Section 6 of Claimant's Closing Argument Brief we lay out the number of ways in which Bidsal's very own offer is inconsistent with his current position. We had pointed that out before. While he makes no mention of it in his *RPAOB* he has previously attempted to avoid what his offer said by arguing that the statements by lay person Bidsal in his offer cannot change how the Agreement should be interpreted. (*RB II* 6:23.) 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 $5,000,000.00 was the "offered price." 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 $5,000,000.00 as the offered price or FMV.

Bidsal has attempted to avoid these conclusions on the claim that "the use of the term 'FMV' in his offer 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.

10.5. **Golshani Not Draftsman and Who Was Irrelevant**

Starting *RPAOB* 7:16 Bidsal argues that the Agreement should be construed that there is no **core element** and rather the Agreement calls for appraisal whenever offer rejected because Golshani was the draftsman. Before even addressing that claim, it is important to bear in mind that unless the interpretation being urged is one to which the language used is susceptible, who the draftsman was is totally irrelevant. Our discussion above and in Claimant's Closing Argument Brief demonstrates that nothing in the language of Section 4 expresses, much less implies, that a counteroffer automatically triggers the need for appraisal.

In addition, in Claimant's Closing Argument Brief 18:21-24:3 and at 32:16-34:5, with citations to the record and exhibits (1) we demonstrate that while Golshani may have been the typist of Rough Draft 1 and Rough Draft 2, he was no more its author than Bidsal (contrary to his claim at *RPAOB* 9:22 that he "drafted nothing"; if Bidsal's counsel dictated *RPAOB* would he claim that the stenographer typing it was the draftsman?), (2) the many ways in which those drafts copied from what LeGrand had either before drafted or created formulas in response to LeGrand's suggestion, (3) those drafts were reviewed and revised by their attorney, LeGrand, and put into Draft 2 by LeGrand (Exhibit 24) ,

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and (4) Section 7 in LeGrand's Draft 2 was further revised by LeGrand before being moved from separate pages into Section 4 in Exhibit 26. In addition, then someone (Bidsal) other than Golshani modified what LeGrand had last done before the Agreement was signed. (See discussion of Bidsal's revison in Section 8, above). Little wonder Golshani would in these circumstances not consider himself as having drafted Section 4.

The Arbitrator can decide whether the changes from section 7 of what was in Rough Drafts 1 and 2 to Section 4 of the signed Agreement (Exh. 29) are significant or insignificant. (Bidsal argues they are "minor." *RPAOB* 17:25.) But it is undeniable that it was Golshani (with Bidsal's blessing) who faxed Rough Draft 2 to LeGrand. So since there are many similarities between it and what LeGrand inserted, and since LeGrand received what he revised from Golshani, it is understandable that LeGrand referred to that language as being "Ben's." His designation, however, cannot alter the facts on how Section 4 of the Agreement came to be, and who was the author of its various parts. (This answers Bidsal's "Mission Square" claim in Section II.C of *RPAOB*.)

Beyond that, even if there had been no LeGrand drafts used by the parties to create Rough Draft 1, where parties create something and send it to their attorney for his review and correction which he then does, seemingly the attorney, not the parties would be deemed the draftsman.

At *RPAOB* 9:22 (and so impressed with his own words repeats it at 18:12) Bidsal relies on his own testimony to assert that Golshani always brought drafts with him when they met. Of course Golshani's testimony conflicts with that. For example, he said that the signed Agreement was printed at Bidsal's office while Golshani was there. (Tr. 104:19-105:18 and 166:1-168:4.)

Given all that, it is beyond remarkable that Bidsal at *RPAOB* 7:23-24 says that there is no dispute that Golshani alone drafted Rough Draft 1 and alone made the changes to it in Rough Draft 2. Nothing could be further from the truth.

Starting at *RPAOB* 16:19 Bidsal quarrels with how Golshani interprets drafting the language in Section 4. Here is what Golshani actually said at Tr. 163:24-164:9:

002441

> "Well, it depends what you mean by 'draft.' If you think that I came and I wrote something here and included it into the operating agreement, no. But I gave–I wrote some draft, rough draft, as a, you know, an idea with my partner; send it to my partner, and nobody else. And later on he said, 'Send it to LeGrand, our attorney.' And after that, I really didn't know what happened to that and what they did with it. So when I look at this Section 4 as a whole, I did not draft this."

Is Golshani's belief as to the meaning of drafting the language in the final signed agreement wrong? Maybe. But so what, as Bidsal recites starting at *RPAOB* 17:3 Golshani readily stated the portions he either initiated or changed. But if one examines the portions of the transcript which Bidsal cites it is discovered that he overstates what Golshani did and thus for example (1) as to the specific intent, that came from prior LeGrand draft (Tr. 85:10), (2) the change to have two formulas was result what "we thought" (Id.), the change from percentage interest to 50% was as the result of Bidsal complaint (Tr. 89:2-9), (3) he used Section 7 of LeGrand's August 18th draft (Tr. 86:16-21) and (4) the reduction of number of appraisers when requested by Remaining Members was to satisfy complaint by Bidsal (Tr. 89:1). Bidsal overstates, and in fact mis-states some of the items such as the third paragraph of Section 4.2 (*RPAOB* 17:8) relying on Tr. 146:2-8, since there what Golshani said was, "I typed it, but this is something we discussed together." And as to the acronym "FMV" (*RPAOB* 17:9) since he typed it he "inserted" but who came up with it is not stated in the testimony, and as Golshani testified, comparing reference to "FMV" to what LeGrand had before written Golshani testified, "'Rejecting the offer'–'same appraisal and fair market'–it is–it is the same. It's the same appraisal and fair market value. It is from him, too . . .It doesn't matter." (Tr. 146:20-25.)

At *RPAOB* 17:15 Bidsal re-raises the issue of whether determination of the draftsman should be by law determined. While CLA did not raise the issue in its Closing Argument Brief, since Bidsal did, we lay it out again.[6] The parties recited and agreed in

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[6] At the hearing Bidsal's counsel read not only that sentence, but also the six subdivisions of that Article XIII dealing with different subjects. The Arbitrator ruled that he "believes that the thrust

Article XIII of the executed Operating Agreement that, "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.

10.6. **True History**

In section III.H Bidsal purports to give accurate background. In Section 5, starting on page 13 of Claimant's Closing Argument Brief we set it out more accurately and fully. For example Bidsal starts by referring to LeGrand's first "iterations" but does not mention they were not even sent to Golshani. Then at *RPAOB* 18:24 he claims that "from the moment that LeGrand introduced buy-sell language it was contemplated that the sale price would be set though a formal appraisal." He repeats that claim at *RPAOB* 22:20. That is wholly false. Our discussion and quotations together with citations to the uncontradicted testimony of Golshani and LeGrand and the e-mails set out at Claimant's Closing Argument Brief 16:24-17:10 set the record straight.

As just one way of showing it is false, here is what LeGrand wrote on September 16th (Exh. 17) "We discussed that you want to be able to name a price and either get bought or buy at the offer price." Note: There is no mention of appraisal.

Bidsal continues that this appraisal "concept continued though the final version of the Green Valley OPAG." Wrong again. The forced buy/sell provision in Section 5 of

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of that recitation is not to foreclose that anybody else may have had a hand in the drafting of that." Tr 19:17. Claimant respectively disagrees. The six subdivisions covered a totally separate subject springing from the portion stating that he represented the Company and not the individual members. We suspect that because the reading of them took so much more time, the critical portion reading simply, "This Agreement has been prepared by David G. LeGrand" was lost sight of. It is not qualified in any way. Therefore, the laws of Nevada and California barring a contest of that recital ought to apply.

the September 20th LeGrand draft (Exhibit 19) had no such appraisal mentioned. So when Bidsal says that appraisal "was always supposed to be part of the buy-sell language," one needs a heaping spoonful of salt, not just a few grains.

10.7. "**No Party (Except Bidsal) Would Ever Make An Initial Offer**"

Spectacularly once again to show that the Agreement cannot be construed to allow the Remaining Member to buy at offered price because, Bidsal argues, "then not party would ever make an initial offer." Claimant showed how false this was in *CCAB* § 7.2. We review that in part.

Supporting such position Bidsal was questioned on whether he was familiar with such a provision and he responded "no," he had never head about it until this proceeding. (Tr. 181:16-182:7.) When pursued as to whether he himself had entered into such an agreement, he evaded answering. (Tr. 182:22-183:23.) Finally at Tr. 227:13-20 he denied having ever entering into an agreement where "someone was able to name a price and either bought or buy at that offer price."

But he acknowledged entering into the operating agreement for Cheyenne Technologies, LLC in 2003. (Tr. 339:14-22.) And after some more of his quibbling the Arbitrator directed him to "Can you take a look at it [Exhibit 39] and se what that provision says? Would you also please pay specific attention to the sentence that starts 'And non-offering members shall elect." (See N. 8 on page 32 of *CCAB.)* That is part of Section (or paragraph) 3.2 of the Cheyenne agreement, and it clearly provides that the responding party can elect to buy or sell at the figure used by the initiating party.

Bidsal's claim that Section 4 cannot be interpreted to allow the Remaining Member to buy or sell at the offered price because no one would ever make an offer is proved fallacious because Bidsal himself had before entered into just such an agreement.

10.8. **Other Bidsal Misstatements, Omissions And Erroneous Arguments**

At *RPAOB* 6:18 Bidsal claims that LeGrand introduced Dutch Auction omitting

that it had been discussed before and at the July 21st meeting. (See quotations, discussion and citations starting at 14:6-15:24 of Claimant's Closing Argument Brief.)

At *RPAOB* 6:22 Bidsal cites Tr. 316:12-15 to support the claim that Le Grand testified that the buy-sell language in the August 18th draft "did not end up in the final executed OPAG." But what LeGrand there testified to was that "the language in the draft of August 18th is not **exactly** the language that appears in the final executed document." (Emphasis added.) The omission of "exactly" totally changes the meaning.

At *RPAOB* 25:13 Bidsal says "a counteroffer means that the Remaining Member does not agree to establish the sale price without an appraisal." A counteroffer means no such thing, or at least not as used here. As before stated neither the offer nor the counteroffer are acts which can simply be ignored without impact. Failure to respond to offer is deemed an acceptance. And once the offer is made Section 4.2 provides that the Remaining member must either "sell or buy at the same offered price" and the counteroffer enables the Remaining Member to buy "based upon the same fair market value" as in the offer. So while oftentimes the words "offer" and "counteroffer" indicate that the parties incur no obligation or right unless and until accepted, even Bidsal does not pretend that is true here. Indeed his very argument is that the parties incur the obligation of proceeding to appraisal the moment that a counteroffer is made.

At *RPAOB* 25:27 Bidsal claims that because the language of "specific intent" portion was changed somewhat, and because supposedly that was Golshani's doing, somehow that means that the **core element** does not exist. Claimant must concede that it has no ability to determine the correlation that Bidsal there claims. It makes no sense at all.

Starting at *RPAOB* 25:27 Bidsal commences an argument that Claimant is jumping around and overlooking or ignoring portions. Wrong again. Claimant reviews what Section 4 provides in Sections 2 and 4 of *CCAB*. Once again the critical portion without quotation marks reads:

002445

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002445

> The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either
>
> (I) Accepting the Offering Member's purchase offer, or.
> (ii) Rejecting the purchase offer and making a counteroffer to purchase the interest of the Offering Member based upon the same fair market value (FMV) according to the following formula.
>
> (FMV - COP) x 0.5 + capital contribution of the Offering Member(s) at the time of purchasing the property minus prorated liabilities.
>
> The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) and according to the procedure set forth in Section 4. In the case that the Remaining Member(s) decide to purchase, then Offering Member shall be obligated to sell his or its Member Interests to the remaining Member(s).

Starting at *RPAOB* 28:10 Bidsal quibbles with Golshani's testimony about what was said at the July 21st meeting. Bidsal begins by quarreling with Golshani's stating that the buy-sell was then discussed. To prove his claim that Golshani's statement was not believable, Bidsal raises several points.

First he questions why should it have taken so long to get the Agreement finished. He notes that there were several drafts. Never mind that the list he recites includes exhibits that are not drafts and that many of the drafts included no buy-sell provisions at all, and some were before July 21st. The fact is that the delays were not to the liking of either party (so each testified) and LeGrand's delays were in part caused by his difficulty in providing a Dutch Auction provision where the capital contributions were so variant. In any case the delay does not disprove Golshani's statement.

And as to LeGrand's initial failure to recall (*RPAOB* 28:16), we have above pointed out that once his memory was refreshed by looking at his e-mails, he had no difficulty saying that what the parties expressed was the responder could choose either to buy or sell based on the amount in the offer. (Tr. 281:7-21, 282:7-11 and 284:11-20.) And LeGrand's inability to recall the exact date that something was said six and one-half years ago is hardly surprising or indicative that what he then testified to after his memory was refreshed by reading his e-mails was false.

002446

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002446

At *RPAOB* 28:20 Bidsal questions,

> "if the person who was making the offer 'for sure researches about how much he should offer so that either way, it would be fair,' as Golshani contended, it does not explain why the parties added an appraisal process into the OPAG. (Tr. 59:23024). If the Offering Member was expected to conduct an appraisal beforehand, then it implies that the offered price would be fair and no appraisal process would be needed."

Nothing is more clear than that an owner can determine the value of his property without an appraisal, and no one ever said that it was expected that he would conduct an appraisal. That is point one. Second, assuming he got an appraisal, his offer did not have to reflect it so there no inference that the offered price would in fact be fair. Third, Golshani's reference to being "fair" meant that the process was fair to both: the Offering Member was under no compulsion to make an offer, it was all up to him, and therefore by definition fair to him, and the Remaining Member's right to buy instead of sell made it fair for him. But as we have also above noted, the Remaining Member may not have the cash to buy, exactly what Bidsal thought was true here. So it was Bidsal himself (Tr. 82:15-83:6) who proposed that for the Remaining Member's added protection they should give him the right to have the property appraised.

002447

Then starting at *RPAOB* 28:26 Bidsal claims that the appraisal was to benefit the Offering Member as well as the Remaining Member and then quotes a portion of a sentence from Golshani's testimony on page 88 that "the appraisal worked, because both parties would seek the appraisal." So impressed was he with this argument that he repeats it and the citation at 31:23.

Here is the what Golshani really said. Let's start where it begins. It starts with Bidsal's falsely stating that he had never received Exhibit 20. (*Remember Exhibit 351.)* Golshani was the first witness and Bidsal had not yet admitted his lie. So on page 87 Golshani was asked whether Bidsal ever acknowledged receipt of his e-mail to Bidsal of September 20th and attached Rough Draft 1 (Exh. 20). After he said yes, he was asked how Bidsal so acknowledged. He answered that they had discussed it. Then he was asked what was discussed. In that context Golshani was testifying about Exhibit 20 and

002447

the introduction in it of the appraisal provision. That provision said that upon Remaining Member's request each side would select three appraisers of whom the other side would choose one and the average of the appraisers by those two would become the FMV. (Remember this is a provision that Bidsal suggested, Tr. 82:19-83:6.) So the full statement from Golshani to part of which Bidsal refers reads:

> "From what I remember, he liked that–that we are–the way–you , the appraisal worked, because both parties would seek the appraisal. I put three MAI, and then he said this overkilling it, two would suffice."

Maybe the Iranian born Golshani's English was not perfect, but his reference to "both parties would seek the appraisal" obviously meant in the context of Exhibit 20 that both parties would be providing appraisers to provide appraisals. To contend that Golshani was testifying that under the provision in Exhibit 20 both parties could request an appraiser is pure hogwash. And surely it cannot mean that there would always have to be appraisals, the only other interpretation, cannot fly because then there would have been no reason for an amount being included in the offer.

So none of what Bidsal mentions to disprove Golshani's testimony in fact disproves anything. Bidsal continues with a repeat of his own testimony as to the legal interpretation of Section 4. It made no sense at the hearing and it does not become better by being reworded or reused in his brief.

Starting at *RPAOB* 31:22 Bidsal claims Golshani testified "that if you gave a member a right to appraise, 'he would be protected.' (Tr. 84:8-9)" First, notice that he said "right to appraise." As we have before pointed out in Claimant's Closing Argument Brief at 12:1 to 12:21, Bidsal abandoned the claim that appraisal was a right of Offering Member, and rather it was automatic when the Remaining Member chose to buy. So the only member to which Bidsal could have been referring is CLA, not himself. Second, the statement by Golshani that is cited referred to "the other guy," which if one read the portion before that made clear was the Remaining Member and not the Offering Member. Only by some convoluted mental gymnastics can one conclude other than that the Remaining Member can buy at the offered price.

11. BIDSAL LACKS CREDIBILITY

Bidsal as a witness is not credible.

- We above discuss his assertion that no one would ever make and offer were the **core element** present when he had already done so himself before.
- Bidsal testified that he sent out the offer so that he could get out of managing Green Valley. (Tr. 390:14-18.) But an offer to buy is the exact opposite of getting out of Green Valley. And if he wanted to get out of Green Valley why did he oppose selling his interest based on the very fair market value he established.
- He claimed that he had not received two different e-mails and even createdand then cited an exhibit to prove his claim, but at hearing conceded, that it was not true that he had not received them. And *Remember Exhibit 351.*
- He claimed he was not informed of Golshani's getting an appraisal before the appraisal was done, but Exhibit 42 proves that was false. (*RPAOB* 27:20 and 34:12.) In fact on cross-examination he admitted he was so informed and did not remember when (Tr.240:4-9).

002449

12. THERE WAS NO BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

All CLA did was follow what the buy-sell provision called for. It chose to buy rather than sell and used the amount Bidsal claimed he thought to be the fair market value. If it wasn't that's on him. Actually looking at Section G of *RPAOB* one sees that Bidsal begins, "even if for the sake of argument, CLAP was able to prevail on its contract interpretation . . ." and then it supports its claim for breach of covenant of good faith and fair dealing by repeating the very same arguments it made that CLA's interpretation was wrong. While he repeats his claims we shall not repeat what we above said with regard to each of his claims.

He does not even attempt to explain why either of the cases he cites, or any statement therein, is comparable to this matter. In fact in one of them, *Aluevich v.*

002449

Harrah's, 99 Nev. 215, 660 P.2d 986 (1983)the court upheld the dismissal of that claim, and what he cites is the dissent. As the opinion stated, the covenant is limited to where the defendant had "a vastly superior bargaining power." 99 Nev. At 217. Bidsal's reliance on n.4 in *Frantz v. Johnson,* 116 Nev. 455, 465, 999 P.2d 351, 358 (2000) is equally puzzling. CLA does not dispute that such a cause of action exists. All that note said was that while the lower court's award of tort damages for breach of that covenant was error, its award of contract damages was not. How that case relates to this one is not explained by Bidsal.

However, it is necessary to respond to Bidsal's outrageous N.12 and 13. As to N. 12 Golshani never complained or accused Bidsal of anything because CLA put up more of the capital. We don't know from where Bidsal came up with that, and decorum precludes us from speculating from where it was pulled.

As to N 13 Bidsal argues that he had not been informed of Golshani's heart condition until after the offer, but that is just another matter where the Arbitrator must decide whose testimony is the more trustworthy. The fact that Golshani was able to convince friends to join him in purchasing Bidsal's interest does not negate that Bidsal assumed Golshani would not be able to buy him out since only months earlier Golshani declined to make another purchase because of financial constraints, the latter as Bidsal conceded. (See Conclusion, below.) We above have discussed the mysterious alteration of Exhibit B to increase Bidsal's percentage interest, and whether Golshani's belief as to who is the drafter of Section 4.

Finally that exhibits lacked Bates Stamp numbers is irrelevant. In fact there is no reference to same in any of the citations Bidsal's N.12 gives for that claim. Bidsal does not claim that he had not received the exhibits of which he complains before or that he did not have them independent of the exhibits. More than that, when conferring on the specious claim that Claimant altered exhibits on May 21, 2018 counsel for Bidsal, James Shapiro sent the following e-mail to counsel for CLA (without new quotation marks and with emphasis added):

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Rod,

We're fine with your proposed briefing schedule.

As far as the exhibits, you did modify Exhibit '12,' but that has been pointed out to the Judge already and your modifications are not material to the pending dispute, so **we have no intention of raising the issue in our briefs**. Outside of formatting, I don't believe any of the other Exhibits are materially different from what was produced, so **we have no intention of raising any of those issues in our briefs either**.

As to the few that were not produced before, each was introduced for purposes of impeachment when Bidsal lied in (1) denying he had ever entered into an agreement with provision that the responding party could elect whether to buy or sell at price set in offer when in fact he had done so before, (2) claiming that he did not about Golshani's seeking an appraisal before Golshani's response, when an e-mail to him told him Golshani was seeking such appraisal. (3) denying he had been told that Golshani's credit cards had been maxed out for use in making bids when the e-mail to him stated exactly that and (4) denying he had made revisions when his own e-mail responding to LeGrand's asking if he had finished revisions said "the agreements are finished and signed," not just signed, but "finished" and signed.

002451

13. CONCLUSION

The OPAG clearly sets forth what the parties had agreed upon and had discussed from the very beginning; that there would be a buy-sell provision whereby if a party wanted to exit the relationship, he could name a price and the other party could either buy or sell at that price. That intent is reflected in the final paragraph of Section 4.2 that Bidsal and Golshani both discussed and modified (then § 7.2 and with Golshani as the typist), before sending it to their lawyer for his review and edit, and which Bidsal read, understood (as shown by his offer) and signed.

In March of 2011 Bidsal asked Golshani if he was interested in buying some other properties (Tr. 206:5-9). But at that time Golshani responded that he did not have the money to do so, and so told Bidsal (Tr. 107:1-108:4). Bidsal does not deny that this was

002451

Golshani's response (Tr. 206:12-22).

Believing that Golshani's lack of money still continued into July, and assuming that Golshani could not hastily borrow money within the limited time for him to respond to an offer to buy him out, Bidsal made an offer at an unreasonably low amount, a "lowball" figure. He guessed wrong. Golshani hastily arranged with friends to invest (158:23-159:6) and elected to buy out Bidsal instead. Bidsal now creates fiction after fiction and engages in falsehood after falsehood (and remember Exhibit 351) to support his denial of receipt of the two drafts he had to concede he received enough. He does that in an attempt to have the Arbitrator accept a tortured meaning of the Agreement beyond all recognition from the words actually used, all in order to avoid responsibility for his own wrong guess and lowball offer. Golshani should not be punished for attempting to follow the parties' Agreement. The award should be made in Claimant's favor.

Dated: July 18, 2018.

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

By: _____
RODNEY T. LEWIN

002452

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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 July 18, 2018, I served the foregoing document described as **CLAIMANT'S CLOSING ARGUMENT RESPONSIVE BRIEF** on the interested parties in this action by email.

James E. Shapiro
Email: jshapiro@smithshapiro.com

Daniel L. Goodkin, Esq.
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.

__ **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 by 5:00 p.m.

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

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

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

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

Executed on July 18, 2018 at Beverly Hills, California.

Barbara Silver

Barbara Silver

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EXHIBIT 121

(Respondent's Post Arbitration Response Brief)

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EXHIBIT 121

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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.)

Date: May 8-9, 2018

002455

RESPONDENT SHAWN BIDSAL'S POST-ARBITRATION RESPONSE 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 Post-Arbitration Response Brief, as follows:

I.

PRELIMINARY STATEMENT

Upon a review of Claimant CLA Properties, LLC ("***CLAP***")'s Closing Argument Brief (the "***CLAP Brief***"), two things are abundantly clear: (1) CLA ignores the vast majority of the evidence presented at the Arbitration Hearing, and (2) CLA ignores the majority of the language at issue in the Operating Agreement ("***OPAG***") of Green Valley Commerce, LLC ("***Green Valley***"). Rather, CLAP picked a few quotes from the Arbitration Hearing transcript and using them out-of-context, attempts to make them support its arguments. However, the evidence presented at the Arbitration Hearing has shown CLAP's arguments to be wrong. The CLAP Brief is completely unfounded and not supported by the evidence submitted to the Arbitrator.

002455

More importantly, at the end of the day, one additional thing is clear: Bidsal is not trying to steal anything from Golshani or overreach in his dealings with CLAP. Rather, CLAP and Golshani are fully protected under Bidsal's interpretation of the OPAG. As the Arbitrator may or may not recall, the Arbitrator recognized this during CLAP's opening statement at the Arbitration Hearing. (TR. 31:8-12). CLAP conceded the point. (TR. 31:13)

In contrast, Golshani and CLAP seek to now take advantage of Bidsal after Bidsal initiated the break-up of their business venture in due compliance with the buy-sell provisions of the OPAG to which they agreed. Golshani and CLAP did so by unilaterally obtaining an appraisal, refusing to share that appraisal with their long-time business partner (Bidsal), and trying the reverse-engineer and re-write the provisions of the OPAG to provide Claimant with additional protections for which it never bargained during their extensive negotiations of the OPAG.

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002456

II.

STATEMENT OF FACTS IN EVIDENCE

Bidsal refers the Arbitrator to the Statement of Facts in Evidence set forth in his Post-Arbitration Opening Brief, and incorporates the same by this reference as if more fully set forth herein. For the sake of brevity, any additional facts in evidence which may need to be presented in this Response will simply be set forth in the arguments below (with proper references to the record).

002456

III.

STATEMENT OF AUTHORITIES

A. CLAP SPENT MUCH OF ITS BRIEF DISCUSSING COMMUNICATIONS SURROUNDING A "DUTCH AUCTION" PROVISION THAT WAS NEVER EVEN USED IN THE OPAG, WHILE IGNORING THE PROGRESSION OF THE ACTUAL BUY-SELL PROVISION PREPARED BY GOLSHANI.

What is abundantly clear from the CLAP Brief is that Golshani is now unhappy and/or uncomfortable with the buy-sell language he drafted. In an attempt to distance himself from the very language he prepared, CLAP and Golshani spent nearly one-third of their Brief discussing communications surrounding the infamous "dutch auction" initially proposed by David LeGrand, but later scrapped in favor of Golshani's language. (CLAP Brief at 1, and 13-26). In doing so, Golshani completely ignored any analysis of the progression of his own buy-sell language, which is

002456

the language ultimately used to replace LeGrand's "dutch auction" language in the OPAG, as illustrated in Exhibits 358, 360, and 361.

Specifically, CLAP argued that the OPAG contained a "dutch auction" and that it was synonymous with the term "forced buy-sell". (CLAP Brief at 1:3-4 and 9-10). However, the evidence at the Arbitration Hearing demonstrated that LeGrand used the term "dutch auction" in reference to language that ***he*** (LeGrand) was drafting, yet his language never actually made it into the OPAG. *[See Ex's 7/304, 10/305, 5/6/11/306]* (TR. 316:12-15). Rather, when Golshani got frustrated with LeGrand's attempts to draft the "dutch auction" language, Golshani drafted the proposed language himself and it was Golshani's buy-sell language that was used in Section 4 of the OPAG. (TR. 320:11-17 & 321:19-22). Thus, CLAP's references to a "dutch auction" are absolutely meaningless and irrelevant.

Further, a "dutch auction" is not synonymous with a "forced buy-sell" (whatever that is supposed to mean), as the evidence at the Arbitration Hearing demonstrated. This is clear from the fact that LeGrand used the term "dutch auction" in his early emails, but that he disagreed with the use by CLAP's counsel of the term "forced" buy-sell. (TR. 284:22-23).

Additionally, on page 14 of the CLAP Brief, Golshani quoted his own false testimony for the notion that a meeting took place on July 21, 2011 with Bidsal present, and that everything was clear between them that the remaining member had the option to purchase the offering member's interests at a price based upon the offering members estimate (without an appraisal). (CLAP Brief at 14:6-18:20). He also claimed that David LeGrand testified in support Golshani's rendition of the meeting. (CLAP Brief at 15:5-24).

However, if such a procedure was clear at the outset from such a meeting as Golshani now contends, it does not explain why:

(1) the parties went through more than seven different drafts of the OPAG before it was final *[See Ex's 7/304, 10/305, 5/6/11/306, 12/307, 14/308, 16/311, 17/313, 18/314, 19/315, 25/323, and 29/337]*,

(2) Golshani, himself, had to create the ROUGH DRAFT and ROUGH DRAFT 2 and send them to LeGrand, a seasoned transactional lawyer, so that he could get it right,

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(3) Golshani changed an initiating offer ***to sell*** into an offer ***to purchase*** between ROUGH DRAFT and ROUGH DRAFT 2, rather than keeping it an offer to sell or making it an "offer to sell or purchase."

(4) LeGrand's recollection of his discussions with Bidsal and Golshani were so vague,

(5) LeGrand testified after questioning by Golshani's counsel that "I don't believe our conversation addressed the concept you just described of a compulsory sale following an offer by a member" (TR. 274:10-13), or

(6) the parties added an appraisal process into the OPAG (TR. 59:23-25).

In any event, CLAP misrepresented LeGrand's testimony. The alleged quotes set forth in bold-face type on Page 15, Lines 18-20 of the CLAP Brief contained the words of Mr. Lewin, CLAP's counsel, in his leading questions put to LeGrand. They were not LeGrand's words as CLAP contended. (TR. 282:20-25, 283:1-6, 284:11-20, and 289:8-13). Further, they were incomplete quotes and taken out-of-context because LeGrand was asked "was it your understanding," which CLAP conveniently removed from one of the quotes. (Compare CLAP Brief 15:21-24 and TR. 284:11-20). More importantly, LeGrand was being questioned about communications he had early in the process, back in July 2011, during the time that he was attempting to draft his so-called "dutch auction" which never made it into the OPAG at issue. *[Ex. 12 & 29/337]* Thus, whatever beliefs LeGrand may have formed at that time are meaningless to the issue of what the parties intended when the actual buy-sell language at issue was incorporated into the OPAG.

Moreover, in spite of Golshani's false testimony to the contrary and mischaracterization of LeGrand's testimony, there really was no clear discussion between the parties way back on July 21, 2011, wherein they agreed to Golshani's version of how the buy-sell provisions in the OPAG should read. This is belied by the first line of LeGrand's own July 22, 2011 email wherein he stated he was "unclear". *[Ex. 12]* Rather, Bidsal gave the correct rendition of what they discussed, and Bidsal

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emphatically testified that they never discussed any scenario where the Offering Member had to sell at a price based upon an initial offer. (TR. 227:13-19 and 383:21-25).[1]

As Bidsal explained in his Opening Brief, when Section 4 was first drafted (entitled "ROUGH DRAFT" by Golshani), it was written by Golshani 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. 20/316]*. 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 . . ." *See Ex. 22/319. See also Ex. 358* showing the redline comparison between Golshani's initial "ROUGH DRAFT" and his "ROUGH DRAFT 2". These changes were made as a result of negotiations between the parties. (TR. 136:9-138:7).[2]

This is critically significant because it places the emphasis upon the desire of the first party to initiate a break-up of the entity to ***buy-out*** the remaining member, not sell its interests to the remaining member. If a ***sell-off*** by the member initiating the break-up was the intended course of

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002459

[1] On Page 16 of the CLAP Brief, CLAP also referenced LeGrand's August 18, 2011 email and OPAG drafts *[Ex. 16]*; however, as stated earlier, LeGrand's preliminary attempts at a buy-sell provision were all jettisoned in favor of Golshani's buy-sell provision where, among other things, an initiating offer to sell was replaced with an offer to purchase. *[Ex. 22/319 and 358]*. In addition, the first page of Exhibit 16 shows that LeGrand wrote it following a discussion ***with Golshani*** (not with Golshani and Bidsal). Bidsal cannot control Golshani or know whether Golshani misrepresented to LeGrand the nature of their deal during a conversation of which he was not a party. On Page 17 of the CLAP Brief, CLAP further referenced LeGrand's September 16, 2011 email *[Ex. 17]*, but, once again, the draft and LeGrand's comments appear to have arisen out of a conversation he had with Golshani, alone. Thus, it is disingenuous, to say the least, for CLAP to accuse Bidsal for "falsely testifying" that he did not discuss with Golshani any scenario where the offering member would be forced to sell at the initial offered price to purchase. (CLAP Brief at 17:8-10)

[2] In the CLAP Brief, CLAP falsely stated that ROUGH DRAFT was LeGrand's product "[i]n significant measure." (CLAP Brief at 19:8-9). CLAP also suggested that Bidsal was somehow a "co-author" of ROUGH DRAFT 2 and that he "massaged" the language. (CLAP Brief at 24:3-5 and 13-15). However, while discussions took place between Bidsal and Golshani and Golshani explained the "what ifs" and different scenarios to Bidsal, the evidence was clear at the Arbitration Hearing that Bidsal took no hand in drafting the buy-sell provisions. Rather, Golshani admitted, wholesale, that he was its author. *[Ex. 20/316]* (TR. 91:15-18, 136:22-25, 138:22-24, 140:1-11).

Further, CLAP accused Bidsal of lying about never having received ROUGH DRAFT 2 *[Ex. 22/319]*. (CLAP Brief at 22:8-13). When CLAP first produced the October 26, 2011 email (to which ROUGH DRAFT 2 was purportedly attached), Bidsal initially could find no evidence of having received it and referenced that fact in his Arbitration Brief *[Ex. 351]*. However, upon closer examination, Bidsal recalled the specifics of ROUGH DRAFT 2 and a series of conversations with Golshani, which he testified about, and conceded that he probably received it, even though he still has no evidence in his possession that the email was sent to him. (TR. 193:22-194:15) The critical factor is that conversations took place and the parties intentionally changed an initiating offer to sell to an offer to purchase, which is reflected in the contents of ROUGH DRAFT and ROUGH DRAFT 2. It is immaterial whether Bidsal actually received an email on October 26, 2011 with ROUGH DRAFT 2 attached (of which Bidsal, to this day, still has no firm confirmation).

002459

conduct, then Golshani and Bidsal would have kept that procedure intact or add both sell and purchase in the same paragraph after Golshani created his ROUGH DRAFT. However, they did not do so, thus signaling their intent to emphasize that a break-up was to begin with the initiating member ***purchasing*** the other member's interest.[3]

By specifically changing the word "sell" to "purchase", the parties were acknowledging and consummating the agreement that an offer to buy is ***not*** an offer to sell. Therefore, there is no basis to Golshani's claim that an offering member could put itself in peril of having to sell its membership interest in Green Valley at the offered price, simply by the remaining member making a counteroffer without an appraisal to determine FMV. Rather, the emphasis was on ***purchasing*** the remaining member's interest after offering what the Offering Member thought was the fair market value, and any counteroffer had to follow the strict requirements of procuring what the parties agreed would be a fair price based upon the medium of two appraisals.

As pointed out in Bidsal's Opening Brief, under Nevada law, in interpreting an agreement, the court may not modify it, or create a new contract. A court is not at liberty to revise an agreement while professing to construe it. *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). Even CLAP concedes this point. (CLAP Brief at 4:23-5:1).

B. GOLSHANI DRAFTED THE BUY-SELL PROVISIONS AT ISSUE, AND ANY AMBIGUITIES SHOULD BE CONSTRUED AGAINST HIM AND IN FAVOR OF BIDSAL.

Incredibly, after all of the evidence was presented at the Arbitration Hearing, Golshani and CLAP still argued in the CLAP Brief that Golshani did not draft the buy/sell provisions at issue. (CLAP Brief at 32-34) This, even though it was shown at the Arbitration Hearing that Golshani had perjured himself with his sworn Declaration that he did not draft Section 4 of the OPAG.

[3] CLAP attempted to downplay this significance, arguing that it did not matter if the offer was one to sell or to purchase because in either instance the remaining member could buy or sell. CLAP Brief at 23:10-12. However, CLAP ignored the fact that it was ***specifically*** changed and Golshani's explanation makes no sense because an offering member makes sure he or it has the funds to purchase, first, and does not need to worry about whether the remaining member has sufficient funds or not.

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As described in Bidsal's Opening Brief, Golshani was questioned about his Declaration. (TR. 161:24 – 162:3) *[Ex. 359].* When asked if he averred that ***he did not draft*** Section 4 of the OPAG, he waffled, responding with: "[w]ell it depends on what you mean by 'draft'... " (TR. 163:22-25) He then squarely refuted his own sworn declaration, admitting that he "wrote some draft, rough draft." (TR. 164:2-3).

Further, ***multiple times*** during the Arbitration Hearing, Golshani admitted that he drafted the language contained in Section 4 the OPAG, including, more specifically, the formulas and appraisal provisions (TR. 85:13-16, 88:22-89:2, 92:20-23, 138:3-5), the entire ROUGH DRAFT *[Ex. 20/316]* (TR. 91:15-18, 136:22-25, 138:22-24, 140:1-11), the entire ROUGH DRAFT 2 *[Ex. 22/319]* (TR. 91:20-23 and 147:13-15), the change in the triggering event from an offer to sell to an offer to purchase (TR. 93:11-17, 93:24-25, 151:6-9), the third paragraph that begins with "the remaining member" (TR. 145:10-15), and insertion of the word "FMV" into the counteroffer provision in Roman numeral II (TR. 146:10-16 and 147:1-11).]

Although he could recall very little without refreshing his recollection with documents, even LeGrand admitted that Golshani ***sent him*** some language that Golshani was proposing, which was reflected in DRAFT 2. *[Ex. 321]* (TR. 318:7-14). He also admitted that the second and third pages of Exhibit 22/319 (ROUGH DRAFT 2) was a document that he received from Golshani. (TR. 318:23 – 319:5). LeGrand took Golshani's ROUGH DRAFT 2 and made minor revisions to it; however, there were no significant changes to ROUGH DRAFT 2. *[See Ex's 22/319, 321, & 29/337].* Rather, LeGrand simply took Golshani's language and inserted it almost untouched into the Operating Agreement. *[See Ex. 29/337]* (321:19-22). The evidence also showed that in April 2013, LeGrand was assisting Golshani and Bidsal with drafting an OPAG for Mission Square, which, according to LeGrand was "**based upon the GVC OPAG *that has Ben's language on buy sell***." *[Ex. 343, at 1 (emphasis added)].*

Even though Golshani attempted to argue that Bidsal had a hand in the provisions and that he "massaged" them (CLAP Brief at 24:3-4), the evidence actually showed that Bidsal never drafted any of the revisions. (TR. 208:6-7, 384:18-23, 387:13-15). Specifically, Golshani brought in hard copies of different versions of the OPAG when he came to Bidsal's office to meet with him. (TR.

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385:8-12 and 19-21). Golshani was the one making changes on his computer. (TR. 152:20-22). By August 3, 2012, the OPAG had been signed by Bidsal and Golshani in Bidsal's office. *[Ex's 332 and 29/337]* (TR. 213:22-25). Golshani simply brought it in to Bidsal's office for signature. (TR. 214:4-11).

Additionally, Golshani and CLAP argue that such a fact is irrelevant. Id. Nothing could be further from the truth. The Nevada Supreme Court has made it clear that: "[a]n 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 (2015) *citing to* Anvui, LLC v. G.L. Dragon, LLC, 123 Nev. 212, 215–16, 163 P.3d 405, 407 (2007). Thus, the fact that Golshani drafted the language at issue is directly relevant to the issue of interpretation of the OPAG, and inasmuch as the buy-sell provisions in the OPAG create any ambiguities, they should be construed against CLAP. As the Arbitrator put it: if "something isn't perfect equipoints, who the drafter is or isn't may tip the balance." (TR. 15:13-15) Golshani was the drafter of the buy-sell provision at issue. Thus, it must be construed against CLAP.

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002462

C. CLAP IS COMPLETELY WRONG ON WHAT IT TERMS THE "CORE ISSUE" AND HOW CLAP EXPLAINS WHAT THE OPAG SAYS.

In the introduction in the CLAP Brief, CLAP simply cut and pasted its worn out arguments set forth in its Rule 18 Motion and Arbitration Brief. CLAP Brief at 2-3. Further, on Pages 6 through 13 of the CLAP Brief, CLAP, again, simply cut and pasted the arguments it made in previous motions and briefs.

However, the evidence presented at the Arbitration Hearing does not support CLAP's contentions as to how to interpret the central issue in this case. First, CLAP contended that the "Agreement clearly states that the Remaining Member has a choice to either buy or sell at the valuation set forth in the offer." (CLAP Brief at 2:7-8) However, CLAP, notably, gives no reference to the record and the OPAG, itself, does not support CLAP's contention. *[Ex. 29/337].*

Second, CLAP pulled a couple of quotes from Bidsal severely out of context. CLAP Brief at 2:9-13. Bidsal never testified that the offering member had no right to an appraisal at any time, rather, he said that the offering member had no right ***at the outset*** when the initial offer was made,

002462

"because the offering member is estimating." (TR. 204:19-23) He further acknowledged that only the remaining member could invoke the appraisal "***under that provision*** [meaning provision ⑤(i) of Section 4.2 - selling the remaining member's interest to the offering member]." (TR. 258:21-22) (emphasis added). He never testified that the offering member could not invoke the appraisal process under any circumstances. Rather, the evidence showed that the appraisal process would also have to be followed if the remaining member made a counteroffer, because "FMV" (as defined in provision ④ of Section 4.1 and provision ② of Section 4.2) had to be calculated via the appraisal process in that instance.[4]

Third, contrary to CLAP's arguments on Page 2, Lines 14-21 of the CLAP Brief, the appraisal process does fix the price. The offering member cannot back out of the transaction. CLAP suggests that Bidsal's true explanation of the buy-sell is not mandatory at all, but subject to further negotiation. CLAP Brief at 2:22-23. However, that is not true. The buy/sell is mandatory. Once the appraisal has fixed the price, since the remaining member opted to make a counteroffer, the offering member has no choice but to sell at the price fixed by the appraisal. Contrary to CLAP's arguments on Page 9, Line 3 and Page 10, Lines 16-17 of the CLAP Brief, there is no other way to make a counteroffer under provision ⑤(ii) of Section 4.2, except through the appraisal process. If the remaining member decides to communicate a counteroffer, the appraisal process is not optional as CLAP suggests, it is mandatory under provision ⑤(ii) of Section 4.2.[5]

Fourth, CLAP claimed that Bidsal never at any time explained the meaning of "or" and "if appraisal invoked", which words are taken from provision ⑦ of Section 4.2. CLAP Brief at 11:21-22. This is not true. At the Arbitration Hearing, Bidsal carefully explained the meaning of the words contained in provision ⑦ of Section 4.2, as well as the proper understanding of provision ⑦ of Section 4.2 (sometimes referred to as the "specific intent" provision). (TR. 256-263).

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[4] CLAP repeated this false argument on Page 12, Lines 18-21, accusing Bidsal of "changing his tune." This is not true, Bidsal always maintained that the initial offer did not provide for appraisal, but a counteroffer under provision ⑤(ii) of Section 4.2 required one. That is why Bidsal responded to CLAP's August 3, 2017 letter with the names of qualified appraisers to assist in the process. *[Ex. 31/347 and 32/348].*

[5] CLAP's arguments on Page 11, Line 5 of the CLAP Brief also ignored the plain language of provision ⑤(ii) of Section 4.2.

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Specifically, Bidsal explained that provision ⑦ of Section 4.2 was to be read in conjunction with the paragraphs immediately above it, only. (TR. 256:6-21) *[Ex. 29/337].* If the Remaining Member chose the first option (roman numeral "i"), by accepting the Offering Member's offer to purchase, then they would go to the specific intent provision. (TR. 257:11-24) *[Ex. 29/337].* If the Remaining Member chose the second option (roman numeral "ii"), by making a counteroffer, then they would go through the appraisal process and go back to the same specific intent provision. (TR. 257:25-258:16) *[Ex. 29/337].* As soon as the Remaining Member made an election to make a counteroffer, they would have to continue with the rest of the sentence and complete an appraisal based on FMV. (TR. 262:15-19) *[Ex. 29/337].* FMV was a defined word in Section 4.2 as the medium of two appraisals, and it was further defined in Section 4.1 (which referred back to Section 4.2). (TR. 263:20-24) *[Ex. 29/337].*

This interpretation, in fact, was the only logical interpretation and explains why the last paragraph of Section 4.2 uses "this provision" and separately the phrase "...according to the procedure set forth in Section 4." It also explains why the "specific intent" language appears at the end of the buy-sell procedure contained in Section 4.2 as opposed to appearing at the beginning of Section 4.

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D. THE JULY 7, 2017 INITIATING OFFER CANNOT AND DID NOT ALTER THE TERMS OF THE OPAG.

In the CLAP Brief, CLAP also argued that the initiating offer letter sent by Bidsal to CLAP on July 7, 2017 caused the offered price to be equivalent to the "FMV" simply because the offering letter used the term "FMV". (CLAP Brief at 26:8-28:6).[6]

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 provision ① of Section 4.2. *[Ex. 30].* This is confirmed by the first sentence which says "[t]he Offering Member's best estimate of

[6] CLAP also referenced Bidsal's testimony that he initiated the buy-sell process because he "wanted to get out of managing Green Valley" as if that was justification for forcing Bidsal to sell. CLAP Brief at 5:9-10. What Bidsal meant was that he did not want to manage Green Valley for free while Golshani did nothing to further Green Valley's business interests. Further, CLAP accused Bidsal of trying to take advantage of CLAP because he allegedly thought "CLA lacked the will or ability to turn the tables" when there was no evidence to support such a claim and, in fact, the evidence showed that CLAP had in excess of $3,000,000.00 in available funds around the same time. *[Ex. 35/349].*

002464

the current fair market value of the Company is $5,000,000.00" and which is entirely consistent with provisions of provision ① of Section 4.2. 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 provision ① of Section 4.2.

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 of the OPAG, nor could it even if Bidsal had wanted it to. The term "FMV" as it is defined and set forth in provision ④ of Section 4.1 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 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." *[Ex. 29/337]* That simply did not happen.

Instead, Bidsal clearly made an offer to purchase CLAP's membership interest in the Company in accordance with provision ① of Section 4.2. 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" may have been technically inappropriate in that it was not consistent with the definition of "FMV" as set forth in provision ④ of Section 4.1, the inclusion of the term "FMV" in Bidsal's Initial Offer does not magically modify the provisions of provision ④ of Section 4.1 or provision ② of Section 4.2, nor does it allow CLAP to somehow violate provision ⑤(ii) of Section 4.2 and make a counteroffer at the offered price.

E. CLAP MISSTATED BIDSAL'S OTHER ARGUMENTS AND IS INCORRECT IN ITS CRITICISMS.

On Pages 29-30 of the CLAP Brief, CLAP stated that Bidsal argued that "FMV through an appraisal process" was the only way a buy-sell transaction could be consummated. However, that is not true. Bidsal testified that the remaining member could choose the option set forth in provision

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⑤(i) of Section 4.2, by just agreeing to sell its interests to the offering member at a price based upon the offering member's initial estimate. (TR. 382:1-7).

Further, on Pages 31-32 of the CLAP brief, CLAP claimed that Bidsal's argument that no one would make an initiating offer if it could be forced to sell at a price based upon the initial estimated value, was proven to be false. However, in support of CLAP's criticism of the argument, CLAP, again, referenced irrelevant testimony about the "dutch auction" which LeGrand proposed at the outset, yet neither party wanted, hence, Golshani, himself had to draft the buy-sell language incorporated into the OPAG.

In addition, CLAP referenced language from proposed Exhibit 39, which was never admitted into evidence, notwithstanding CLAP's repeated efforts to get it admitted. (TR. 229:8-12 and 231:10-232:7). Rather, following objections by counsel for Bidsal, the Arbitrator denied CLAP's attempt to get Exhibit 39 into evidence. (TR. 189:1-2, 190:4-9, 191:23-192:13, 229:8-12, 231:7-9, and 232:4-7). Among other things, Exhibit 39 lacked any relevance, because Exhibit 39 was an entirely different operating agreement, different language, different facts, different property, different scenarios, and the subject of an entirely different lawsuit. (TR. 185:9-12, 188:10-12, 191:1-9, 230:25-231:6, and 231:16-232:3). It is utterly improper for CLAP to reference matters not in evidence.

However, Bidsal was correct. As Bidsal explained, if CLAP's theory was correct then no party would ever make an initial offer based on what he "thinks" for fear of having an offer to purchase twisted into an obligation to sell. That would also render the word "thinks" in provision ① of Section 4.2 a nullity.

Thankfully, from the moment the buy-sell language was first introduced, it was clear that the default position would be to set the sales price using a formal appraisal. *[Ex. 16/311]*. This intent was continued in the language of Section 4, which limits a counteroffer to the FMV, as that term is defined in provision ④ of Section 4.1 and provision ② of Section 4.2, thereby giving the Offering Member the ability to make an Initial Offer without the benefit of an appraisal in order to keep the initial costs low, but without worrying that the Initial Offer can be turned against the Offering Member. *[Ex. 29/337]*. The bottom line is that the purpose of the initiating offer by Bidsal was to

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start the process and, unless CLAP desired to avoid the expenses of conducting the appraisals and was willing to sell based upon the initiating offer figure, became only a beginning benchmark.

Finally, on Page 33 of the CLAP Brief, Golshani, incredibly, tried to argue, again, that he was not the draftsman of the buy-sell provisions in the OPAG. Understandably, he did so without referencing any portion of the record as the record clearly proves him wrong. The record of the Arbitration Hearing is very clear that Golshani was the drafter of the buy-sell provision at issue. (TR. 85:13-16, 88:22-89:2, 91:15-23, 92:20-23, 93:11-17, 93:24-25, 136:22-25, 138:3-5 and 22-24, 140:1-11, 145:10-15, 146:10-16, 147:1-15, 151:6-9, 161:24-162:3, 163:22-25, and 164:2-3,). *[Exs. 20/316, 22/319, & 359].* Therefore, the arguments in the CLAP Brief are without merit and certainly not supported by the evidence actually presented at the Arbitration Hearing.

IV.

CONCLUSION

As demonstrated in Bidsal's Post-Arbitration Opening Brief, the evidence has shown that the intent of the parties under the OPAG is that CLAP's August 3, 2017 letter can only constitute a counteroffer as provided for in provision Ⓢ(ii) of Section 4.2, which means CLAP is entitled to purchase Bidsal's membership interest for FMV, which is defined as the medium of two appraisals. Being drafted by Golshani, the buy-sell provisions at issue should be construed against Golshani and CLAP. CLAP's opposing interpretation of the OPAG was not be borne out by the evidence.

Further, the evidence at the Arbitration Hearing demonstrated that CLAP was fully protected at all times by the appraisal process in the OPAG, under Bidsal's explanation of the relevant provisions of the OPAG. The Arbitrator astutely observed this and CLAP conceded the point. (TR. 31:2-14). Consequently, there was no evidence to show that Bidsal was trying to take any advantage of CLAP.

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Conversely, the evidence has shown that CLAP is attempting to circumvent the express terms of the OPAG by not following the appraisal process the parties negotiated. CLAP should not be rewarded for doing so. Consequently, the Arbitrator should order CLAP and Bidsal to complete the appraisal process identified in provision ② of Section 4.2.

DATED this 18th day of July, 2018.

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002468

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 18th day of July, 2018, I served a true and correct copy of the forgoing **RESPONDENT SHAWN BIDSAL'S POST-ARBITRATION RESPONSE BRIEF**, by emailing a copy of the same, with Exhibits, to:

Individual:	Email address:	Role:
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/s/ Vanessa M. Cohen
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002468

22

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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REPLY TO CLA'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO COUNTERPETITION TO VACATE ARBITRATION AWARD

Respondent SHAWN BIDSAL, an individual ("***Bidsal***"), by and through his attorneys, SMITH & SHAPIRO, PLLC, hereby submits his Reply to CLA's Memorandum of Points and Authorities in Support of Petition for Confirmation of Arbitration Award and in Opposition to Bidsal's Counterpetition to Vacate the Arbitration Award. (the "***Memorandum***")

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

Dated this 26th day of August, 2019

SMITH & SHAPIRO, PLLC

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002469

A. INTRODUCTION

Few arbitration decisions exhibit such comprehensive justification for judicial intervention in vacating an award. In this matter, the Arbitrator's award is completely irrational, exhibiting a manifest disregard for the law and a disregard for the specific contract provisions. The Arbitrator exceeded his powers and strayed from the interpretation and application of the agreement in order to dispense his own brand of justice. While it is impossible for Bidsal, or any person to know what is in the mind of another, one can surmise that when the Arbitrator capriciously, and in *violation of specific contract provisions*, granted himself five months to rule on this matter, the evidence ceased to be fresh in his mind.[1] Although the Operating Agreement's ("***OPAG***") time limit for rendering a ruling was meant to avoid this, it is likely that the significant amount of time that elapsed between the Merits Hearing and the issuance of his decision contributed to the errors in the decision.

CLA Properties, LLC's ("***CLAP***"), Memorandum of Points and Authorities in Support of its Petition for Confirmation of the Arbitration Award and in Opposition to Bidsal's Counterpetition to Vacate the Arbitration Award (the "***Memorandum***") rests on faulty logic and unwarranted attacks on Bidsal.[2] CLAP proceeds to cite to sources that contain absolutely **zero** evidence in support of such claims.[3] CLAP appears to be trying to capitalize on the Arbitrator's partiality against Bidsal and use the same tactics to try to turn the present Court against him.

As evidence of CLAP's efforts to continue to paint Bidsal in a negative light, CLAP mischaracterizes Bidsal's testimony. CLAP states that Bidsal offered to purchase CLAP's membership interest so that he could "get out of managing Green Valley." *See* Memorandum at fn. 2. Such an assertion is illogical, if Bidsal wanted to get out of managing Green Valley, why would he offer to purchase CLAP's interest as he did in his July 7, 2017 offer letter. *See* Exhibit "Y" to

[1] The Arbitrator was supposed to issue his decision much earlier pursuant to the express provisions of the OPAG, but granted his own motion to extend the time. *See* Exhibits "B", "O" and "EE" to Respondent's Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award (the "***Counterpetition***") (App. Part 1: APP 4-100) (App. Part 2: APP 427) (App Part 4: APP 841-856)

[2] Examples of these unwarranted attacks on Bidsal's character can be found in footnote 2 where CLAP states that Bidsal made false claims and fabricated documents.

[3] Likewise, the alleged "fabricated" document is a printout of an email search result; not some nefarious document created by Bidsal.

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Counterpetition (App. Part 3: APP0587-0588). Bidsal clearly wanted to get out of managing Green Valley with CLAP, and his method for doing so was to purchase any interests that he did not already own. Exhibit "Y" to Counterpetition (App. Part 3: APP0587-0588). Likewise, CLAP states that the Arbitrator found "Bidsal to be not credible." *See* Memorandum at 1:16-17. The Arbitrator in fact, never made such a finding. *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1087-1108). Finally, in the Memorandum at 22:13-15, CLAP asserts that Bidsal made changes to the OPAG to include changing CLAPs percentage of interest; however, as evidence to support this false assertion, they use Golshani's testimony. Of note, in his own actual testimony, Golshani is unable to give any more than his opinion on who drafted the section he accuses Bidsal of modifying. Golshani does state that he didn't read the terms until after the present dispute arose. Golshani, a savvy textile business man, who modified the OPAG himself on multiple occasions, created the drafts of the relevant clauses and had every opportunity, to read, review and modify the OPAG before signing. Additionally, he presented absolutely no evidence, than his opinion, that Bidsal made this alleged change to the OPAG. *See* Memorandum Exhibit "PX 559."

In CLAP's introduction it appears to argue that the volume of materials presented to the Arbitrator somehow precluded him from making errors, misconstruing facts, disregarding the law, engaging in partiality and exceeding his powers. However, the fact of the matter is that this same volume of material serves as evidence that the arbitrator committed plain error, blatantly recognized, but disregarded the law, misconstrued the undisputed facts, and exceeded his powers when rendering the Award in favor of CLAP. In other words, the Arbitrator's ruling ignores the evidence, makes up evidence that does not exist, and interprets the parties' agreement in a way that is expressly contradicted by the plain words of the agreement and the documents that can be used to interpret the agreement. Therefore, intervention by the Court has become necessary.

B. PRE-ARBITRATION

1. Section 4 of the Green Valley OPAG.

It is vital to any discussion regarding Section 4 of the Green Valley OPAG to look at the actual language that Golshani drafted and which ultimately ended up in the OPAG signed by Golshani and Bidsal. As such, Section 4 is reproduced next.

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002471

002471

① The payment of the purchase price shall be in cash or, if non-cash consideration is used, it shall be subject to this Article V, Section 3 and Section 4..

Section 4. Purchase or Sell Right among Members.

② 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

③ 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.

④ 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.

⑤ 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).

⑥ 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.

⑦ The Remaining Member(s) shall have 30 days within which to respond in writing to the Offering Member by either

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

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

⑧ 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).

In order to place CLAP's arguments in context, Section 4 of the Green Valley OPAG must be read ***in its entirety*** *See* above; *See also* Exhibit "O" to Respondent's Opposition to CLAP's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to

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Vacate Arbitration Award (the "***Counterpetition***") (App. Part 2: APP0429-0430) and the excerpt above.[4] CLAP continuously attempts to parse out small portions of the entire clause and attempt to give them independent, and distorted, meaning. In reality, Section 4 must be read as a whole section, in order, from top to bottom. Segment ② is entitled "**Section 4. Purchase or Sell Right among Members.**" Segment ② consists of one sentence, "[i]n the event that a Member is willing to purchase the Remaining Member's Interest in the Company then the procedures and terms of Section 4.2 shall apply." Clearly Section 4.2 ONLY applies if a Member is willing to purchase. Absent an expressed willingness to purchase, Section 4.2 is not triggered. The word "sell" is found only in the title of segment ②, not in the body of the section. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above.

Segment ③ is entitled "**Section 4.1 Definitions**". This segment contains all defined terms for Section 4, including the phrase "FMV". *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above. Of particular note, this is the first time that the term "FMV" is mentioned in the section and it is listed as one of only five defined terms in the section; indicating that the term holds significance in its meaning.

Segment ④ is entitled "**Section 4.2 Purchase or Sell Procedure.**" *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above. In segment ④ the word "sell" is found only once in the section title. Additionally, the defined term "FMV" is not utilized in segment ④. In order to add "FMV" to this section it would require a meeting of the members, a vote of the members and affirmation by ninety percent of the members. These actions never took place. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0432-0433) and the excerpt above. Segment ④ simply refers to an Offering Member making an offer to *purchase* the other member's "Interests" for a price that the Offering Member thinks is the fair market value for said interests. This option is one of two scenarios in which it is unnecessary to establish "FMV" to arrive at purchase of a member's interest. If CLAP had accepted Bidsal's initial purchase offer there would be no need to define a value for "FMV". Clearly, CLAP did not accept Bidsal's initial purchase offer, so this

[4] The segments of Section 4 have been specifically numbered ① through ⑧ for ease of reference

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scenario was not applicable. The second scenario in which "FMV" would not need to be established to arrive at a purchase of a member's interest is if CLAP had ignored Bidsal's initial offer. This option will be addressed below in order of procedure.

Segment ⑤ is the first time the defined term "FMV" is used outside of the definitions section. According to the definitions in segment ③, the following paragraph contains the agreed upon definition of "FMV": "… The medium of these 2 appraisals constitute the fair market value of the property which is called (FMV)." *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above.

Once again, the word "sell" is not found in segment ⑤. Up through segment ⑤, the "Remaining Member(s)" have three choices (1) accept the offered price to purchase their interests, (2) not accept the offered price and establish the "FMV" of the property or (3) ignore the offer in its entirety. The only way to establish the "FMV" of the property is listed in this paragraph and requires taking the medium of two appraisals. *Segment ⑤ is the only section that defines "FMV."* Of particular note, there is no prohibition for the "Remaining Member" to make his, or its, own offer to purchase the interests of the other member(s). If he, or it, was to make a new independent offer, the roles would be reversed and the two members would then follow the sequential paragraphs as the alternate party.

If, and only if, an "FMV" has been established can the parties continue. No other reading of Section 4 is possible. If "FMV" has not been established, then clearly no member can purchase at "FMV," for no one would know what the purchase price would be. Segment ⑥ provides a formula[5] for calculating the purchase price. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above.

The formula simply would not work if an "FMV" as defined above had not been determined; making it abundantly apparent that this section must be read in order and in context. At this point, the "Remaining Member" has the following choices; (1) sell at the price determined by the formula, (2) offer to purchase the other member's interest independently, triggering the same process

[5] Of note, this formula is obsolete, as the capital contributions have been repaid and several of the original buildings in the Property have been sold and the proceeds distributed. *See* Exhibit "B" to Counterpetition (App. Part 1: APP0090).

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beginning at the top of section 4.2 or (3) continue to ignore the offer . At this point in the process there is still no option to force a sale.

Segment ⑦ deals with timing and options of the "Remaining Member." *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above. Once again, the word "sell" is not found in segment ⑦. Once again, the formula only makes sense if an "FMV" has been established. Once again, an actual dollar figure can only be ascertained if an "FMV" figure is present. Absent that figure, which can only be derived when this segment is read in order and in context, this value cannot be ascertained. At this point in the process there is still no option to force a sale. The "Remaining Member's choices are (1) accept the "Offering Member's" purchase offer that is derived from the formula using "FMV" or (2) reject the purchase offer, that is derived from the formula using "FMV" and make a counteroffer to purchase based on the same "FMV" valuation. Thus, if the previously called "Remaining Member" wanted to be the buyer instead of the seller, he, or it, can now do so. The "FMV" would NOT change, but the sale price may change based on the capital contributions of the buyer that have not been reimbursed. The previously called "Offering Member" can (1) accept the counter offer or (2) proceed to the next sequential section; there is no forced sale language at this time. CLAP's argument that it can jump to Section 4.2(ii) without *proceeding* through the prior sections is fatally flawed. If one begins at Section 4.2(ii) stating that they would like to make a counter offer at the same fair market value (FMV) they would be unable to do so, because there is has been no FMV established. FMV can only be established by the definition of the preceding section. To state otherwise would be to eliminate the term agreed to by the Members and insert a non-agreed upon term in its place, after the fact.

At Segment ⑧ the language of Section 4, arrives at the "specific intent" portion that CLAP so eagerly wants to jump to as a stand-alone option. Segment ⑧ is not a stand-alone option however, as it uses the defined term of "FMV" which can only be derived by going through the process as delineated in Section 4.

> 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**….

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See Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430) and the excerpt above. Segment ⑧ clearly delineates that Section 4 is a "procedure." A procedure, as defined by Merriam Webster's dictionary is "a series of steps followed in a regular definite order." Here, Section 4 lays out a series of steps followed in a regular definite order and then calls it as such. The options now for the originally "Remaining Member" are: (1) sell at the price derived above by the formula or (2) purchase at the price derived above by the formula.

Segment ⑧ also addresses the only other scenario in which it would be unnecessary to establish "FMV". If an offering member had made an offer to a remaining member, but the remaining member had failed to respond, within 30 days, with a selection of option (i) or option (ii), then it is the "specific intent of this provision" that once the offering member presented his offer to purchase, then the remaining member "shall…sell…" "at the same offered price." Clearly, CLAP did not accept Bidsal's initial offer to purchase, so this scenario was not applicable.

2. <u>CLAP's Argument Rests on Reading Section 4.2 Out of Context.</u>

CLAP's argument, and frankly the Arbitrator's results, are a plainly erroneous and tortured reading of Section 4 of the OPAG. In the Arbitration Demand, CLAP described its interpretation of Section 4 of the OPAG, reciting Bidsal's July 7, 2017 initial break-up letter, and identified the issue as Bidsal "has refused to sell his interest, but instead has demanded an appraisal to determine FMV." *See* Exhibit "DD" to Counterpetition at 2 (end of the second paragraph) (App. Part 4: APP0835-0840 at 837). Thus, CLAP brought the Arbitration Proceeding to get an Arbitrator to endorse CLAP's interpretation of the buy-sell provisions of the OPAG, and to force Bidsal to sell his interest in Green Valley to CLAP at a price based upon Bidsal's initial estimate as to the value of Green Valley. CLAP <u>did not</u> articulate any other issues to be decided by the Arbitrator. *See* Exhibit "DD" to Counterpetition (App. Part 4: APP0835-0840).

(a) <u>Section 4.2(ii)</u>

One can see CLAP's flawed logic on page 3 of the Memorandum. In discussing Section 4.2(ii), CLAP states in paragraph number 4, that "[t]he Remaining Member has the option of rejecting the offer and instead 'counteroffer to purchase the interest of the Offering member based upon the **same fair market value**,' but there is no antecedent reference to 'fair

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market value' to which it can be the 'same'..." This sentence is a prime example of the twisted reading of Section 4 that CLAP insists on. First the term used in that section is "FMV", not "fair market value". "FMV" is a defined term mentioned antecedently no less than five times; one of which is the definition of the term. Clearly any counteroffer using this section has to use the same "FMV." "FMV" can only be established one way according to Section 4 of the OPAG. Once again CLAP's insistence to treat each sentence as a standalone clause is erroneous. The OPAG plainly states that Section 4 contains a procedure that the members are to follow. CLAP intentionally ignores the language of procedure. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430).

(b) CLAP's argument that "FMV" has multiple definitions is simply wrong.

CLAP argues that Bidsal is out of line when he states that the one definition of "FMV" is the definition appearing in Section 4. The notion that the parties agreed to multiple and/or alternate definitions of "FMV" and then chose to write one down and not write the other acceptable definitions down in the OPAG is without merit. Of course the defined term of "FMV" is the only definition; that is why parties define terms…so that they can rely on the definition of the defined terms. Here, the parties agreed that the term "FMV" would be defined in section 4.2 and then they defined it in section 4.2. The defined term speaks for itself.

(c) CLAP's argument that the Offering Member has no right to an appraisal is simply wrong.

CLAP is correct in one aspect; the procedure of Section 4 does not delineate the Offering Member having an independent right to an appraisal. If the Offering Member stays an Offering Member and the Remaining Member does not elect to make an offer of his or its own, there would be no need for an appraisal, until and unless the Remaining Member demanded one. However, where the tables are turned and the originally Remaining Member becomes a newly Offering Member (as in here when Golshani made an offer to purchase instead of agreeing to sell), then the process starts from the beginning, and the old "Remaining Member" becomes the new Offering Member. Nothing in the OPAG prevents these roles from shifting. The roles are not stagnant.

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Here, when CLAP received Bidsal's original offer, CLAP was the Remaining Member and Bidsal was the Offering Member. However, when CLAP choose to deviate from the delineated procedure of Section 4.2(ii) and make its own offer under the same terms as Bidsal's, then CLAP became the Offering Member and Bidsal became the Remaining Member, thus triggering Bidsal's right to an appraisal. Bidsal was following the procedure of Section 4 in asking for an appraisal. CLAP was attempting to circumnavigate the procedure by jumping from the first paragraph to the last paragraph and ignoring all the procedure in between.

(d) CLAP's argument that Bidsal ignores the "Specific Intent Provision" is simply wrong.

Bidsal does not, in fact, ignore any of the provisions of Section 4; unlike CLAP who picks and chooses which provisions they will read and/or adhere to. Bidsal merely takes the provisions in procedural order. Because "FMV" was never established in accordance with the terms of Section 4, neither Bidsal nor CLAP ever got to the so called "specific intent" provision. The "specific intent" provision required that all of the other provisions be completed. If and when those provisions were complete and the members arrived at an impasse, the specific intent provision kicked in, obligating a sale. Had CLAP simply followed procedure, instead of trying to pull one over on Bidsal, by skipping necessary provisions, CLAP would have been in the position to force Bidsal to sell, but instead he elected to muddy the waters by jumping from paragraph one of the procedure to the final paragraph of the procedure.

3. The Evidence Conclusively Demonstrates that Only CLA Drafted the Final Section 4 of the OPAG.

As Section 4 of the OPAG is the only section of the OPAG that is being dissected, it is important to view the drafting of this section, independent from the drafting of the OPAG as a whole. The OPAG must be read as a final and complete document, taken in its entirety, but that does not mean that one member was responsible for drafting the entire document. Here, the uncontroverted testimony (which the Arbitrator flat out ignored) is that Section 4 of the OPAG was drafted by CLAP. CLAP has not pointed to any evidence to the contrary. Additionally, CLAP indicates that Bidsal has failed to raise this objection before its present Counterpetition. To the

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contrary, since the very first Interim Award was being considered, Bidsal has objected to the notion CLAP did not draft Section 4 of the OPAG. A true and correct copy of Bidsal's Objection to CLAP's Proposed Interim Order is attached hereto as ***Exhibit "QQ"*** and is incorporated herein by this reference.

The body of a draft OPAG was initially provided by the commercial real estate broker with whom Bidsal had developed a business relationship and who had assisted Bidsal in finding different opportunities, Jeff Chain ("***Chain***"). *See* Exhibit "B" to Counterpetition at 360:11-18 (App. Part 1: APP0069). *See also* Exhibit "E" to Counterpetition (App. Part 1: APP0108-0133). This draft OPAG had a section entitled "Article VIII TRANSFER OF MEMBERSHIP INTEREST." The transfer of membership interest section was listed as Section 8.01. Nowhere in this draft OPAG is the term "Dutch Auction" utilized. *See* Exhibit "E" to Counterpetition (App. Part 1: APP0108-0133).

The body of the draft OPAG was then modified by a transaction attorney, David LeGrand ("***LeGrand***"), assisting both members of Green Valley in finalizing the OPAG. *See* Exhibit "B" to Counterpetition at 360:23-361:8 (App. Part 1: APP0069-0070). After approximately five attempts by LeGrand to get the language of regarding the transfer of membership interests to a state that was acceptable to the members, he essentially puts the ball back into CLAP's court. LeGrand, on or about September 19, 2011 stated because CLAP's capital contribution was larger than that of Bidsal's that Ben Golshani ("***Golshani***"), CLAPs only member, should consider creating a formula. LeGrand specifically states "I know Ben wants to get this finished;" indicating that CLAP, more so than Bidsal, was eager to finish the drafting of the section of the OPAG addressing transfers of membership. *See* Exhibit L to Counterpetition (App. Part 2: APP0381-0382). Additionally, LeGrand, stated that "[a] simple 'Dutch Auction' where either of you can make an offer to the other and the other can elect to buy or sell at the offer price does not appear sensible to me." Id. One day later, LeGrand takes another try at drafting acceptable language. The language proposed by LeGrand spanned three pages, four sections and no less than 12 paragraphs. *See* Exhibit M to Counterpetition (App. Part 2: APP0383-0414). LeGrand numbers his new section regarding transfers of membership interests, as Article V, Section 5 and refers to it as a "dutch Auction". Id.

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LeGrand's September 20, 2011 attempt to change the language to his so-called "dutch Auction" language was not acceptable to CLAP. This fact is corroborated by Golshani himself in his Arbitration testimony. Golshani states:

> 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 [Bidsal], 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?' [Bidsal] 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.

See Exhibit "PP" at 84:15-25 through 85:1 (App. Part 6: APP1153-1154); A true and correct copy of an excerpt from the Arbitration Transcript is attached hereto as ***Exhibit "PP"*** and is incorporated herein by this reference. Two days later, on September 22, 2011, CLAP, via Golshani, sent Bidsal an email stating, "…please find a rough draft of **what I came up with**." (emphasis added) LeGrand was not even courtesy copied on this email. *See* Exhibit "N" to Counterpetition (App. Part 2: APP0415-418). Golshani and Bidsal rejected LeGrand's proposed language. Golshani's language is significantly different than LeGrand's language. Golshani did NOT refer to his language as a "Dutch Auction" or "Forced Buy-Sell". Golshani had created language spanning one page, covering one section with approximately eight short paragraphs. The section is entitled "**Section 7. Purchase or Sell Right among Members.**" Of note, this Rough Draft uses the word "sell" and now contained formulas, similar to those that are found in the final OPAG. Also of note, the "specific intent" paragraph was included for the FIRST time. *See* Exhibit "N" to Counterpetition (App. Part 2: APP0415-418).

On or about October 26, 2011, CLAP, via Golshani, sends Bidsal another email stating that Golshani and Bidsal had discussed the terms of the OPAG and that Golshani modified his Rough Draft to include the discussed terms. Golshani himself in his arbitration testimony states, "[t]hen I created the second draft…" *See* Exhibit "PP" at 91:20-21. (App. Part 6: APP1155).

Golshani does NOT refer to his language as a "Dutch Auction" or "Forced Buy-Sell" in Rough Draft 2. This Rough Draft 2, spanned two pages and covered one section with approximately eight short paragraphs. The section is entitled "**Section 7. Purchase or Sell Right among**

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Members." LeGrand again was not courtesy copied on this email. The language is switched to "purchase" and the formulas, although modified, remained. The "specific intent" paragraph also remained. *See* Exhibit "P" to Counterpetition (App. Part 2: APP0448-0451).

Sometime between October 26, 2011 and November 10, 2011, Golshani sent his Rough Draft 2 to LeGrand. LeGrand states, "…I received fax from Ben and am rewriting it to be more detailed and complete." Essentially, LeGrand is editing the language he received from Golshani; language that Golshani had created and revised over a period of months. LeGrand makes no mention of a "Dutch Auction" or "Force Buy-Sell." *See* Exhibit "R" to Counterpetition (App. Part 2: APP0454-0455). LeGrand edited Rough Draft 2 into Draft 2 and circulated it to the members. Draft 2 still spanned two pages and covered one section with approximately eight short paragraphs. The section is entitled "**Section 7. Purchase or Sell Right among Members.**" The formulas remained and the "specific intent" paragraph also remained. *See* Exhibit "S" to Counterpetition (App. Part 3: APP0456-0458).

CLAP mysteriously cites to Memorandum Exhibit "103" at Appendix (PX)000012 to "prove" that Bidsal was the drafter. Yet, this exhibit is an email, dated November 29, 2011 from LeGrand to both members stating, "[t]his version has Ben's 'dutch auction' language and a buy-sell at FMV on a death or dissolution of a Member." Once again, LeGrand is acknowledging that Golshani drafted language and that LeGrand himself inserted some language, but never that Bidsal drafted any of the language. Once again the only person using the term "dutch auction" is LeGrand, not the members and not the draft documents. *See* Memorandum Exhibit "103" at Appendix (PX)000011- 41. Once again this version spans two pages and covers one section with approximately eight paragraphs. Once again this version contains formulas, substantially similar to the previous drafts of Golshani. Once again, the "specific intent" paragraph remains. Nowhere, is there any indication that any modification or draft was submitted by Bidsal. *See* Memorandum Exhibit "103" at Appendix (PX)000011-41.

How anyone, including the Arbitrator and CLAP, arrived at the conclusion that Bidsal drafted Section 4 of the OPAG is a complete and utter mystery and this conclusion runs directly contrary to the uncontroverted evidence. Although the terms in the draft versions of the OPAG are

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important in determining the drafter of the OPAG and the intent of its various provisions, when it comes to following the OPAG, the only version that matters is the final, signed version. So, despite the fact that LeGrand referred to a "Dutch Auction," and/or "Forced Buy-Sell," it truly doesn't matter because LeGrand's language was rejected. What matters is the actual language that is included in the final, signed version of the OPAG.

4. Evolution of the Final Purchase Language

Of specific importance for the interpretation of the intent are the words that Golshani chose NOT to use in creating his rough draft. As demonstrated by the law submitted with the Motion, when one version of a draft contract contains a specific term and later versions have removed that term, the removal indicates that parties intended to convey a different meaning.

LeGrand's last attempt at personally drafting purchase language came on September 20, 2011 as Article V, Section 5 and refers to it as a "dutch Auction". *See* Exhibit M to Counterpetition (App. Part 2: APP0383-0414). The language of Section 5 states in pertinent part "In the event that a Member desires to sell his Membership Interests to the other Members…" Id. Golshani then rejected that language and circulated the language on September 22, 2011 in Section 7 of his ROUGH DRAFT. The modified language now reads, "In the event that a Member **is willing to sell his or its Member's Interests in the Company** to the other Members…" (The changes from LeGrand's language are bolded for emphasis.) *See* Exhibit "P" to Counterpetition (App. Part 2: APP0448-0451).

Golshani then makes additional changes to that same language on October 26, 2011 in Section 7 of his ROUGH DRAFT 2. The modified language now reads, "In the event that a Member is willing to **purchase the Remaining Member's Interest** in the Company…" (The changes from the ROUGH DRAFT language to the ROUGHT DRAFT 2 language are bolded for emphasis.) *See* Exhibit "S" to Counterpetition (App. Part 3: APP0456-0458).

LeGrand then reinserts himself into the process on November 10, 2011, creating "DRAFT 2". LeGrand essentially repeats the changes made by Golshani in ROUGH DRAFT 2. The modified language now reads, "In the event that a Member is willing **to purchase** the Remaining Member's Interest in the Company…" There were virtually no substantive changes to this section

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from Golshani's ROUGH DRAFT 2 to LeGrand's DRAFT 2. *See* Exhibit "S" to Counterpetition (App. Part 3: APP0456-0458) (emphasis added)

The final OPAG essentially adopts the language from ROUGH DRAFT 2 in Section 4. The finalized language now reads, "In the event that a Member is willing **to purchase** the Remaining Member's Interest in the Company then the procedures of Section 4.2 shall apply." *See* Exhibit "O" to Counterpetition (App. Part 2: APP04190447) (emphasis added)

What is important to note is that deleting "sell" from the language, the parties to the OPAG, jointly, agreed that a willingness to purchase was what was intended as a triggering event, NOT a willingness to sell or a forced sale. Here, Bidsal manifested his willingness to purchase by submitting his best estimate of the fair market value of Property.

5. Can An Attorney's Unilateral Letter Change The Terms Of The OPAG?

The next completely irrational argument made by CLAP and adopted by the Arbitrator is that Bidsal's attorney, via a letter, changed the terms of the OPAG. CLAP identifies the July 7, 2017 letter found at Exhibit "Y" to Counterpetition (App. Part 3: APP0586), stating that Bidsal was identified as the "Offering Member." That assertion is true. On July 7, 2017, Bidsal was the only member who had made an offer and thus was the only "Offering Member." CLAP also cites the letter stating, "[t]he Offering Member's best estimate of the current fair market value of the Company is $5,000,000.00 (the "***FMV***")." That is also an accurate recitation of the language contained in said letter, however, the term "(the ***"FMV"***)", as used in the letter is an abbreviation and not a term of art quoting from the OPAG. At no point in time does the letter cite to the OPAG definitions section to define its abbreviation. The letter goes on to say that the $5,000,000.00 best estimate would "…be used to calculate the purchase price of the Membership Interest to be sold." All of these assertions are accurate. Bidsal's attorney defines what Bidsal thought was the fair market value, an assessment that was made without the protection of an appraisal. At this point the protections placed in effect by the OPAG flow to CLAP. CLAP has the power to (1) accept the offer, (2) reject the offer and demand an appraisal. This places CLAP squarely in the driver's seat. If Bidsal's best estimate is too high, CLAP benefits. If Bidsal's best estimate is too low, CLAP has the appraisal as a protection. Bidsal's protection likewise, is if CLAP believes the Bidsal estimate is

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too low, Bidsal and CLAP resort to getting appraisals. CLAP attempts, and the Arbitrator allowed CLAP, to rip Bidsal's only protection out from under him, by an improper forced sale, a sale that Bidsal never agreed to participate in.

Although the language of Section 4.2, first paragraph, required Bidsal to submit to Golshani what he "thinks is the fair market value," CLAP then jumps to the absurd, stating "…Bidsal acting through his attorney said that his offered $5,000,000 was the FMV…" and that "…he refused to sell using the $5,000,000 as the FMV." Using this logic means that Bidsal, through his counsel, could change the definition of "FMV" from that stated in the OPAG, to whatever he wanted. If that is the case, that Bidsal's counsel could unilaterally change the OPAG via an attorney's letter, what would stop him from changing the contract to read, that all interests in the company now belonged to Bidsal. Certainly the notion that Bidsal could unilaterally change the OPAG is a ridiculous notion, that no one could possibly put credence in; thus making CLAP's argument just as ridiculous. Bidsal, nor his attorney, had any unilateral ability to change the definition of "FMV." "FMV" stands as the defined term in the signed OPAG and according to the OPAG can only be derived by the medium of two appraisals, which never happened. The Arbitrator however, irrationally elected to read the contract, the OPAG, in conformity with the letter, thus disregarding the contract provision and supplanting the contract provision with the basic abbreviation as used in the letter.

Upon receipt of the July 7, 2017 letter, CLAP had the options in Section 4.2's second paragraph (1) accept the July 7, 2017 offer or (2) request to establish FMV via the definition. CLAP also had the option in Section 4.2's first paragraph as "Any Member" to give notice to Bidsal that CLAP was ready, willing and able to purchase Bidsal's interests for a price CLAP thought was the fair market value, thus becoming an Offering Member. What was not an option was for CLAP, as a Remaining Member, to bypass establishment of the "FMV" and skip to the final paragraph of Section 4.2, select a value for "FMV" and force Bidsal to sell his shares; thus ignoring the entire procedure as laid out in Section 4. Yet that is exactly the tact chosen by CLAP and endorsed by the Arbitrator. *See* Exhibit "AA" to Counterpetition (App. Part 4: APP0825).

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C. ARBITRATION

1. Irrational Findings of the Arbitrator Made in Plain Error.

(a) The OPAG was drafted by Bidsal.

The facts as outlined above show that for the Section of the OPAG in dispute, Section 4, many people had a hand in drafting the language, Jeff Chain, LeGrand and Golshani. What none of the evidence showed, despite an argument from CLAP, was that any of the language was derived from the hand of Bidsal. Yet the Arbitrator, disregarding the specific contract provisions to correct his perceived injustice to Golshani made the determination that Bidsal was the drafter of Section 4.2. *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1092, fn. 5). The Arbitrator himself speaks out of both sides of his mouth, simultaneously determining that Bidsal was the drafter of Section 4.2 and also "[t]hat testimony is consistent with the 'specific intent' language of Section 4.2 which Mr. LeGrand specially drafted…" (emphasis added.) *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1094, para. 12). It is impossible for Bidsal to be the drafter of a section of language that LeGrand drafted. However, notably, neither Bidsal nor LeGrand was the original drafter of the specific intent language, but rather Golshani as noted above. *See* Exhibit "N" to Counterpetition (App. Part 2: APP0415-418).

(b) Despite "FMV" being a defined term in the OPAG, the Arbitrator elected to ignore the OPAG definition and provide his own definition.

The final draft of the OPAG, Section 4.1 Definitions, states "'FMV' means 'fair market value' obtained as specified in section 4.2. Section 4.2 defines 'FMV' as "[t]he medium of …two appraisals constitute the fair market value of the property which is called (FMV). Yet despite the definition, the Arbitrator irrationally chose an alternate definition. The Arbitrator's definition is set forth in the Final Decision as "…$5 million is the 'FMV'…'" Admittedly, the Arbitrator used his own notion of fairness to arrive at his definition rather than using the definition contained in the OPAG. *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1097, para. 19).

If, as CLAP suggests, it is allowed to jump to Section 4.2(ii) thus ignoring the procedure of the rest of the section, it arrives at a point where it must ascertain the value of its counteroffer. In this instance CLAP argued, and the Arbitrator irrationally supported, that CLAP can insert a

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002485

definition of "FMV" that is not contemplated in the OPA. However, the explicit language of Section 4.2, provides for a definition of how to arrive at a FMV, at the time of CLAP's offer, FMV had not been established. Allowing CLAP to ignore the procedural process of Section 4.2 and jump to Section 4.2(ii) creates a situation where FMV is rendered meaningless; clearly this was not the intent of the parties as they agreed on a specific definition of "FMV."

(c) Despite "Offering Member" and "Remaining Member(s)" being defined terms in the OPAG, the Arbitrator either misconstrued or intentionally disregarded the definition, adding his own terms and assumptions to the definitions.

The final draft of the OPAG, Section 4.1 Definitions, states "Offering Member" means the member who offers to purchase the Membership Interest(s) of the Remaining Member(s). The Arbitrator makes assumptions, ignoring the definition of the OPAG, that an Offering Member must remain an Offering Member and can never become a Remaining Member. Here, Bidsal was the original "Offering Member" when he made his July 7, 2017 offer, to CLAP. However, when CLAP ignored the procedure of Section 4 and made its own offer to Bidsal, the tables were turned and CLAP became an "Offering Member." Nowhere in the OPAG does any definition indicate that the roles of Offering Member and Remaining Member were static. Evidence of this additional qualification that the Arbitrator added to the definitions can be found at page 12 of the Final Decision. The Arbitrator states that, "[t]o repeat, appraisal rights are triggered only '[i]f the [Offering Member's] offered price is not acceptable to the Remaining Member' and, further, that the Remaining Member requests the 'following procedure' of an appraisal 'within 30 days of receiving the offer.'" The Arbitrator goes on to say, "[b]y implication, that logically would foreclose the possibility of Mr. Bidsal, as the Offering Member, having a contractual right to request an appraisal to determine 'FMV' as a 'second bite at the [Green Valley valuation] apple.'" *See* Exhibit MM" to Counterpetition (App. Part 5: APP1099).

It is unclear whom or what the Arbitrator was quoting when he quoted "second bite at the [Green Valley valuation] apple." What is clear is that the Arbitrator added "by implication" that Mr. Bidsal, once an Offering Member, could never again be a Remaining Member. The definition of Remaining Member according to Section 4.1 of the OPAG is "…the Members who received an offer

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(from Offering Member) to sell their shares." Since Bidsal received an offer from CLAP to buy his shares, without CLAP going through the delineated procedure of 4.2, Bidsal then became, by definition, a Remaining Member that had a contractual right to request an appraisal to determine "FMV." In fact, that is what Bidsal did, he followed Section 4.2, paragraph 2 of the OPAG in his August 5, 2017 letter and, as a Remaining Member, invoked his right to establish the FMV. As was required by that same section, he provided the Offering Member two MIA Appraisers from which to select. *See* Exhibit "BB" to Counterpetition (App. Part 4: APP0828-0829).

(d) A "Dutch Auction" was used in Section 4.2.

The Arbitrator, in his final decision states that, "…**Section 4** provisions were referenced to by the parties and their joint attorney, David LeGrand, as 'forced buy/sell' and 'Dutch auction,' whereby one of the members (designated as the 'Offering Member') can offer to buy out the interest of the other based upon a valuation of the fair market value of the LLC set by the Offering Member in the offer. The other member (designated as the 'Remaining Member') is then given the option to either buy or sell using the Offering Member's valuation, or the Remaining Member can demand an appraisal." (emphasis added.) *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1090, para. 4). These assertions are so flawed, that is hard to know where to begin.

First, Section 4 did not exist, as the "Purchase or Sell Right among Members" until the final OPAG. All the drafts previously had different numbering and various language. Therefore, NONE of the previous communications regarding "Dutch auction" or "forced buy/sell" were references to "Section 4" as stated by the Arbitrator.

Second the "parties" or the members, never reference a "Dutch Auction" or "forced buy/sell" language. That language consistently came from LeGrand, not the members, in language contained in draft OPAGs, that ultimately was not used in the final OPAG. LeGrand was essentially cut out of the negotiations between CLAP and Bidsal after his failed attempt to draft purchase language on September 20, 2011. Much like the Arbitrator wanted to make Bidsal's attorney's statements regarding fair market value part of the OPAG, he also wants to make attorney, LeGrand's statements part of the OPAG. But as previously stated, an attorney, not a party to the finalized agreement, can't change the contents of a signed contract, here the OPAG. The OPAG speaks for itself and never

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does it once utter the term "Dutch auction" or "forced buy/sell." The Arbitrator irrationally inserted the "Dutch Auction" and "forced buy/sell" language into the OPAG (both of which were initially discussed, then rejected by CLA), where they simply did not exist. Once again the Arbitrator admittedly used his own notion of fairness, to arrive at his finding that a "Dutch Auction" and a "forced buy/sell" provision was utilized in the OPAG, rather than using the actual language of the OPAG. *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1092, para. 8).

Finally, the Arbitrator states, "[t]he other member (designated as the 'Remaining Member') is then given the option to either buy or sell using the Offering Member's valuation, or the Remaining Member can demand an appraisal." This statement is patently inaccurate. Even if the Arbitrator is trying to quote the "specific intent" provision, he still gets it wrong. The "specific intent" provision states,

> The specific intent of this provision is that once the Offering Member presented his or its offer to the Remaining Members, then the Remaining Members shall either sell or buy at the same offered price (or FMV if appraisal is invoked) 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) (emphasis added)

See Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430). Here, once again, the Arbitrator disregards a specific contract provision to correct his perceived injustice to Golshani. The irony is that by the Arbitrator's irrational disregard of the contract provisions, Bidsal suffered the injustice by having all of his protections, which were far less than CLAP's from the start, removed. CLAP had built in protections from the OPAG, it could sell high, if Bidsal overestimated the value of the "Interest", it could demand appraisals if it believed Bidsal underestimated the value of the Interest, and after working through the entire procedure of Section 4, it could, as the Remaining Member, decide to purchase at "FMV." Bidsal's only protection was the appraisal provision in segment ⑤ and the Arbitrator improperly ignored the contract provision granting him a single protection. In reality, segment ⑧ requires that the procedure set forth in Section 4 be followed. If the procedure set forth in Section 4 was followed, then by the time the parties get to the "specific intent" provision a "FMV" valuation will have been accomplished and therefore will be used in the formula. The

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Arbitrator chooses to re-write Section 4 to suit his own personal notion of fairness, rather than follow the OPAG as written.

(e) Section 4.2 of the OPAG employed a "form of cost-effective 'rough justice.'"

The Arbitrator states that, "[i]f the [buy-sell] provisions work, as intended, the result might not be expertly authoritative or precise, but nevertheless a form of cost-effective 'rough justice,' when one partner 'pulls the trigger' on separation, by initiating Section 4.2 procedures." Here, the Arbitrator strays from the application of the agreement, jumping to the end of Section 4.2, rather than using the procedure that is clearly delineated; in doing so the Arbitrator is dispensing his own brand of justice. As stated above, there is no "buy-sell" procedure which can be initiated by an Offering Member under Section 4.2. There is only a notification that the Offering Member is "ready, willing, and able to purchase" option. The Offering Member is the member that initiates the procedures in Section 4.2, with an offer to purchase. Not until the procedures of 4.2 have been exhausted, and the Members reach the final paragraph can the Remaining Member obligate the Offering Member to sell. By the final paragraph, the "FMV" must be established, requiring two appraisals be conducted. Such a procedural arrival at a sales figure is hardly "rough justice" as identified by the Arbitrator. Once again, the Arbitrator irrationally injects a term into the OPAG that is clearly not present or applicable. Once again, the Arbitrator strayed from the interpretation and application of the agreement to dispense his own brand of justice, a brand of justice that disregarded the specific contract provision to correct what the Arbitrator felt was an injustice to Golshani.

2. The Arbitrator Recognized, but Disregarded the Law.

(a) Contractual provisions are to be construed against the drafter.

The Arbitrator was clearly aware of the legal principal that a contract provision is to be construed against the party who drafted it. Williams v. Waldman, 108 Nev. 466, 473, 836 P.2d 614, 619 (1992). The Arbitrator demonstrated this knowledge in his statement that "…the Arbitrator finds that Mr. Bidsal controlled the final drafting of the Green Valley Commerce, LLC OPAG, and had the last and final say on what the language was before signing the OPAG, and is deemed to be the principal drafter of Section 4.2 of that agreement and therefore bears the burden

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of risk of ambiguity or inconsistency within the disputed provision." (emphasis added.) *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1041, para.17).

However, in order to arrive at a decision consistent with what he knew the law to be, he had to fabricate that Bidsal was the drafter of Section 4.2. The Arbitrator went to great lengths pinning the drafting of Section 4.2 on anyone other than CLAP. The Arbitrator said that LeGrand "specially" drafted Section 4.2 and alternately that Bidsal drafted Section 4.2. *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1094, para. 12). *See also* Exhibit "MM" to Counterpetition (App. Part 5: APP1092, fn. 5). In reality, the only evidence, as shown above, is that CLAP drafted Section 4.2 and thus any ambiguity in the section should be construed against it. *See* Exhibit "N" to Counterpetition (App. Part 2: APP0415-0418).

3. The Arbitrator Exceeded his Powers.

The issue in controversy before the Arbitrator, as identified by CLAP, is that "Respondent [Bidsal] has refused to sell his interest [in the Company], but instead has demanded an appraisal to determine FMV." Nowhere in the Demand for Arbitration did CLAP argue that it should be entitled to take the assets associated with Bidsal's interest in the Company free and clear of encumbrances or that those assets needed to be transferred to CLAP in a manner not specified within the OPAG. In fact, CLAP's Demand for Arbitration did not even address real property, only the interests in the Company. *See* Exhibit "DD" to Counterpetition.

Yet despite CLAP's delineation of the issues, the Arbitrator independently, and in contravention of the OPAG, took it upon himself to:

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

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

See Exhibit "MM" to Counterpetition (App. Part 5: APP1101, para. 24).

In the OPAG, the parties agree that the arbitration shall be "…administered by JAMS in accordance with its then prevailing expedited rules…" *See* Exhibit "O" to Counterpetition (App. Part 2: APP0426). The then prevailing JAMS Arbitration rules are those dated 2014. JAMS Rule

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24 governs Awards. Rule 24(c) states, in pertinent part, that "[t]he Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement…" (JAMS Award). *See* Exhibit "NN" to Counterpetition (App. Part 5: APP1109-1143).

Here, the parties' agreement was the OPAG. The OPAG addressed the rights of members to purchase and sell interests in the Company in Section 4. Section 4 does NOT state that the sale of a one member's interests to another member had to include a transfer of assets that were free and clear of encumbrances. The Arbitrator took it upon himself to add that language to the OPAG when rendering this decision.

Additionally, the OPAG did not place a time frame on the transfer of Company interests from a selling member to a buying member with one exception. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0429-0430). The one exception was, if a member made an offer (Offering Member) to the other member (Remaining Member) using an amount the Offering Member thinks is the fair market value, then that offer had to include terms that the sale would be all cash and would close escrow within 30 days of acceptance. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0430). Yet, despite the fact that the OPAG clearly contemplated placing date restrictions for all transfers, it elected only to place such restrictions on the acceptance of one time of offer, the initial offer. The Arbitrator took it upon himself to place an additional term into the OPAG by adding a 10 day transfer period, which was neither agreed on by the parties, nor even feasible. The only agreed on transfer period in the OPAG was for a transfer within a 30 day period; indicating what the members thought was a reasonable time period for a transfer.

Finally, there is nothing in either the OPAG or the JAMS rules which authorized the Arbitrator to retain any continuing jurisdiction once a final Award was entered but before it is converted into a judgment with the district court. *See* Exhibit "O" at Article III, Section 14.1 and Exhibit "NN" to Counterpetition (App. Part 2: APP00426-0427; App. Part 5: APP1109-1143) Therefore, the Arbitrator exceeded his powers and the Award should be vacated.

4. The Arbitrator Exceeded his Powers by Eliminating a Provision of the Contract

According to CLAP's own Memorandum, page 6, fn. 5, CLAP admits that its August 3, 2017 offer, was indeed a rejection of Bidsal's purchase offer and a counteroffer to purchase

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Bidsal's interest based upon the "same fair market value", under segment ⑦, option (ii). Let's assume for a moment that CLAP is correct, which Bidsal denies, and ignore the rest of Section 4 and jump to option (ii) under segment ⑦. First segment ⑦, option (ii) requires CLAP to reject Bidsal's purchase offer. Next, segment ⑦, option (ii) requires CLAP to make a counteroffer at "fair market value (FMV)." We have already determined that in segments ③ and ⑤ there is a lengthy definition of "FMV." If, as CLAP alleges, there is no requirement for an appraisal, because it believed the offered price was an acceptable price for CLAP to purchase, then segments ⑤ and ⑥ are rendered meaningless. Leaving the only place that the term "FMV" would apply would be in option (ii) of segment ⑦. When the Arbitrator elected to buy CLAP's argument that FMV as stated in segment ⑦ was not the same as the defined term in segments ③ and ⑤ and that no appraisal was required, the Arbitrator unilaterally and in complete disregard of the contract provisions eliminated the defined use of "FMV" from throughout the entire OPAG. The Arbitrator ignored the actual agreement of the Members, ignored the intent of the parties as to the defined term, ignored the fact that CLAP drafted the definitions section and irrationally eliminated a section of the OPAG to arrive at his own notion of justice. In short, the Arbitrator wildly exceeded his powers by acting as a member of the Company, unilaterally entitled to make contract changes, ex post facto.

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5. <u>The Arbitrator Exhibited a Bias Against Bidsal.</u>

The Arbitrator's bias against Bidsal was thoroughly addressed in the Counterpetition. However, to highlight this bias, one example involves the drafting of Section 4.2 of the OPAG. As previously mentioned, the Arbitrator, in his final decision, belies his bias when he stated that "Mr. LeGrand "specially drafted" Section 4.2 of the OPAG and then turns right around and states that Bidsal is the drafter in order to allow CLAP the benefit of his interpretation. (emphasis added.) *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1092, fn. 5) and (App. Part 5: APP1094, para. 12). It is impossible for Bidsal to be the drafter of a section of language that LeGrand "specially drafted." The bias of the Arbitrator was so prevalent that he himself couldn't keep evidence of said bias out of his final award.

An additional example highlighting the Arbitrator's bias occurred in footnote 2 to page 2 of the Final Award. The Arbitrator specifically highlights, "[t]he evidentiary sessions of the Merits

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Hearing were held in Las Vegas, Nevada, at the insistence of Mr. Bidsal, notwithstanding that the individual principals (including Mr. Bidsal), CLA's lead counsel and the Arbitrator are residents of Southern California." *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1089). The decision to hold the hearings in Las Vegas, Nevada was not a mere preference of Mr. Bidsal's, but rather what was negotiated by CLAP and Bidsal, and included in the OPAG! The OPAG, Section 14.1, Dispute Resolution, states "…any controversy, dispute or claim arising out of or relating in any way to this Agreement or the transactions arising hereunder shall be settled exclusively by arbitration in the City of Las Vegas, Nevada." (emphasis added.) *See* Exhibit "O" to Counterpetition (App. Part 2: APP0426). The Arbitrator makes it appear that Mr. Bidsal was acting unreasonably, when truly he was complying with the OPAG, a position that apparently seemed foreign and was offensive to the Arbitrator. Once again this is an example of the Aribitrator's disregard of a specific contract provision. The Arbitrator strays from the interpretation and application of the language of the agreement and dispenses his own brand of justice, by lambasting Mr. Bidsal.

The Arbitrator's bias was also clearly on display when he irrationally elected to assign the drafting of Section 4 to Bidsal and then state that his erroneous assignment was not dispositive in his final decision. CLAP cites Lamps Plus, Inc. v. Varela, 587 U.S. ___ (2019, slip opinion No. 17-988, April 24, 2019) for the assertion that a contract should be construed against the drafter, as a last resort when the meaning of the provision remains ambiguous after exhausting the ordinary methods of interpretation. However, this does not help CLAP's argument. First, the terms of Section 4 of the OPAG, when procedurally read in order, are not ambiguous. Second, when the Arbitrator "discerned" Bidsal's intent, he ignored all of Bidsal's testimony and the language of the contract itself. Additionally, when attempting to discern Bidsal's intent the Arbitrator irrationally assigned emotions to Bidsal, stating that the arbitration was an example of "seller's remorse." *See* Exhibit "MM" to the Counterpetition at (App. Part 5: APP1092). The arbitration was brought by CLAP, not Bidsal and, more importantly, the Arbitrator is certainly ill-suited to assign emotion to a matter. This assignment of emotion is additional evidence of the Arbitrator's bias against Bidsal. The Arbitrator need not have gotten to the point where he had to ascertain intent, as Section 4 taken in its totality is not ambiguous, however, because he did, he was also obligated to correctly ascertain the

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drafter of Section 4 and to construe the contract provision against the draftsman, in this instance, against CLAP.

6. A No Holds Barred Litigation? – Attorney's Fees.

The Arbitrator in his Final Award states that Bidsal conducted a "'no holds barred litigation' over the "core" dispute." *See* Exhibit "MM" to Counterpetition (App. Part 5: APP1048). Once again this statement is an exhibition of the Arbitrator's bias against Bidsal. First and foremost, Bidsal did NOT initiate the arbitration.; as noted in Exhibit "DD" to Counterpetition (App. Part 4: APP0835-0840). CLAP, not Bidsal initiated the Arbitration. Bidsal, never considered that his own family, his cousin, would try to take advantage of him and his knowledge by initiating the subject disagreement. *See e.g.* Exhibit "D" to Counterpetition (App. Part 1: APP0055). Additionally, someone conducting a "no holds barred" litigation, hardly agrees to arbitrate under the JAMS expedited rules, as Bidsal did in the OPAG. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0426). The instigator to this litigation is, was and always will be CLAP.

Additionally, Section 14.1 of the OPAG, governing Dispute Resolution, specifically states that "[n]o pre-arbitration discovery shall be permitted, except that the arbitrator shall have the power in his sole discretion, on application by any party, to order pre-arbitration examination solely of those witnesses and documents that any other party intends to introduce in its case-in-chief at the arbitration hearing." *See* Exhibit "O" to Counterpetition (App. Part 2: APP0425). In compliance with the OPAG, Mr. Bidsal was prohibited from conducting discovery. Essentially, we have Bidsal: (1) agreeing to expedited arbitration in the event of a dispute, (2) not initiating the subject arbitration and (3) not conducting pre-arbitration discovery. How these actions amount to "no holds barred" litigation, is perplexing. The reality is that Bidsal did not engage in"no holds barred" litigation, he simply complied by the terms of the OPAG. The Arbitrator on the other hand, completely and irrationally disregarded the fact that CLAP filed the Arbitration Demand and disregarded contract provisions, in this instance, one that prevented a "no holds barred" litigation via a ban on pre-arbitration discovery to arrive at a decision that effectively dispensed his own brand of justice.

As with general arbitration awards, awards of attorneys' fees may be vacated based on a "manifest disregard of the law." *See* Arbitration Between Bosack v. Soward, 573 F.3d 891, 899 (9th

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Cir. 2009). Nevada law governs any award of attorney's fees. *See* Exhibit "O" to Counterpetition (App. Part 2: APP0435).

D. POST-ARBITRATION

1. Standard for Vacating an Federal Arbitration Award.

The rules under 9 U.S.C. § 10 for vacating an arbitration award have been covered in detail by the Counterpetition. However, as CLAP spends a copious amount of time and paper delineating how the present case differs from the cited case law, it is necessary to address its misplaced attacks.

The fact of the matter remains Kyocera Corp. v. Prudential-Bache Trade Servs., Inc., 341 F.3d 987, 997 (9th Cir. 2003) establishes a test for when arbitrators exceed their powers and that test applies to matters heard under the Federal Arbitration Act. The Kyocera test can and should be applied to the present matter and nothing that CLAP cited to contradicts this. The Ninth Circuit Court of Appeals has held that arbitrators "exceed their powers" when the award is (1) "completely irrational" or (2) exhibits a "manifest disregard of the law." Kyocera Corp. v. Prudential-Bache Trade Servs., Inc., 341 F.3d 987, 997 (9th Cir. 2003). At no point does CLAP argue that the test itself is faulty, because it is not; they attack the case on factual matters unique to Kyocera. Since this matter clearly has its own factual matters, the Kyocera, test can and should be applied to its facts regardless of the facts and outcome of the Kyocera matter. The fact of the matter is, as delineated above, the Arbitrator made completely irrational decisions and exhibited a manifest disregard of the law.

CLAP seems to insinuate that only cases that are substantially similar in fact can be utilized in assessing case law. The facts of a case need not be similar to use the tests that the courts have established. In citing Stolt-Nielsen, S.A. v. AnimalFeeds International, 130 S. Ct. 1758, 1767 (2010) (*quoting* Major League Baseball Players Ass'n. v. Garvey, 532 U.S. 504, 509, 121 S. Ct. 1724 (2001))(emphasis added); Bidsal does not say that the facts of the two matters are similar, such an assertion is irrelevant. What is relevant is that the Supreme Court of the United States established that "[a]n arbitration decision may be vacated under FAA §10(a)(4) on the ground that the arbitrator exceeded his powers, 'only when [an] arbitrator strays from interpretation and application of the

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agreement and effectively 'dispense[s] his own brand of industrial justice…" Thus, establishing that there are grounds to vacate arbitration awards and laying out criteria to do just that. In the present instance the Arbitrator stayed from the interpretation and application of the OPAG, often citing that his decision was not in accordance with the OPAG but was based on fairness. His decisions based on his idea of fairness, are absolutely an exhibition of the Arbitrator dispensing his own brand of justice.

CLAP also faults Bidsal for citing Major League Baseball Players Ass'n. v. Garvey, 532 U.S. 504, 509, 121 S. Ct. 1724 (2001). Of note, Bidsal did not cite this case, the Supreme Court of the United States quoted this case in arriving at its decision in Stolt-Nielsen.

CLAP continues to get into the weeds of each cited matters' factual basis, when Bidsal cited these cases for the overarching tests established, not the similarity of facts. In attacking another case cited by Bidsal, ASPIC Eng'g & Constr. Co. v. ECC Centcom Constructors LLC, Case No. 17-16510 (9th Cir., January 28, 2019), CLAP bogs down on the fact that the Federal Acquisition Regulation is central to ASPIC, while that may be, Bidsal cited the case for the fact that ASPIC provides useful and clear guidelines for vacating an arbitration award. The ASPIC court holds that the district court properly vacated an arbitration award because the arbitrator 'dispense[d] his own brand of industrial justice' by 'disregard[ing] a specific contract provision to correct what he perceived as an injustice.'". In the present matter, the Arbitrator has ignored facts, disregarded definitions and replaced the definitions with his own thoughts and then added additional criteria to the OPAG. Clearly he disregarded the terms of the OPAG in arriving at his final award.

2. Standard for Determining if the Arbitrator Exceeded his Powers.

In citing Schoenduve Corp v. Lucent Technologies, 442 F.3d 727 (9th Cir. 2006) CLAP tries to utilize the case to show that the "[t]he scope of the arbitrator's authority is determined by the contract requiring arbitration as well as by the parties; definition of the issues to be submitted in the submission agreement." Schoenduve citing Piggly Wiggly Operators' Warehouse, Inc., 611 F.2d at 584. However, what CLAP fails to mention is the following sentence, "[t]he Demand for Arbitration served as Lucent's and Schoenduve's submission agreement." In the present matter, the Demand for Arbitration did not include a request to determine how the interests should be

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002496

transferred, the time frame under which they needed to be transferred or whether or not the parties wished the Arbitrator to retain jurisdiction over the matter. Unlike the case in Schoenduve, the Demand for Arbitration was not lengthy and complained of a single issue on the part of respondent: "Respondent has refused to sell his interest, but instead has demanded an appraisal to determine FMV." Nowhere in this submission of the Demand was the timing of a transfer at issue nor did CLAP indicate that it was concerned that it was trying to buy encumbered interests.

E. CONCLUSION

The Arbitrator, unilaterally, in contravention of the JAMS rules and, more importantly, the OPAG, changed a term of the OPAG when he granted himself an extension to make a final decision through October 9, 2017. A true and correct copy of the Arbitrator's unilateral decisions are attached hereto as and is incorporated herein by this reference. The OPAG provided that the Arbitrator must make a decision within 30 days. *See* Exhibit "O" of the Counterpetition. (App. Part 2: APP0426-0427). The parties, bilaterally, at the Arbitrator's request, granted him an additional 30 days to decide. Despite, the Arbitrator acknowledging that he had to get the Parties agreement to extend the deadline, and despite the plain language of the OPAG, the Arbitrator unilaterally granted himself months of extension time. This action plainly indicates that the Arbitrator ignored the contract, and is, in and of itself, enough to meet the threshold required to set aside the decision.

However, the Arbitrator committed so many additional egregious errors including, ignoring the law, ignoring facts, and changing the language of the OPAG, so as to allow the present Court the ability to rest a decision to vacate on more than just one basis. An arbitrator cannot supplant his own notions of justice and fact, when there is ample evidence to the contrary. However, that is exactly what happened in the present matter. The Arbitrator cannot possibly know what is in the minds of the parties at the time of drafting, and thus is required to rely upon the contract itself and the testimony before him. Here, the OPAG, when read procedurally, leaves little up to interpretation. The arbitrator's perceived "intent" of the parties, was secondary, to the actual final OPAG. The intent of the parties was clearly reduced to writing in the final signed OPAG and removed the need for the Arbitrator to attempt to delve into the minds of the Parties to ascertain some nebulous subjective intent, that may or may not exist. The intent was clearly and rationally laid out in the

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contract itself. Yet the Arbitrator chose to disregard the requirement to procedurally read Section 4.2 and thus created an issue that need not have been there at all, thus dispensing his own brand of justice to erroneously correct what he clearly misinterpreted section 4.2 in favor of CLAP. The Arbitrator's findings are completely irrational, ignoring the language of the contract, supplanting definitions with his own notions, recognizing and ignoring the law and exhibiting plain bias against a party. The Arbitrator exceeded his powers, strayed from interpretation and application of the agreement and effectively dispensed his own brand of justice. Thus the Arbitrator's Final Award should be vacated.

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

Dated this 26th day of August, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SMITH & SHAPIRO, PLLC, and that on the 26th day of August, 2019, I served a true and correct copy of the foregoing **REPLY TO CLA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR CONFIRMATION OF ARBITRATION AWARD AND IN OPPOSITION TO COUNTERPETITION TO VACATE ARBITRATION AWARD**, by e-serving a copy on all parties registered and listed as Service Recipients in Odyssey File & Serve, the Court's on-line, electronic filing website, pursuant to Administrative Order 14-2, entered on May 9, 2014.

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

APPENDIX – VOLUME 6

DATED this 26th day of August, 2019.

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PART	DESCRIPTION
6	Exhibit PP – Arbitration Transcript (84:15-25 through 85:1 and 91:20-21)
6	Exhibit QQ – Respondent Shawn Bidsal's Objection to Claimant CLA Properties, LLC's Proposed Interim Order
6	Exhibit RR – Order No. 1 Re-Setting Intended "Target Date" for Rendering of Written Decision Via Merits Order and Order No. 2 Re-Setting Intended "Target Date" for Rendering of Written Decision Via Merits Order

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EXHIBIT PP

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EXHIBIT PP