

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC; SJC VENTURES
HOLDING COMPANY, LLC,

Appellants

vs.

CBC PARTNERS I, LLC; CBC
PARTNERS, LLC; 5148 SPANISH
HEIGHTS, LLC; KENNETH ANTOS
AND SHEILA NEUMAN-ANTOS;
DACIA, LLC

Respondents.

Case No. 82868

Electronically Filed
Nov 10 2021 01:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from a decision in favor of Respondent
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Elizabeth Gonzalez, District Court Judge
District Court Case No. A-20-813439-B

APPELLANTS' APPENDIX VOLUME I

DATE	DESCRIPTION	VOLUME	PAGES
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04/09/2020	Complaint	I	AA0001-0010
05/04/2021	Cost Bond on Appeal	XVIII	AA4244-4247
06/04/2021	Court Minutes for Motion to Reconsider	XIX	AA4432
01/11/2021	Court Minutes for Renewed Motion to Dismiss First Amended Complaint as to Dacia, LLC or in the Alternative Motion for Summary Judgment	XVI	AA3589
12/24/2020	Declaration of Alan Hallberg in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	X	AA2169-2171
11/09/2020	Declaration of Kenneth M. Antos in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction	VI	AA1300-1327
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	Counterclaimants' 5148 Spanish Heights, LLC and CBC Partners I, LLC Counterclaim Against Spanish Heights Acquisition Company, LLC, SJC Ventures, LLC, SJC Ventures Holding Company, LLC, and Jay Bloom		
06/10/2020	Defendants CBC Partners I, LLC, CBC Partners, LLC, and 5148 Spanish Heights, LLC Answer to First Amended Complaint	I	AA0099-0116
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12/15/2020	Exhibits in Support of Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	VIII/IX/X	AA1834-2144
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04/06/2021	Findings of Fact and Conclusions of Law	XVIII	AA4165-4185
05/15/2020	First Amended Complaint	I	AA0046-0065
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11/03/2020	Order Denying CBC Partners I, LLC and 5148 Spanish Heights, LLC's Motion for Partial Summary Judgment and Denying CBC Partners I, LLC and 5148 Spanish Heights, LLC's Motion for Appointment of Receiver	VI	AA1289-1292
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05/29/2020	Order Granting Plaintiffs' Motion for Preliminary Injunction on a Limited Basis	I	AA0082-0084
05/04/2021	Plaintiffs' Motion to Amend the Court's Findings of Fact, Conclusions of Law, and Order or Alternatively for Reconsideration	XVIII/XIX	AA4248-4324

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12/14/2020	Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	VIII	AA1805-1833
05/28/2021	Plaintiffs' Reply in Support of Motion to Amend the Court's Findings of Fact, Conclusions of Law, and Order, or Alternatively for Reconsideration	XIX	AA4427-4431
11/02/2020	Plaintiffs' Reply in Support of Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction	VI	AA1283-1288
01/01/2021	Plaintiffs' Reply in Support of Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on an Order Shortening Time	XVI	AA3552-3580
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02/01/2021	Preliminary Injunction Hearing and Trial – Day 3	XVII	AA3968-3981
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03/15/2021	Preliminary Injunction Hearing and Trial – Day 4 (Volume II)	XVIII	AA4055-4152
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	LLC or in the Alternative Motion for Summary Judgment		
01/05/2021	Reply in Support of Renewed Motion to Dismiss First Amended Complaint as to Dacia, LLC or in the Alternative Motion for Summary Judgment	XVI	AA3586-3588
09/28/2020	SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC's Answer to Counterclaim Filed By Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust	I	AA0161-0171
07/10/2020	Spanish Heights Acquisition Company, LLC, SJC Ventures, LLC, SJC Ventures Holding Company, LLC, and Jay Bloom's Answer to Counterclaim	I	AA0117-0135
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05/26/2020	Summons	I	AA0070-0073
05/26/2020	Summons	I	AA0074-0077
05/26/2020	Summons	I	AA0078-0081
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	Michael R. Mushkin on Behalf of 5148 Spanish Heights, LLC		
05/18/2021	Transcript of Oral Ruling Re: Motion for Sanctions for Violation of the Automatic Stay and Related Relief Filed By James D. Greene on Behalf of Spanish Heights Acquisition Company, LLC	XIX	AA4403-4426

CERTIFICATE OF SERVICE

I certify that on the 10th day of November, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – XIX** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
6070 S. Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
Attorney for Respondents

DATED this 10th day of November, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-813439-C
Department 24

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): SPANISH HEIGHTS ACQUISITION COMPANY, LLC, a Nevada Limited Liability Company; SJC VENTURES LLC, a Domestic Limited Liability Company Attorney (name/address/phone): Joseph A. Gutierrez, Esq., Danielle J. Barraza, Esq., Maier Gutierrez & Associates, 8816 Spanish Ridge Avenue, Las Vegas, Nevada 89148 (702) 629-7900	Defendant(s) (name/address/phone): CBC PARTNERS I, LLC, a foreign Limited Liability Company; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Attorney (name/address/phone):
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II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

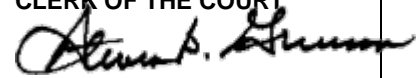
April 9, 2020

Date

/s/ Danielle J. Barraza

Signature of initiating party or representative

See other side for family-related case filings.



COMP

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
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CASE NO: A-20-813439-C
Department 24

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES LLC, a Domestic
Limited Liability Company

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.:

Dept. No.:

COMPLAINT

EXEMPT FROM ARBITRATION:

1. Request for Declaratory Relief
2. Action Concerning Real Property

Plaintiffs Spanish Heights Acquisition Company, LLC, and SJC Ventures LLC, by and through their attorney of record, MAIER GUTIERREZ & ASSOCIATES, hereby complain and allege against Defendants as follows:

PARTIES

1. That at all times pertinent hereto, Plaintiff Spanish Heights Acquisition Company, LLC, is a Limited Liability Company duly registered and in good standing in the State of Nevada.

2. That at all times pertinent hereto, Plaintiff Spanish Heights Acquisition Company, LLC owns the property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel

1 Number 163-29-615-007 ("Property") .

2 3. That at all times pertinent hereto, Plaintiff SJC Ventures LLC is a Limited Liability Company
3 duly registered and in good standing in the State of Nevada.

4 4. That at all times pertinent hereto, Plaintiff SJC Ventures LLC has been a lawful tenant of the
5 Property pursuant to a binding lease agreement.

6 5. That at all times pertinent hereto, Defendant CBC Partners I, LLC is a foreign company doing
7 business in Clark County, State of Nevada.

8 6. That the following alleged incidents occurred in Clark County, Nevada.

9 7. The true names and capacities of Defendants DOES I through X and/or ROES I through X,
10 whether individual, company, associate, or otherwise, are unknown to the Plaintiff at the time of filing
11 of this Complaint, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is
12 informed, believes and therefore alleges that each of the Defendants, designated as DOES I through
13 X and/or ROES I through X are or may be, legally responsible for the events referred to in this action,
14 and caused damages to the Plaintiff, as herein alleged, and Plaintiff will ask leave of this Court to
15 amend the Complaint to insert the true names and capacities of such Defendants, when the same have
16 been ascertained, and to join them in this action, together with the proper charges and allegations.

17 **GENERAL ALLEGATIONS**

18 8. As documented by a Deed recorded at the Clark County Recorder's Office on November 3,
19 2017, Plaintiff Spanish Heights Acquisition Company, LLC owns the residential Property at issue.

20 9. As documented by a real property lease, SJC Ventures LLC is the lawful tenant of the Property,
21 with Plaintiff Spanish Heights Acquisition Company, LLC being the lawful Landlord.

22 10. Defendant CBC Partners I, LLC claims to be the holder of a Secured Promissory Note ("Note")
23 dated June 22, 2012, which is purportedly secured by a Deed of Trust, Assignment of Rents, Security
24 Agreement and Fixture Filing against the Property, made as of December 17, 2014. Subsequently a
25 First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was
26 recorded in the Property records through the Clark County Recorder's Office on December 19, 2016.
27 Thus, defendant CBC Partners I, LLC purports to have been a secured lender with an interest in the
28 Property.

1 11. Defendant CBC Partners I, LLC also purports to have secured certain remedies in the event of
2 a default on the Note through a Forbearance Agreement dated September 27, 2017, and an
3 Amendment to Forbearance Agreement dated December 1, 2019 (collectively the “Forbearance
4 Agreement”) which extended Spanish Heights Acquisition Company, LLC’s purported obligations
5 under the Note through March 31, 2020.

6 12. One of the purported remedies under the Forbearance Agreement that Defendant CBC Partners
7 I, LLC claims to have is a right to exercise a pledged membership interest in Spanish Heights
8 Acquisition Company, LLC, through a separately-executed Pledge Agreement dated September 27,
9 2017.

10 13. On March 16, 2020, defendant CBC Partners I, LLC sent Spanish Heights Acquisition
11 Company, LLC a “Notice of Default” correspondence which prematurely claimed that there was a
12 default under the Forbearance Agreement even though the only performance deadline set forth in the
13 Forbearance Agreement was March 31, 2020.

14 14. On March 23, 2020, Spanish Heights Acquisition Company, LLC sent correspondence to
15 defendant CBC Partners I, LLC which reminded defendant CBC Partners I, LLC that the forbearance
16 period set forth in the Forbearance Agreement was unambiguously extended until March 31, 2020,
17 and CBC Partners I, LLC has no right to unilaterally modify the terms of the Forbearance Agreement
18 to manufacture an earlier performance deadline.

19 15. Defendant CBC Partners I, LLC acknowledged its mistake by issuing an “Amended Notice of
20 Default” on April 1, 2020, admittedly “correcting the default date to March 31, 2020.”

21 16. However, the Amended Notice of Default violated Nevada Governor Sisolak’s Declaration of
22 Emergency Directive 008, issued on March 29, 2020 in response to the coronavirus/COVID-19
23 pandemic, which states as follows:

24 No lockout, **notice to vacate**, notice to pay or quit, eviction, **foreclosure action, or**
25 **other proceeding involving residential or commercial real estate based upon a**
26 **tenant or mortgagee's default of any contractual obligations imposed by a rental**
27 **agreement or mortgage** may be initiated under any provision of Nevada law effective
28 March 29, 2020, at 11:59 p.m., until the state of emergency under the March 12, 2020

1 Declaration of Emergency terminates, expires, or this Directive is rescinded by order
2 of the Governor. (emphasis added).

3 17. Through correspondence dated April 1, 2020, Defendant CBC Partners I, LLC elected to select
4 its claimed remedy by seeking to exercise its purported rights under the Pledge Agreement by having
5 the pledged collateral shares of Spanish Heights Acquisition Company, LLC transferred to CBC
6 Partners I, LLC's nominee, CBC Partners, LLC.

7 18. Upon information and belief, sometime after receiving the April 1, 2020 correspondence from
8 defendant CBC Partners I, LLC, representatives of the Kenneth & Sheila Antos Living Trust and
9 Kenneth Ms. Antos Sheila M. Neumann-Antos Trust assigned any right, title, interest, and
10 membership interest they had in Spanish Heights Acquisition Company, LLC to CBC Partners, LLC,
11 thus effectuating defendant CBC Partners I, LLC's remedy selection. Accordingly, CBC Partners I,
12 LLC is purporting to be a part-owner of the Property, by means of owning a partial membership
13 interest in Spanish Heights Acquisition Company, LLC.

14 19. On April 3, 2020, defendant CBC Partners I, LLC issued a "Notice to Vacate" to SJC Ventures,
15 LLC, the tenant of the Property. Defendant CBC Partners I, LLC issued this "Notice to Vacate" on
16 April 3, 2020, even though:

- 17 a) Section 13(a) of the Pledge Agreement provides for a cure period of fifteen (15) days from
18 the date of written notice of default;
- 19 b) There exists a valid lease agreement with SJC Ventures, acknowledged twice by CBC
20 Partners; and
- 21 c) Four days prior, Governor Sisolak's March 29, 2020 Emergency Directive placed a
22 moratorium on both foreclosure and eviction actions, which specifically precluded Notices
23 to Vacate.

24 20. Upon information and belief, defendant CBC Partners I, LLC is attempting to exercise both
25 legal title (ownership of the Property) and equitable title (lien encumbering the Property), in violation
26 of the Merger Doctrine.

27 21. On April 4, 2020, April 6, 2020, and April 7, 2020, Spanish Heights Acquisition Company
28 (through its majority owner) sent correspondence to defendant CBC Partners I, LLC, demanding that

1 defendant CBC Partners I, LLC rescind its illegal foreclosure action notices that were issued after
2 Governor Sisolak's Emergency Directive placing a moratorium on foreclosure actions.

3 22. To date, defendant CBC Partners I, LLC has refused to rescind its illegal foreclosure action
4 notices, thus prompting this litigation.

5 23. To date, defendant CBC Partners I, LLC is attempting to violate the Merger Doctrine by
6 attempting to hold both legal title and equitable title in the Property, thus prompting this litigation.
7 Absent the application of de facto Merger, Defendant purports to be both Lender and Borrower for
8 the same real property collateral.

9 24. To date, defendant CBC Partners 1, LLC is attempting to violate the One Action Rule, having
10 elected its remedy to accept equity in the entity pledged as additional collateral, it is now barred from
11 further selecting a foreclosure remedy against the real property as it indicated in its April 8, 2020
12 correspondence is its intention to do under its former note (again extinguished under the de facto
13 merger).

14 **FIRST CAUSE OF ACTION**

15 **(Declaratory Relief as to CBC Partners I, LLC's Obligation to Abide by Governor Sisolak's** 16 **Emergency Directive Placing a Moratorium on Foreclosure and Eviction Actions)**

17 25. That Plaintiffs incorporate by reference paragraphs 1 through 24 as though fully set forth
18 herein.

19 26. A true and justiciable controversy exists between the Plaintiffs and the Defendant concerning
20 the rights, status, and legal relations of the parties to this action.

21 27. The Plaintiffs' interests are adverse to those of the Defendant.

22 28. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are affected by
23 statute, including NRS 107.

24 29. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are also effected
25 by the State of Nevada, Executive Department, Declaration of Emergency Directive 008, dated March
26 29, 2020, which placed a moratorium on foreclosure actions as it relates to residential or commercial
27 real estate.

28 30. This matter is filed in part under the Uniform Declaratory Judgment Act.

1 31. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
2 and legal relations at issue in this matter and a declaration that the State of Nevada, Executive
3 Department, Declaration of Emergency Directive 008, dated March 29, 2020, which placed a
4 moratorium on foreclosure actions, is enforceable by the Plaintiffs against the Defendant.

5 32. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
6 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
7 attorneys' fees and interest thereon.

8 **SECOND CAUSE OF ACTION**

9 **(Declaratory Relief Regarding the Application of the One Action Rule)**

10 33. That Plaintiffs incorporate by reference paragraphs 1 through 32 as though fully set forth
11 herein.

12 34. A true and justiciable controversy exists between the Plaintiffs and the Defendant concerning
13 the rights, status, and legal relations of the parties to this action.

14 35. The Plaintiffs' interests are adverse to those of the Defendant.

15 36. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are affected by
16 statute, including NRS 107.

17 37. This matter is filed in part under the Uniform Declaratory Judgment Act.

18 38. Pursuant to NRS 40.430 and 30.040, the Plaintiffs are entitled to declaratory relief as to rights,
19 statutes, and legal relations at issue in this matter and a declaration that the defendant CBC Partners
20 I, LLC is precluded from pursuing any foreclosure action against the subject real property pursuant to
21 the One Action Rule.

22 39. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
23 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
24 attorneys' fees and interest thereon.

25 **THIRD CAUSE OF ACTION**

26 **(Declaratory Relief Regarding the Applicability of the Doctrine of Merger)**

27 40. That Plaintiffs incorporate by reference paragraphs 1 through 39 as though fully set forth
28 herein.

1 41. A true and justiciable controversy exists between the Plaintiffs and the Defendant concerning
2 the rights, status, and legal relations of the parties to this action.

3 42. The Plaintiffs' interests are adverse to those of the Defendant.

4 43. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are affected by
5 statute, including NRS 107.

6 44. This matter is filed in part under the Uniform Declaratory Judgment Act.

7 45. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
8 and legal relations at issue in this matter and a declaration that the purported Note that defendant CBC
9 Partners I, LLC claims to be secured by a Deed of Trust recorded against the Property has been
10 extinguished via the Merger Doctrine in light of CBC Partners I, LLC attempting to exercise purported
11 rights to become legal owner of the Property.

12 46. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
13 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
14 attorneys' fees and interest thereon.

15 **FOURTH CAUSE OF ACTION**

16 **(Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction)**

17 47. That Plaintiffs incorporate by reference paragraphs 1 through 46 as though fully set forth
18 herein.

19 48. Plaintiffs have multiple justiciable controversies with Defendant.

20 49. On the basis of the facts described herein, Plaintiffs have a reasonable probability of success
21 on the merits of their claims and have no other adequate remedies of law.

22 50. Plaintiffs have a probable right to relief and will suffer immediate, severe, and irreparable
23 injury unless the Defendant, its respective agents, servants, employers, principals, assignees,
24 transferees, and/or beneficiaries, and all those in active concert and participation with Defendant are
25 immediately restrained and enjoined from: (1) engaging in any further foreclosure activities against
26 the Property or eviction activity against the tenants; (2) proceeding on the current Notices of Default
27 and/or Notice to Vacate (including the tolling of any time under the Notice or Agreements); and (3)
28 attempting to foreclose on the Property through an extinguished purported interest.

1 51. The actions of Defendant described herein have resulted in immediate harm to, among other
2 things, Plaintiffs' Property interests and tenant rights.

3 52. Plaintiffs are entitled to injunctive relief to end such actions and prevent further harm.

4 53. Plaintiffs have been required to retain the services of an attorney to file and prosecute this
5 action and have thereby been damaged. Accordingly, Plaintiffs seek an award of reasonable attorneys'
6 fees and costs incurred in this action.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

9 1. For an entry of Declaratory Judgment pursuant to NRS 107 and 30.040 that the State
10 of Nevada, Executive Department, Declaration of Emergency Directive 008, dated March 29, 2020,
11 which placed a moratorium on eviction and foreclosure actions, is enforceable by the Plaintiffs
12 against the Defendant and therefore Defendant's Notice of Default and Notice to Vacate are in
13 violation of the Governor's Executive Order 008 and are null and void ab initio;

14 2. For an entry of Declaratory Judgment pursuant to NRS 107 and 30.040 that the
15 purported Note that defendant CBC Partners I, LLC claims to be secured by a Deed of Trust recorded
16 against the Property has been extinguished via the Merger Doctrine in light of CBC Partners I, LLC
17 exercising its purported rights to become partial legal owner of the Property;

18 3. For an entry of Declaratory Judgment pursuant to NRS 40.430 and 30.040 that
19 defendant CBC Partners I, LLC is precluded from pursuing any foreclosure action against the subject
20 real property pursuant to the One Action Rule;

21 4. Judgment in favor of Plaintiffs on the complaint and all claims for relief asserted
22 therein;

23 5. For such injunctive relief as necessary;

24 6. For an award of reasonable attorneys' fees and costs incurred by Plaintiffs;

25 7. For an award of pre and post-judgment interest; and

26 ///

27 ///

28 ///

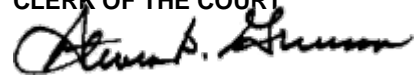


EXHIBIT 14

EXHIBIT 14

1 **TRO**

2 JOSEPH A. GUTIERREZ, ESQ.

3 Nevada Bar No. 9046

4 DANIELLE J. BARRAZA, ESQ.

5 Nevada Bar No. 13822

6 **MAIER GUTIERREZ & ASSOCIATES**

7 8816 Spanish Ridge Avenue

8 Las Vegas, Nevada 89148

9 Telephone: 702.629.7900

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11 E-mail: jag@mgalaw.com
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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 SPANISH HEIGHTS ACQUISITION
16 COMPANY, LLC, a Nevada Limited Liability
17 Company; SJC VENTURES LLC, a Domestic
18 Limited Liability Company

19 Plaintiffs,

20 vs.

21 CBC PARTNERS I, LLC, a foreign Limited
22 Liability Company; DOES I through X; and
23 ROE CORPORATIONS I through X, inclusive,

24 Defendants.

Case No.: A-20-813439-C

Dept. No.: 24

25 **TEMPORARY RESTRAINING ORDER**

26 The Court, having reviewed the application for temporary restraining order filed by Plaintiffs
27 Spanish Heights Acquisition Company, LLC, and SJC Ventures LLC ("Plaintiffs"), including all other
28 pleadings, declarations, and affidavits on file herein, and for good cause appearing, finds that this is a
proper instance for a temporary restraining order to be issued and that if defendant CBC Partners I,
LLC ("Defendant") is not restrained and enjoined by order of this Court, Plaintiffs will continue to
suffer immediate and irreparable injury. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the application for
temporary restraining order filed by Plaintiff be, and the same is hereby, GRANTED.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, together with
2 any and all of its affiliates, agents, employees, and attorneys, is immediately and until after the hearing
3 on Plaintiff's Motion for Preliminary Injunction:

4 1. Ordered to rescind the Notice of Breach conveyed on March 16, 2020; the Amended
5 Notice of Breach conveyed on April 1, 2020; and the Notice to Vacate conveyed on April 3, 2020.

6 2. Prevented and precluded from engaging in any future violations of the Governor's
7 Emergency Directive 008, and is specifically enjoined from performing any and all eviction or
8 foreclosure activities, including filing further Notices of Breach, Notices to Vacate, Notices of Sale,
9 and all associated notices, while Nevada Governor Sisolak issued Declaration of Emergency Directive
10 008, issued on March 29, 2020, which placed a moratorium on foreclosure actions, remains in effect;
11 and

12 3. Prevented and precluded from attempting to foreclose on the Property, until after the
13 hearing on Plaintiff's motion for preliminary injunction, as the One-Action Rule and the Merger
14 Doctrine need to be reviewed and considered.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a hearing on the motion
16 for preliminary injunction filed by Plaintiff will take place on the 16th day of April, 2020,
17 at 9:00 a.m., in Department 24 of the above-entitled Court. Notice of said hearing and
18 the time and place thereof shall be given by Plaintiffs to Defendant's counsel no later than the 10th
19 day of April, 2020, by serving upon Defendant's counsel a copy of this
20 temporary restraining order, together with copy of the moving papers. An opposition, if the opposing
21 party desires to file one, shall be filed and served on or before April 14, 2020. A reply shall
22 be filed and served on or before April 15, 2020.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall not be
24 required to post a bond / post a bond or cash with the Court in the amount of \$1,000.00 in
25 accordance with NRC 65(c) as security for the payment of such costs and damages as may be
26 incurred or suffered by any party who is found to have been wrongfully enjoined or restrained in this
27 action.

28 ///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this temporary restraining
2 order shall remain in effect until the hearing on the motion for preliminary injunction, unless further
3 extended by order of this Court or stipulation of the parties.

4 IT IS SO ORDERED this 9th day of April, 2020.

5
6 
7 DISTRICT COURT JUDGE Time: 3:41 pm

8 Respectfully submitted,

9 **MAIER GUTIERREZ & ASSOCIATES**

10 /s/ Joseph A. Gutierrez

11 JOSEPH A. GUTIERREZ, ESQ.

12 Nevada Bar No. 9046

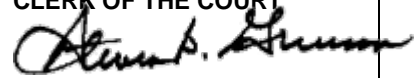
13 DANIELLE J. BARRAZA, ESQ.

14 Nevada Bar No. 13822

15 8816 Spanish Ridge Avenue

16 Las Vegas, Nevada 89148

17 *Attorneys for Plaintiff s*
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NEOJ
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES LLC, a Domestic
Limited Liability Company

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-C
Dept. No.: 24

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that a **TEMPORARY RESTRAINING**

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///

1 **ORDER** was hereby entered on the 9th day of April, 2020. A copy of which is attached hereto.

2 DATED this 10th day of April, 2020.

3 Respectfully submitted,

4 **MAIER GUTIERREZ & ASSOCIATES**

5 /s/ Joseph A. Gutierrez

6 JOSEPH A. GUTIERREZ, ESQ.

7 Nevada Bar No. 9046

8 DANIELLE J. BARRAZA, ESQ.

9 Nevada Bar No. 13822

10 8816 Spanish Ridge Avenue

11 Las Vegas, Nevada 89148

12 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 10th day of April, 2020, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

6 Michael R. Mushkin, Esq.
7 MUSHKIN & COPPEDGE
8 6070 South Eastern Avenue, Suite 270
9 Las Vegas, Nevada 89119
10 *Attorney for Defendant CBC Partners I, LLC*

11 */s/ Natalie Vazquez*
12 _____
13 An Employee of MAIER GUTIERREZ & ASSOCIATES
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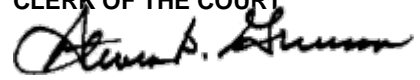


EXHIBIT 14

EXHIBIT 14

1 **TRO**

JOSEPH A. GUTIERREZ, ESQ.

2 Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

3 Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

4 8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

5 Telephone: 702.629.7900

Facsimile: 702.629.7925

6 E-mail: jag@mgalaw.com
djb@mgalaw.com

7 *Attorneys for Plaintiffs*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 SPANISH HEIGHTS ACQUISITION
13 COMPANY, LLC, a Nevada Limited Liability
14 Company; SJC VENTURES LLC, a Domestic
Limited Liability Company

15 Plaintiffs,

16 vs.

17 CBC PARTNERS I, LLC, a foreign Limited
18 Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

19 Defendants.

Case No.: A-20-813439-C

Dept. No.: 24

TEMPORARY RESTRAINING ORDER

20
21 The Court, having reviewed the application for temporary restraining order filed by Plaintiffs
22 Spanish Heights Acquisition Company, LLC, and SJC Ventures LLC ("Plaintiffs"), including all other
23 pleadings, declarations, and affidavits on file herein, and for good cause appearing, finds that this is a
24 proper instance for a temporary restraining order to be issued and that if defendant CBC Partners I,
25 LLC ("Defendant") is not restrained and enjoined by order of this Court, Plaintiffs will continue to
26 suffer immediate and irreparable injury. Accordingly,

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the application for
28 temporary restraining order filed by Plaintiff be, and the same is hereby, GRANTED.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant, together with
2 any and all of its affiliates, agents, employees, and attorneys, is immediately and until after the hearing
3 on Plaintiff's Motion for Preliminary Injunction:

4 1. Ordered to rescind the Notice of Breach conveyed on March 16, 2020; the Amended
5 Notice of Breach conveyed on April 1, 2020; and the Notice to Vacate conveyed on April 3, 2020.

6 2. Prevented and precluded from engaging in any future violations of the Governor's
7 Emergency Directive 008, and is specifically enjoined from performing any and all eviction or
8 foreclosure activities, including filing further Notices of Breach, Notices to Vacate, Notices of Sale,
9 and all associated notices, while Nevada Governor Sisolak issued Declaration of Emergency Directive
10 008, issued on March 29, 2020, which placed a moratorium on foreclosure actions, remains in effect;
11 and

12 3. Prevented and precluded from attempting to foreclose on the Property, until after the
13 hearing on Plaintiff's motion for preliminary injunction, as the One-Action Rule and the Merger
14 Doctrine need to be reviewed and considered.

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a hearing on the motion
16 for preliminary injunction filed by Plaintiff will take place on the 16th day of April, 2020,
17 at 9:00 a.m., in Department 24 of the above-entitled Court. Notice of said hearing and
18 the time and place thereof shall be given by Plaintiffs to Defendant's counsel no later than the 10th
19 day of April, 2020, by serving upon Defendant's counsel a copy of this
20 temporary restraining order, together with copy of the moving papers. An opposition, if the opposing
21 party desires to file one, shall be filed and served on or before April 14, 2020. A reply shall
22 be filed and served on or before April 15, 2020.

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall not be
24 required to post a bond / post a bond or cash with the Court in the amount of \$1,000.00 in
25 accordance with NRC 65(c) as security for the payment of such costs and damages as may be
26 incurred or suffered by any party who is found to have been wrongfully enjoined or restrained in this
27 action.

28 ///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this temporary restraining
2 order shall remain in effect until the hearing on the motion for preliminary injunction, unless further
3 extended by order of this Court or stipulation of the parties.

4 IT IS SO ORDERED this 9th day of April, 2020.

5
6 
7 DISTRICT COURT JUDGE Time: 3:41 pm

8 Respectfully submitted,

9 **MAIER GUTIERREZ & ASSOCIATES**

10 /s/ Joseph A. Gutierrez

11 JOSEPH A. GUTIERREZ, ESQ.

12 Nevada Bar No. 9046

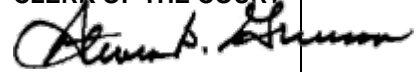
13 DANIELLE J. BARRAZA, ESQ.

14 Nevada Bar No. 13822

15 8816 Spanish Ridge Avenue

16 Las Vegas, Nevada 89148

17 *Attorneys for Plaintiff s*
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Michael R. Mushkin, Esq.
Nevada Bar No. 2421
L. Joe Coppedge, Esq.
Nevada Bar No. 4954
MUSHKIN & COPPEDGE
6070 South Eastern Ave Ste 270
Las Vegas, NV 89119
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Facsimile: 702-386-4979
Michael@mccnvlaw.com
jcoppedge@mccnvlaw.com
Attorneys for Defendant and Third-Party Plaintiffs
5148 Spanish Heights, LLC and
CBC Partners I, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Domestic
limited liability company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign limited
liability company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

5148 SPANISH HEIGHTS, LLC, a Nevada
limited liability company; and CBC PARTNERS
I, LLC, a Washington limited liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE
DEFENDANTS 1-10; and ROE DEFENDANTS
11-20,

Counterdefendants.

Case No. A-20-813439-B

Dept. No.: 11

**DEFENDANT CBC PARTNERS I,
LLC'S ANSWER TO COMPLAINT;**

and

**COUNTERCLAIMANTS' 5148
SPANISH HEIGHTS, LLC AND CBC
PARTNERS I, LLC
COUNTERCLAIM AGAINST
SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, SJC VENTURES,
LLC, SJC VENTURES HOLDING
COMPANY, LLC, AND JAY BLOOM**

1 **DEFENDANT CBC PARTNERS I, LLC’S ANSWER TO COMPLAINT**

2 Defendant, CBC Partners I, LLC (“Defendant”), by and through its Michael R. Mushkin,
3 of the law firm of Mushkin & Coppedge, for its Answer to Plaintiffs’ Complaint hereby admits,
4 denies, and affirmatively alleges as follows in response to the Complaint on file in the above-
5 entitled action:

6 **PARTIES**

7 1. In answering Paragraph 1 of the Complaint, Defendant is without knowledge
8 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
9 contained therein.

10 2. In answering Paragraph 2 of the Complaint, Defendant admits that there is a
11 property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor’s
12 Parcel Number of 163-29-615-007 and Defendant is without knowledge sufficient to form a belief
13 as to the truth of the remainder of the allegations and therefore denies the allegations contained
14 therein.

15 3. In answering Paragraph 3 of the Complaint, Defendant is without knowledge
16 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
17 contained therein.

18 4. In answering Paragraph 4 of the Complaint, Defendant denies the allegations
19 contained therein.

20 5. In answering Paragraph 5 of the Complaint, Defendant denies the allegations
21 contained therein.

22 6. In answering Paragraph 6 of the Complaint, Defendant is without knowledge
23 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
24 contained therein.

25 7. In answering Paragraph 7 of the Complaint, Defendant is without knowledge
26 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
27 contained therein.

28 8. In answering Paragraph 8 of the Complaint, Defendant admits a Deed of Sale was

1 recorded on November 3, 2017 in the Office of the Clark County Recorder and Defendant is
2 without knowledge sufficient to form a belief as to the truth of the remainder of the allegations
3 and therefore denies the allegations contained therein.

4 9. In answering Paragraph 9 of the Complaint, Defendant denies the allegations
5 contained therein.

6 10. In answering Paragraph 10 of the Complaint, Defendant admits that it was a
7 secured lender with an interest in the Property until April 1, 2020 at which time 5148 Spanish
8 Heights, LLC, a Nevada limited liability company became the holder of a Secured Promissory
9 Note dated June 22, 2012 which is secured by a Deed of Trust, Assignment of Rents, Security
10 Agreement and Fixture Filing against the Property, made as of December 17, 2014 with a First
11 Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was
12 recorded in the Property records through the Clark County Recorder's Office on December 19,
13 2016.

14 11. In answering Paragraph 11 of the Complaint, Defendant admits the allegations
15 contained therein.

16 12. In answering Paragraph 12 of the Complaint, Defendant admits the allegations
17 contained therein.

18 13. In answering Paragraph 13 of the Complaint, Defendant admits that on March 16,
19 2020 a Notice of Non-Monetary Default was sent to Plaintiffs delineating several documents to
20 be provided. Defendant denies the remainder of the allegations contained therein.

21 14. In answering Paragraph 14 of the Complaint, Defendant admits that on March 23,
22 2020, Spanish Heights Acquisition Company, LLC, sent a letter to Defendant; however,
23 Defendant denies the allegations contained in the letter.

24 15. In answering Paragraph 15 of the Complaint, Defendant denies the allegations
25 contained therein.

26 16. In answering Paragraph 16 of the Complaint, Defendant denies the allegations
27 contained therein.

28 17. In answering Paragraph 1 of the Complaint, Defendant is without knowledge

1 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
2 contained therein.

3 18. In answering Paragraph 18 of the Complaint, Defendant admits that
4 representatives of the Kenneth & Sheila Antos Living Trust and Kenneth Ms. Antos Sheila M.
5 Neumann-Antos Trust assigned any right, title, interest, and membership interest they had in
6 Spanish Heights Acquisition Company, LLC to CBC Partners, LLC. Defendant denies the
7 remainder of the allegations contained therein.

8 19. In answering Paragraph 19 of the Complaint, Defendant denies the allegations
9 contained therein.

10 20. In answering Paragraph 20 of the Complaint, Defendant denies the allegations
11 contained therein.

12 21. In answering Paragraph 21 of the Complaint, Defendant admits receiving
13 correspondence from Spanish Heights Acquisition Company, however, Defendant denies the
14 allegations contained in the correspondence.

15 22. In answering Paragraph 22 of the Complaint, Defendant denies the allegations
16 contained therein.

17 23. In answering Paragraph 23 of the Complaint, Defendant denies the allegations
18 contained therein.

19 24. In answering Paragraph 24 of the Complaint, Defendant denies the allegations
20 contained therein.

21 **FIRST CAUSE OF ACTION**

22 **(Declaratory Relief as to CBC Partners I, LLC's Obligation to Abide by Governor**
23 **Sisolak's Emergency Directive Placing a Moratorium on Foreclosure and Eviction Actions)**

24 25. In answering Paragraph 25 of the Complaint, Defendant repeats and realleges all
25 answers as though fully set forth herein.

26 26. In answering Paragraph 26 of the Complaint, Defendant denies the allegations
27 contained therein.

28 27. In answering Paragraph 27 of the Complaint, Defendant admits the allegations

1 contained therein.

2 28. In answering Paragraph 28 of the Complaint, Defendant is without knowledge
3 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
4 contained therein.

5 29. In answering Paragraph 29 of the Complaint, Defendant denies the allegations
6 contained therein.

7 30. In answering Paragraph 30 of the Complaint, Defendant is without knowledge
8 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
9 contained therein.

10 31. In answering Paragraph 31 of the Complaint, Defendant is without knowledge
11 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
12 contained therein.

13 32. In answering Paragraph 32 of the Complaint, Defendant denies the allegations
14 contained therein.

15 **SECOND CAUSE OF ACTION**

16 **(Declaratory Relief Regarding the Application of the One Action Rule)**

17 33. In answering Paragraph 33 of the Complaint, Defendant repeats and realleges all
18 answers as though fully set forth herein.

19 34. In answering Paragraph 34 of the Complaint, Defendant denies the allegations
20 contained therein.

21 35. In answering Paragraph 35 of the Complaint, Defendant admits the allegations
22 contained therein.

23 36. In answering Paragraph 36 of the Complaint, Defendant is without knowledge
24 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
25 contained therein.

26 37. In answering Paragraph 37 of the Complaint, Defendant is without knowledge
27 sufficient to form a belief as to the truth of the allegations and therefore denies the allegations
28 contained therein.

38. In answering Paragraph 38 of the Complaint, Defendant denies the allegations contained therein.

39. In answering Paragraph 39 of the Complaint, Defendant denies the allegations contained therein.

THIRD CAUSE OF ACTION

(Declaratory Relief Regarding the Applicability of the Doctrine of Merger)

40. In answering Paragraph 40 of the Complaint, Defendant repeats and realleges all answers as though fully set forth herein.

41. In answering Paragraph 41 of the Complaint, Defendant denies the allegations contained therein.

42. In answering Paragraph 42 of the Complaint, Defendant admits the allegations contained therein.

43. In answering Paragraph 43 of the Complaint, Defendant is without knowledge sufficient to form a belief as to the truth of the allegations and therefore denies the allegations contained therein.

44. In answering Paragraph 44 of the Complaint, Defendant is without knowledge sufficient to form a belief as to the truth of the allegations and therefore denies the allegations contained therein.

45. In answering Paragraph 45 of the Complaint, Defendant denies the allegations contained therein.

46. In answering Paragraph 46 of the Complaint, Defendant denies the allegations contained therein.

FOURTH CAUSE OF ACTION

(Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction)

47. In answering Paragraph 47 of the Complaint, Defendant repeats and realleges all answers as though fully set forth herein.

48. In answering Paragraph 48 of the Complaint, Defendant denies the allegations contained therein.

49. In answering Paragraph 49 of the Complaint, Defendant denies the allegations contained therein.

50. In answering Paragraph 50 of the Complaint, Defendant denies the allegations contained therein.

51. In answering Paragraph 51 of the Complaint, Defendant denies the allegations contained therein.

52. In answering Paragraph 52 of the Complaint, Defendant denies the allegations contained therein.

53. In answering Paragraph 53 of the Complaint, Defendant denies the allegations contained therein.

AFFIRMATIVE DEFENSES

1. Defendant denies each and every allegation contained in the Complaint not otherwise specifically admitted or denied herein.

2. Plaintiffs have failed to state a claim against Defendant upon which relief may be granted.

3. Plaintiffs' claims are barred because the grant of relief would unjustly enrich them.

4. Plaintiff's claims are barred because they failed to satisfy a condition precedent and/or a condition subsequent.

5. Defendant's actions upon which Plaintiffs' Complaint is based were reasonable, justified, undertaken in good faith, and lawful.

6. Plaintiffs' claims against Defendant are barred as a matter of law as Plaintiffs' Complaint makes numerous blatantly false claims.

7. Plaintiffs have failed to mitigate their damages.

8. Plaintiffs' claims are barred by the doctrine of laches.

9. Plaintiffs' claims are barred by the doctrine of unclean hands.

10. Plaintiff's claims are barred by a failure of consideration.

11. Plaintiffs are estopped from asserting the claims set forth in the Complaint because of improper conduct, acts, or omissions.

1 12. Plaintiffs' claims are barred by lack of authority.

2 13. Plaintiffs' claims are barred because Plaintiffs did not suffer any damages and, to
3 the extent Plaintiffs have suffered any losses, they are speculative and vague.

4 14. Defendant has incurred attorneys' fees and costs in the defense of this action and
5 is entitled to full reimbursement thereof.

6 15. Defendant hereby incorporates those affirmative defenses enumerated in NRCP 8
7 as if fully set forth herein. Such defenses are herein incorporated by reference for the specific
8 purpose of not waiving any such defense. In the event further investigation or discovery reveals
9 the applicability of any such defenses, Defendant reserves the right to seek leave of the Court to
10 amend this Answer to the Complaint and to specifically assert any such defense. Such defenses
11 are herein incorporated by reference for the specific purpose of not waiving any such defense.

12 WHEREFORE, Defendant prays for judgment as follows:

13 1) That Plaintiffs take nothing by way of their claims, and the same be dismissed with
14 prejudice;

15 2) That Defendant be awarded its attorneys' fees and costs incurred in the defense of
16 this action; and

17 3) Such other and further relief as the Court deems just and proper.

18
19
20 **COUNTERCLAIMANTS 5148 SPANISH HEIGHTS, LLC AND CBC PARTNERS I, LLC**
21 **COUNTERCLAIM AGAINST SPANISH HEIGHTS ACQUISITION COMPANY, LLC,**
22 **SJC VENTURES, LLC, SJC VENTURES HOLDING COMPANY, LLC, AND JAY**
 BLOOM

23 Counterclaimants, 5148 Spanish Heights, LLC, and CBC Partners I, LLC, allege as
24 follows:

25 **JURISDICTION AND VENUE**

26 1. Pursuant to Nevada's long arm statute codified at NRS 14.065, a Court of this
27 State may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the
28 Constitution of Nevada or the Constitution of the United States.

2. Venue is proper pursuant to Nev. Rev. Stat. § 13.040.

THE PARTIES

3. Counterclaimant, 5148 Spanish Heights, LLC is and at all relevant times a Nevada limited liability company, doing business in Clark County, Nevada.

4. Counterclaimant, CBC Partners I, LLC, is and at all relevant times a Washington limited liability company.

5. Counterdefendant Spanish Heights Acquisition Company, LLC (“SHAC”), is and at all relevant times a Nevada limited liability company.

6. Counterdefendant SJC Ventures, LLC, (“SJCv”) is and at all relevant times a Delaware limited liability company, doing business in Clark County, Nevada.

7. Counterdefendant SJC Ventures Holding Company, LLC, (“Holding”) is and at all relevant times a Delaware limited liability company;

8. Counterdefendant Jay Bloom (“Bloom”), is an individual residing in Clark County, Nevada.

9. Upon information and belief, Counterdefendant Bloom is the manager of SJCV and Holding and Holding is the manager of SHAC.

10. Plaintiff is informed and believes, that at all time herein mentioned, each of the Defendants was and are the agent, servant, representative, independent contractor, partner, joint venturer, alter ego and/or employee of each or some of the other co-defendants, and in doing those acts herein referred to, was acting within the course and scope of its authority as such agent, servant, representative, independent contractor, partner, joint venturer, alter ego, and/or employee, and with the express and/or implied approval, permission, knowledge, consent and ratification of all said co-defendants.

11. Upon information and belief, Doe Defendants 1 through 10 are individuals unknown to Plaintiff who, therefore, sue said Defendants by fictitious names who may be liable for damages with the named Defendants on the allegations set forth in this Complaint or may have received fraudulent transfers, which are avoidable pursuant to Nev. Rev. Stat. Chapter 112. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and identities

1 of the Doe Defendants when known.

2 12. Upon information and belief, Roe Defendants 11 through 20 are entities unknown
3 to Plaintiffs who, therefore, sue said Defendants by fictitious names which may be liable for
4 damages with the named Defendant on the allegations set forth in this Complaint or may have
5 received fraudulent transfers, which are avoidable pursuant to Nev. Rev. State. Chapter 112.
6 Plaintiff will amend this Complaint to reflect the true names and identities of the Roe Defendants
7 when known.

8 **FACTUAL ALLEGATIONS RELATED TO ALL CLAIMS**

9 **The Initial Promissory Note**

10 13. On or about April 16, 2007 nonparties Kenneth M. Antos and Sheila M. Neumann-
11 Antos transferred to Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth
12 and Shelia Antos Living Trust dated April 26, 2007 (“Antos”) real property located in Clark
13 County, Nevada commonly known as 5148 Spanish Heights Drive, Las Vegas, Nevada 89148
14 (the “Property”).

15 14. On or about June 22, 2012, Antos with nonparties KCI Investments, LLC a Nevada
16 limited liability company (“KCI”) entered into a Secured Promissory Note with CBC Partners I,
17 LLC, a Washington limited liability company (“CBCI”).

18 15. The June 22, 2012, Secured Promissory Note (the “Note”) was modified and
19 amended several times.

20 16. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
21 Agreement and Fixture Filing (“Deed of Trust”) was recorded against the Property in the Clark
22 County Recorder’s Office as Instrument No. 201412290002856, for the purpose of securing the
23 Note. The balance due is approximately \$5,578,459.15 (\$2,935,001.14 for principal, pre-
24 forbearance protection payments of \$1,326,744.55, interest and late charges of \$1,315,105.24 and
25 interest accrued at the rate of 20% in the amount of \$1,608.22 per day from April 1, 2020, Exhibit
26 A-0003-004).

27 17. This Deed of Trust is subordinate to two (2) additional Deeds of Trust recorded
28 against the Property. The First Mortgage to City National is in the principal amount of

1 \$3,240,000.00 with monthly payment of \$19,181.07. The Second Mortgage to Northern Trust
2 Bank is in the principal amount of \$599,000.00 with monthly payments of \$3,034.00.

3 18. The Deed of Trust was subsequently modified on July 22, 2015 and on December
4 19, 2016 as recorded in the Clark County Recorder's Office Instrument No.'s 201507220001146
5 and 201612190002739 respectively.

6 **The Forbearance Agreement**

7 19. On or about September 27, 2017, Antos, SHAC and Counterdefendant SJC
8 Ventures, LLC ("SJCVC") entered into a Forbearance Agreement of the Note, acknowledging
9 default and affirming CBCI has fully performed.

10 20. As part of the Forbearance Agreement Antos conveyed the Property to SHAC and
11 SHAC leased the property to SJCVC.

12 21. As part of the Forbearance Agreement SHAC would lease the Property to SJCVC
13 the lease contained a Consent to Lease between SHAC and CBCI.

14 22. Paragraph 2 of the Consent to Lease states: "In the event CBCI... or otherwise
15 exercises its rights under the Forbearance Agreement, CBCI may terminate the Lease."

16 23. Pursuant to the terms of the Forbearance Agreement SHAC was to make certain
17 payments to CBCI and other parties. In addition, a balloon payment of the total amount owing
18 was due on August 31, 2019.

19 24. As part of the Forbearance Agreement there were certain requirements of SHAC
20 attached as Exhibit B to the Forbearance Agreement. Among the certain requirements was the
21 understanding that the First Lien holder would pay the real property taxes, that CBCI would pay
22 the 1st and 2nd Mortgage payments to prevent default, that SHAC would make certain repairs and
23 improvements to the Property in approximately the amount of \$100,000.00, SHAC would deposit
24 \$150,000.00 with Bank of America and replenish the account and provide CBCI with an Account
25 Control Agreement; SHAC would maintain the Property, and SHAC would pay for a customary
26 homeowner's insurance policy and all Homeowner's Association dues.

27 **The Pledge Agreement**

28 25. On or about August 4, 2017, SHAC was organized with the initial members being

1 SJCVC, nonparty CBC Partners, LLC, and Antos.

2 26. On or about August 9, 2017 nonparty CBC Partners resigned as a member of
3 SHAC.

4 27. In addition to the certain requirements of the Forbearance Agreement there was
5 certain pledged collateral. Among the pledged collateral Antos and SJCVC pledged 100% of the
6 membership interest in SHAC, the Pledge Agreement.

7 28. The Pledge Agreement was between Antos and SJCVC as Pledgors and CBCI as
8 the Secured Party and was dated September 27, 2017.

9 29. Pursuant to the Pledge Agreement, Antos and SJCVC and pledged all right, title and
10 interest in and to 100% of their membership inters of SHAC to CBCI.

11 30. In addition to pledging membership interest the Pledgors agreed to not “sell, assign
12 (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to,
13 any of the Pledged Collateral...”

14 **SHAC’s Operating Agreement**

15 31. On or about August 9, 2017 CBC Partners resigned as a member of SHAC.

16 32. On or about August 10, 2017 Holdings signed a resignation of member of SHAC.

17 33. SHAC’s Operating Agreement was purportedly effective as of September 30,
18 2017, with the members being Holdings as Investor or Investor Member and Antos being the
19 Seller Member.

20 34. SHAC’s Operating Agreement states that the “management and control of the
21 Company shall be vested exclusively and irrevocably with the Investor Member.”

22 35. Pursuant to Exhibit B of SHAC’s Operating Agreement, Holdings commitment
23 was to be \$150,000.00.

24 Upon information and belief Holdings never made the initial commitment.

25 36. In addition, Pursuant to Paragraph 8.02(a) of SHAC’s Operating Agreement,
26 Holdings, among other things, was to

27 a. “Provide for the funding of a (sic) **annual** expense reserve account in the
28 amount in the amount of \$150,000.00 within ninety days from which non member CBCI is

1 authorized to issue payment against its obligations due from Seller Member should Investor
2 Member fail to effect such payments..." (emphasis added).

3 b. "Provide for a second funding of an annual expense reserve account one
4 year later in the **additional** amount of \$150,000.00 within ninety days of the first anniversary of
5 the signing from which non Member CBCI is authorized to issue payment against its Note should
6 Investor Member fail to effect such payments..." (emphasis added).

7 c. "Cause the Company to effect repairs to the premises to bring it back to
8 top quality standard and working repair."

9 d. "Cause the Company to pay all HOA assessments and fines."

10 e. "At the earlier of 2 years... pay off in full the CBC revicable (sic) as relates
11 to the property."

12 f. At the earlier of 2 years... either assume service of or retire either or both
13 of the 1st and 2nd position lenders."

14 37. Upon information and belief, Holdings never provided funding of the initial or
15 subsequent reserve account, repaired the property to top quality standard, paid the HOA
16 assessments and fines, pay in full CBC receivables or assumed service of the 1st and 2nd position
17 lenders.

18 **Additional Facts**

19 38. On or about December 1, 2019, CBCI, Antos, SHAC and SJCVC entered into an
20 Amendment to Forbearance Agreement, extending the date of the balloon payment to March 31,
21 2020.

22 39. On or about February 21, 2020, after receiving an offer of purchase of the
23 Promissory Note and Deed of Trust, CBCI began reviewing their documents to ensure that all the
24 obligations of SHAC and SJCVC were delineated to the purchasers of the Note.

25 40. On March 12, 2020, Spanish Hills Community Association recorded a Health and
26 Safety Lien against the Property. This Lien is for Nuisances and Hazardous Activities.

27 41. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
28 SHAC and SJCVC, wherein CBCI requested outstanding documentation from SHAC and SJCVC.

1 Among the documentation requested was:

2 a. Evidence of homeowner's insurance coverage Pursuant to Paragraph
3 1(A)(6) of Amendment to Forbearance Agreement and Related Agreements;

4 b. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
5 Forbearance Agreement;

6 c. Evidence of Bank of America account balance of \$150,000.00 pursuant to
7 Paragraph 6(c) of Exhibit B to Forbearance Agreement; Evidence of SJC Ventures filing of
8 applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph I(C)
9 of Amendment to Forbearance Agreement and Related Agreements.

10 42. On or about March 23, 2020, counsel for CBCI received a letter from counsel for
11 SHAC and Jay Bloom. This letter ignored the outstanding documents and stated there could be
12 no default until March 31, 2020.

13 43. On March 26, 2020, an inspection was performed on the Property. This inspection
14 showed that the Property had water damage and required numerous repairs.

15 44. As of March 31, 2020, the Note, real property taxes and homeowners' association
16 dues have not been paid.

17 45. On April 1, 2020, a Notice of Default and Demand for Payment was sent to SHAC
18 and SJCVC. This letter had a typo on the date of final balloon payment being due on March 31,
19 2021. This was corrected and emailed to SHAC's and SJCVC's counsel noting that the default date
20 was corrected to March 31, 2020.

21 46. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to SHAC,
22 SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring
23 the pledged collateral to CBCI's nominee CBC Partners, LLC.

24 47. On April 1, 2020, CBC Partners received the Assignment of Company and
25 Membership Interest of SHAC from Antos.

26 48. On April 1, 2020 CBCI sold its Secured Promissory Note and all related
27 Agreements to 5148 Spanish Heights, LLC.

28 49. On April 3, 2020, a Notice to Vacate was sent to SJCVC, this letter clearly indicated

1 that an accommodation would be made under these difficult times.

2 50. On April 6, 2020, counsel for CBCI sent to counsel for SJCVC and SHAC
3 delineating the timeline of the Notices and indicating that each correspondence concluded with
4 an invitation to discuss resolution of this dispute.

5 **FIRST CLAIM FOR RELIEF**

6 **Breach of Contract (Forbearance Agreement)**

7 **Against SHAC, SJCVC, and Holdings**

8 51. Counterclaimants repeats and realleges each and every allegation set forth in
9 Paragraphs 1 through 50 above and incorporates the same by reference as though fully set forth
10 herein.

11 52. Counterdefendants owe obligations to Counterclaimants under the Secured
12 Promissory Note, Forbearance Agreement along with Exhibit B to the Forbearance Agreement,
13 the Amended to Forbearance Agreement (the "Agreements") and Nevada Law.

14 53. Counterdefendants' actions are in breach of the duties owed to Counterclaimants
15 and Counterdefendants have violated the Agreements.

16 54. Counterdefendants did not compensate Counterclaimants under the terms of the
17 Agreement.

18 55. Although demand for payment has been made, Counterdefendants have failed to
19 make said payment and are indebted to Counterclaimants in an amount in excess of fifteen
20 thousand dollars (\$15,000.00), the exact amount of which will be the subject of proof at trial.

21 56. Counterclaimants are entitled to be compensated for the reasonable attorneys' fees
22 and costs incurred in the prosecution of this action.

23 **SECOND CLAIM FOR RELIEF**

24 **Breach of the Covenant of Good Faith and Fair Dealing (Forbearance Agreement)**

25 **Against SHAC, SJCVC, and Holdings**

26 57. Counterclaimant repeats and realleges each and every allegation set forth in
27 Paragraphs 1 through 56 above and incorporates the same by reference as though fully set forth
28 herein.

58. It is well settled in Nevada that every contract imposes upon the contracting parties the duty of good faith and fair dealing.

59. Counterdefendants owed Counterclaimants a duty of good faith and fair dealing.

60. Counterdefendants breached the duty of good faith and fair dealing when they performed in a manner that was unfaithful to the purpose of the Agreements and to the justified expectations of Counterclaimants by failing to satisfy the outstanding balance owed to Counterclaimants.

61. As a direct and proximate result of Counterdefendants' breach of the implied covenant of good faith and fair dealing, Counterclaimants have been damaged in an amount in excess of fifteen thousand dollars (\$15,000.00), the exact amount of which will be the subject of proof at trial.

62. Counterdefendants' breaches of their contractual duties were intentionally done to injure Counterclaimants with a willful and conscious disregard for Counterclaimants' rights, constituting oppression, fraud and/or malice.

63. Counterclaimant, in addition to compensatory damages, is entitled to recover all attorney's fees it has reasonably incurred and to recover punitive damages for the sake of example and by way of punishing Counterdefendants to deter similar conduct in the future.

THIRD CLAIM FOR RELIEF

Unlawful Detainer NRS 40.250 – Against SJCv and Bloom

64. Counterclaimants repeats and realleges each and every allegation set forth in Paragraphs 1 through 63 above and incorporates the same by reference as though fully set forth herein.

65. Pursuant to the Amendment to Forbearance Agreement all options to extend the lease have expired.

66. Pursuant to the terms of the Consent to Lease Counterdefendants have terminated the Lease Agreement.

67. SJCVC and Bloom continue to occupy the Property.

68. As a direct and proximate result of Counterdefendants' continued occupation of

1 the Property, Counterclaimants have been damaged in an amount in excess of fifteen thousand
2 dollars (\$15,000.00), the exact amount of which will be the subject of proof at trial.

3 69. Counterclaimants are entitled to be compensated for the reasonable attorneys' fees
4 and costs incurred in the prosecution of this action.

5 **FOURTH CLAIM FOR RELIEF**

6 **Fraud in the Inducement – Against SJCVC, Holding, and Bloom**

7 70. Counterclaimants repeats and realleges each and every allegation set forth in
8 Paragraphs 1 through 69 above and incorporates the same by reference as though fully set forth
9 herein.

10 71. Counterdefendants entered into the Consent to Lease and Pledge Agreement with
11 Counterclaimants with no intention of performing.

12 72. Specifically, Counterdefendants agreed to make certain repairs and improvements
13 to the Property in approximately the amount of \$100,000.00, deposit \$150,000.00 with Bank of
14 America and replenish the account and provide Counterclaimants with an Account Control
15 Agreement; maintain the Property, and would pay for a customary homeowner's insurance policy
16 and all Homeowner's Association dues; evidence of Counterclaimants filing applications for
17 mortgages to refinance the Property, among other things.

18 73. When Counterclaimants requested the proof that these requirements had been met
19 Counterdefendants did not respond with any documentation.

20 74. As a direct and proximate result of Counterdefendants' continued reckless
21 disregard of their contractual obligations, Counterclaimants have been damaged in an amount in
22 excess of fifteen thousand dollars (\$15,000.00), the exact amount of which will be the subject of
23 proof at trial.

24 75. The conduct of SJCVC, Holding and Bloom was intentionally done to injure
25 Counterclaimants with a willful and conscious disregard for Counterclaimants' rights,
26 constituting oppression, fraud and/or malice.

27 76. Counterclaimant, in addition to compensatory damages, is entitled to recover all
28 attorney's fees it has reasonably incurred and to recover punitive damages for the sake of example

1 and by way of punishing Counterclaimants SJCVC, Holding and Bloom to deter similar conduct in
2 the future.

3 **FIFTH CLAIM FOR RELIEF**

4 **Abuse of Process/Fraud Upon the Court – Against SJCVC and Bloom**

5 77. Counterclaimants repeats and realleges each and every allegation set forth in
6 Paragraphs 1 through 76 above and incorporates the same by reference as though fully set forth
7 herein.

8 78. Counterdefendants have made a material misrepresentation to the Court.

9 79. Specifically, in Bloom's Declaration filed on April 23, 2020, Paragraph 11 he
10 states: "SJC Ventures LLC had (and still has and has never pledged or transferred) a 51% interest
11 in Spanish Heights Acquisition Company, LLC."

12 80. The September 27, 2017 Pledge Agreement clearly names SJC Ventures, LLC as
13 a Pledgor.

14 81. Bloom signed the Pledge Agreement as manager.

15 82. Bloom is the manager of SJCVC not SHAC.

16 83. In reliance upon SJCVC and Bloom's false representations and as a direct and
17 proximate result of Counterdefendants wrongful conduct, Plaintiff has suffered damages in an
18 amount in an amount in excess of fifteen thousand dollars (\$15,000.00), the exact amount of
19 which will be the subject of proof at trial.

20 84. The conduct of SJCVC and Bloom was intentionally done to injure
21 Counterclaimants with a willful and conscious disregard for Counterclaimants' rights,
22 constituting oppression, fraud and/or malice.

23 85. Plaintiff, in addition to compensatory damages, is entitled to recover all attorney's
24 fees it has reasonably incurred and to recover punitive damages for the sake of example and by
25 way of punishing Counterclaimants SJCVC and Bloom to deter similar conduct in the future.

26 **SIXTH CLAIM FOR RELIEF**

27 **Breach of Fiduciary Duty – Against SJCVC, Holdings, and Bloom**

28 86. Counterclaimants repeats and realleges each and every allegation set forth in

1 Paragraphs 1 through 85 above and incorporates the same by reference as though fully set forth
2 herein.

3 87. By virtue of the agreements between the parties and Counterdefendants
4 representations to Counterclaimants, Counterdefendants entered a special relationship with
5 Counterclaimants, whereby, among other things, Counterdefendants were bound to act for the
6 benefit of Counterclaimants.

7 88. Such relationship imposed a fiduciary duty upon Counterdefendants of the utmost
8 good faith.

9 89. By virtue of Counterdefendants' conduct with respect to the Counterclaimants,
10 including but not limited to falsely representing that it would: a) Provide an expense reserve
11 account; b) Provide an additional expense reserve account; c) repair the Property; d) pay all HOA
12 assessments and fines; d) assume service of or retire the 1st and 2nd position mortgages; and e)
13 payoff CBC.

14 90. Counterdefendants have breached and/or conspired to breach the fiduciary duties
15 it owed to Counterclaimants.

16 91. As a direct and proximate result of the conduct of Counterdefendants,
17 Counterclaimants have suffered damages in an amount more than \$15,000.00.

18 92. Counterdefendants' breaches of their fiduciary duties were intentionally done to
19 injure Counterclaimants with a willful and conscious disregard for Counterclaimants' rights,
20 constituting oppression, fraud and/or malice.

21 93. Counterclaimant, in addition to compensatory damages, is entitled to recover all
22 attorney's fees it has reasonably incurred and to recover punitive damages for the sake of example
23 and by way of punishing Counterdefendants to deter similar conduct in the future.

24 **SEVENTH CLAIM FOR RELIEF**

25 **Breach of Contract (Operating Agreement)**

26 **SJCV, Holdings, and Bloom**

27 94. Counterclaimants repeats and realleges each and every allegation set forth in
28 Paragraphs 1 through 93 above and incorporates the same by reference as though fully set forth

1 herein.

2 95. Counterdefendants owe obligations to Counterclaimants under the Operating
3 Agreement of SHAC and Nevada Law.

4 96. Counterdefendants' actions are in breach of the duties owed to Counterclaimants
5 and Counterdefendants have violated the Agreements.

6 97. Counterdefendants did not compensate Counterclaimants under the terms of the
7 Agreement.

8 98. Although demand for payment has been made, Counterdefendants have failed to,
9 among other breaches, make said payment and are indebted to Counterclaimants in an amount in
10 excess of fifteen thousand dollars (\$15,000.00), the exact amount of which will be the subject of
11 proof at trial.

12 99. Counterclaimants are entitled to be compensated for the reasonable attorneys' fees
13 and costs incurred in the prosecution of this action.

14 **EIGHTH CLAIM FOR RELIEF**

15 **Breach of Covenant of Good Faith and Fair Dealing (Operating Agreement)**

16 **SJCV, Holdings, and Bloom**

17 100. Counterclaimants repeats and realleges each and every allegation set forth in
18 Paragraphs 1 through 99 above and incorporates the same by reference as though fully set forth
19 herein.

20 101. It is well settled in Nevada that every contract imposes upon the contracting parties
21 the duty of good faith and fair dealing.

22 102. Counterdefendants owed Counterclaimants a duty of good faith and fair dealing.

23 103. Counterdefendants breached the duty of good faith and fair dealing when they
24 performed in a manner that was unfaithful to the purpose of the Operating Agreement of SHAC
25 and to the justified expectations of Counterclaimants by failing to comply with the terms in the
26 Operating Agreement.

27 104. As a direct and proximate result of Counterdefendants' breach of the implied
28 covenant of good faith and fair dealing, Counterclaimants have been damaged in an amount in

1 excess of fifteen thousand dollars (\$15,000.00), the exact amount of which will be the subject of
2 proof at trial.

3 105. Counterdefendants' breaches of their duties were intentionally done to injure
4 Counterclaimants with a willful and conscious disregard for Counterclaimants' rights,
5 constituting oppression, fraud and/or malice.

6 106. Counterclaimant, in addition to compensatory damages, is entitled to recover all
7 attorney's fees it has reasonably incurred and to recover punitive damages for the sake of example
8 and by way of punishing Counterdefendants to deter similar conduct in the future.

9 **NINTH CLAIM FOR RELIEF**

10 **Breach of Contract (Pledge Agreement)**

11 **SJCV, Holdings, and Bloom**

12 107. Counterclaimants repeats and realleges each and every allegation set forth in
13 Paragraphs 1 through 106 above and incorporates the same by reference as though fully set forth
14 herein.

15 108. Counterdefendants owe obligations to Counterclaimants under the Pledge
16 Agreement and Nevada Law.

17 109. Counterdefendants' actions are in breach of the duties owed to Counterclaimants
18 and Counterdefendants have violated the Agreements.

19 110. Although demand for performance has been made, Counterdefendants have failed
20 to perform and are indebted to Counterclaimants in an amount in excess of fifteen thousand
21 dollars (\$15,000.00), the exact amount of which will be the subject of proof at trial.

22 111. Counterclaimants are entitled to be compensated for the reasonable attorneys' fees
23 and costs incurred in the prosecution of this action.

24 **TENTH CLAIM FOR RELIEF**

25 **Breach of Covenant of Good Faith and Fair Dealing (Pledge Agreement)**

26 **SJCV, Holdings, and Bloom**

27 112. Counterclaimants repeats and realleges each and every allegation set forth in
28 Paragraphs 1 through 111 above and incorporates the same by reference as though fully set forth

1 herein.

2 113. It is well settled in Nevada that every contract imposes upon the contracting parties
3 the duty of good faith and fair dealing.

4 114. Counterdefendants owed Counterclaimants a duty of good faith and fair dealing.

5 115. Counterdefendants breached the duty of good faith and fair dealing when they
6 performed in a manner that was unfaithful to the purpose of the Pledge Agreement and to the
7 justified expectations of Counterclaimants by failing to surrender their membership interest of
8 SHAC pursuant to the Pledge Agreement.

9 116. As a direct and proximate result of Counterdefendants' breach of the implied
10 covenant of good faith and fair dealing, Counterclaimants have been damaged in an amount in
11 excess of fifteen thousand dollars (\$15,000.00), the exact amount of which will be the subject of
12 proof at trial.

13 117. Counterdefendants' breaches of their contractual duties were intentionally done to
14 injure Counterclaimants with a willful and conscious disregard for Counterclaimants' rights,
15 constituting oppression, fraud and/or malice.

16 118. Counterclaimant, in addition to compensatory damages, is entitled to recover all
17 attorney's fees it has reasonably incurred and to recover punitive damages for the sake of example
18 and by way of punishing Counterdefendants to deter similar conduct in the future.

19 **ELEVENTH CLAIM FOR RELIEF**

20 **Unjust Enrichment – Against all Counterdefendants**

21 119. Plaintiffs hereby repeat and reallege each allegation contained in paragraphs 1
22 through 118 of this Complaint and incorporate the same herein by reference as though fully set
23 forth.

24 120. Counterdefendants have failed to perform material obligations under the Secured
25 Promissory Note, Deed of Trust, Pledge Agreement, and Consent to Lease.

26 121. As a direct and proximate result of Counterdefendants failure to perform,
27 Counterdefendants have been unjustly enriched in an amount in excess of \$15,000.00, the amount
28 to be proven at trial.

122. Plaintiff is entitled to recover its reasonable attorney's fees and costs of this action.

TWELFTH CLAIM FOR RELIEF

Declaratory Relief – Against all Counterdefendants

123. Plaintiffs hereby repeat and reallege each allegation contained in paragraphs 1 through 122 of this Complaint and incorporate the same herein by reference as though fully set forth.

124. Disputes and controversies have arisen between Counterclaimants and Counterdefendants relative to the Contracts and the Agreements.

125. NRS 30.030 provides that "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

126. Based upon the language of NRS30.030, this Court has the power to declare the rights, status and other legal relations between Counterclaimants and Counterdefendants.

127. Plaintiff is entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

PRAYER

WHEREFORE, Counterclaimants requests that this Court enter judgment against Counterdefendants as follows:

1. That this Court award Counterclaimants damages against Counterdefendants in an amount more than \$15,000;

2. That this Court award Counterclaimants their reasonable attorney's fees and costs;

3. That this Court award Counterclaimants punitive damages from Counterdefendants in an amount sufficient to punish Counterdefendants and to make an example of Counterdefendants to deter similar conduct in the future; and

///

1 4. That Counterclaimants be awarded such other and further relief as the Court may
2 deem just and proper.


3 DATED this 27 day of April, 2020

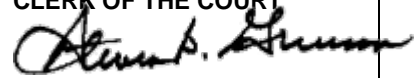
4 MUSHKIN & COPPEDGE

5
6 
7 MICHAEL R. MUSHKIN, ESQ.
8 Nevada Bar No. 2421
9 L. JOE COPPEDGE, ESQ.
10 Nevada Bar No. 4954
11 6070 South Eastern Ave Ste 270
12 Las Vegas, NV 89119

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that the foregoing **Defendant CBC Partners I, LLC'S Answer to**
15 **Complaint and Counterclaimants' 5148 Spanish Heights, LLC and CBC partners I, LLC**
16 **Counterclaim Against Spanish Heights Acquisition Company, LLC, SJC Ventures, LLC,**
17 **SJC Ventures Holding Company, LLC, and Jay Bloom** was submitted electronically for filing
18 and/or service with the Eighth Judicial District Court on this 27th day of April, 2020. Electronic
19 service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service
20 contact list:

21 
22 An Employee of
23 MUSHKIN & COPPEDGE
24
25
26
27
28



ACOM
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B
Dept. No.: 11

FIRST AMENDED COMPLAINT

EXEMPT FROM ARBITRATION:

- 1. Request for Declaratory Relief**
- 2. Action Concerning Real Property**

Plaintiffs Spanish Heights Acquisition Company, LLC, and SJC Ventures Holding Company, LLC, by and through their attorney of record, MAIER GUTIERREZ & ASSOCIATES, hereby file this First Amended Complaint. This First Amended Complaint is filed as of right, within 21 days of service of the first answering of defendant's responsive pleading. Nev. R. Civ. P. 15(a)(1)(B). In support of

1 this First Amended Complaint, Plaintiffs complain and allege against defendants as follows:

2 **PARTIES**

3 1. That at all times pertinent hereto, Plaintiff Spanish Heights Acquisition Company, LLC, is a
4 Limited Liability Company duly registered and in good standing in the State of Nevada.

5 2. That at all times pertinent hereto, Plaintiff Spanish Heights Acquisition Company, LLC owns
6 the property located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel
7 Number 163-29-615-007 ("Property").

8 3. That at all times pertinent hereto, Plaintiff SJC Ventures Holding Company, LLC (hereinafter
9 referred to as "SJC Ventures Holding, LLC") is a Limited Liability Company duly registered and in
10 good standing in the State of Delaware.

11 4. That at all times pertinent hereto, Plaintiff SJC Ventures Holding, LLC has been the sole,
12 exclusive and irrevocable Manager of Spanish Heights Acquisition Company, LLC.

13 5. That at all times pertinent hereto, Plaintiff SJC Ventures Holding, LLC has been a lawful
14 tenant of the Property pursuant to a binding lease agreement.

15 6. That at all times pertinent hereto, Defendant CBC Partners I, L LC is a foreign company doing
16 business in Clark County, State of Nevada without having registered as a foreign entity to do business
17 in Nevada.

18 7. That at all times pertinent hereto, Defendant CBC Partners, LLC is a foreign company doing
19 business in Clark County, State of Nevada without having registered as a foreign entity to do business
20 in Nevada.

21 8. That at all times pertinent hereto, Defendant 5148 Spanish Heights, LLC is a Nevada Limited
22 Liability Company doing business in Clark County, State of Nevada.

23 9. That at all times pertinent hereto, Kenneth Antos and Sheila Neumann-Antos are Trustees of
24 the Defendant Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M.
25 Neumann-Antos Trust (collectively referred to herein as the "Antos Trust"), which at all relevant
26 times conducted activities in Clark County, State of Nevada.

27 10. That at all times pertinent hereto, Defendant DACIA, LLC is a foreign Limited Liability
28 Company doing business in Clark County, State of Nevada.

11. That the following alleged incidents occurred in Clark County, Nevada.

12. The true names and capacities of Defendants DOES I through X and/or ROES I through X, whether individual, company, associate, or otherwise, are unknown to the Plaintiff at the time of filing of this Complaint, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes and therefore alleges that each of the Defendants, designated as DOES I through X and/or ROES I through X are or may be, legally responsible for the events referred to in this action, and caused damages to the Plaintiff, as herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

GENERAL ALLEGATIONS

13. As documented by a Deed recorded at the Clark County Recorder's Office on November 3, 2017, Plaintiff Spanish Heights Acquisition Company, LLC owns the residential Property at issue.

14. As documented by the Operating Agreement of Spanish Heights Acquisition Company, LLC, SJC Ventures Holding, LLC is the lawful sole, exclusive and irrevocable Manager of Spanish Heights Acquisition Company, LLC.

15. As documented by a real property lease, SJC Ventures Holding, LLC is the lawful tenant of the Property, with Plaintiff Spanish Heights Acquisition Company, LLC being the lawful Landlord.

16. Defendant CBC Partners I, LLC claims to be the issuer of a Third Position Secured Promissory Note ("Note") dated June 22, 2012, which is purportedly secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing against the Property, made as of December 17, 2014. Subsequently, a First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing was recorded in the Property records through the Clark County Recorder's Office on December 19, 2016. Thus, defendant CBC Partners I, LLC purports to have been a secured lender with a subordinated interest in the Property.

17. Defendant CBC Partners I, LLC also purports to have secured certain remedies in the event of a default on the Note through a Forbearance Agreement dated September 27, 2017, and an Amendment to Forbearance Agreement dated December 1, 2019 (collectively the "Forbearance Agreement") which extended Spanish Heights Acquisition Company, LLC's purported obligations

1 under the Note through March 31, 2020.

2 18. One of the purported remedies under the Forbearance Agreement that Defendant CBC Partners
3 I, LLC claims to have is a right to exercise a pledged membership interest in Spanish Heights
4 Acquisition Company, LLC, through a separately-executed Pledge Agreement dated September 27,
5 2017 (“Pledge Agreement”).

6 19. CBC Partners argues that it has the right to exercise this pledge of Spanish Heights Acquisition
7 Company, LLC’s Membership Interest against both Antos Trust’s 49% interest and SJC Ventures
8 Holding, LLC’s 51% Membership Interest.

9 20. SJC Ventures Holding, LLC argues that, as a non-party and non-signatory to the “Antos”
10 Pledge Agreement, CBC Partners I, LLC only has a remedy against the Antos’ 49% Membership
11 interest in Spanish Heights Acquisition Company, LLC and in no way has a pledge of non-party, non-
12 signatory SJC Ventures Holding, LLC’s 51% Membership Interest in Spanish Heights Acquisition
13 Company, LLC.

14 21. A separate purported remedy under the Forbearance Agreement that Defendant CBC Partners
15 I, LLC claims to have is a right to exercise a security interest in SJC Ventures Holding’s beneficial
16 interest in any proceeds realized by way of collections activity relating to a judgment obtained by SJC,
17 through a separately-executed “SJC” Security Agreement dated September 27, 2017 (“Security
18 Agreement”).

19 22. At the time the Forbearance Agreement was executed, the Antos Trust owned a 49%
20 membership interest in Spanish Heights Acquisition Company, LLC, and SJC Ventures Holding, LLC
21 owned a 51% membership interest in Spanish Heights Acquisition Company, LLC.

22 23. Although the Antos Trust is a signatory to the “Antos” Pledge Agreement, SJC Ventures
23 Holding, LLC is not a signatory to the “Antos” Pledge Agreement.

24 24. Although SJC Ventures Holding, LLC is a signatory to the “SJC” Security Agreement, the
25 Antos Trust is not a signatory to the “SJC” Security Agreement.

26 25. SJC Ventures Holding maintains that it was bound (until the Note’s extinguishment) by the
27 “SJC” Security Agreement to which it is signatory and not bound by the “Antos” Pledge Agreement
28 to which it is not signatory.

1 26. The Forbearance Agreement also indicates that “[d]uring the Forbearance Period, [CBC
2 Partners I, LLC] shall continue to make payments to the first mortgagee and second mortgagee to
3 prevent the default of the 1st Mortgage and the 2nd Mortgage.”

4 27. Upon information and belief, starting on or around January 2020, CBC Partners I, LLC
5 breached the Forbearance Agreement by failing to continue to make payments to the first and second
6 mortgagee.

7 28. On March 16, 2020, defendant CBC Partners I, LLC sent Spanish Heights Acquisition
8 Company, LLC a “Notice of Default” correspondence which prematurely claimed that there was a
9 default under the Forbearance Agreement even though the only performance deadline set forth in the
10 Forbearance Agreement was March 31, 2020.

11 29. On March 23, 2020, Spanish Heights Acquisition Company, LLC sent correspondence to
12 defendant CBC Partners I, LLC which reminded defendant CBC Partners I, LLC that the forbearance
13 period set forth in the Forbearance Agreement was unambiguously extended until March 31, 2020,
14 and CBC Partners I, LLC has no right to unilaterally modify the terms of the Forbearance Agreement
15 to manufacture an earlier performance deadline.

16 30. Defendant CBC Partners I, LLC acknowledged its mistake by issuing an “Amended Notice of
17 Default” on April 1, 2020, admittedly “correcting the default date to March 31, 2020.”

18 31. However, the Amended Notice of Default violated Nevada Governor Sisolak’s Declaration of
19 Emergency Directive 008, issued on March 29, 2020 in response to the coronavirus/COVID-19
20 pandemic, which states as follows:

21 No lockout, **notice to vacate**, notice to pay or quit, eviction, **foreclosure action, or**
22 **other proceeding involving residential or commercial real estate based upon a**
23 **tenant or mortgagee's default of any contractual obligations imposed by a rental**
24 **agreement or mortgage** may be initiated under any provision of Nevada law effective
25 March 29, 2020, at 11:59 p.m., until the state of emergency under the March 12, 2020
26 Declaration of Emergency terminates, expires, or this Directive is rescinded by order
27 of the Governor. This provision does not prohibit the eviction of persons who seriously
28 endanger the public or other residents, engage in criminal activity, or cause significant

1 damage to the property. (Emphasis added).

2 32. Through correspondence dated April 1, 2020, Defendant CBC Partners I, LLC elected to select
3 its claimed remedy by seeking to exercise its purported rights under the Pledge Agreement by having
4 the Antos Trust's pledged collateral shares of Spanish Heights Acquisition Company, LLC transferred
5 to CBC Partners I, LLC's nominee, CBC Partners, LLC.

6 33. Upon information and belief, on April 1, 2020, representatives of the Antos Trust assigned
7 any right, title, interest, and membership interest they had in Spanish Heights Acquisition Company,
8 LLC to CBC Partners, LLC, thus effectuating defendant CBC Partners I, LLC's remedy selection.
9 Accordingly, CBC Partners I, LLC is purporting to be a part-owner of the Property, by means of
10 purportedly owning the Antos' 49% membership interest in Spanish Heights Acquisition Company,
11 LLC, owner of the real property.

12 34. Upon information and belief, upon assigning its membership interest in Spanish Heights
13 Acquisition Company, LLC to CBC Partners I, LLC, the Antos Trust never signed any agreement
14 which waived or excluded the applicability of the Merger Doctrine.

15 35. Upon information and belief, no other consideration was conferred upon the Antos Trust in
16 consideration of its surrender of its alternative collateral Membership Interest, other than the
17 extinguishment of the CBC Partners 1, LLC Note in consideration of its tender of its 49% equitable
18 interest in Spanish Heights Acquisition Company, LLC, the entity holding ownership of the real
19 property collateral for that Note.

20 36. Upon information and belief, CBC Partners I, LLC purports to have sold its, at the time
21 extinguished but, claimed Note sometime between April 8, 2020 and April 10, 2020 to defendant 5148
22 Spanish Heights, LLC.

23 37. On April 3, 2020, defendant CBC Partners I, LLC issued a "Notice to Vacate" to SJC Ventures,
24 LLC, the tenant of the Property. Defendant CBC Partners I, LLC issued this "Notice to Vacate" on
25 April 3, 2020, even though:

26 a) Section 13(a) of the Pledge Agreement provides for a cure period of fifteen (15) days from
27 the date of written notice of default;

28 b) There exists a valid lease agreement with SJC Ventures, acknowledged twice by CBC

Partners; and

- c) Four days prior, Governor Sisolak's March 29, 2020 Emergency Directive placed a moratorium on both foreclosure and eviction actions, which specifically precluded by name ALL "Notices to Vacate."

38. Upon information and belief, defendant CBC Partners I, LLC is attempting to exercise both legal title (ownership of the Property) and equitable title (lien encumbering the Property), in violation of the Merger Doctrine.

39. On April 8, 2020, CBC Partners I, LLC's counsel sent correspondence claiming that "the default notice will not be withdrawn and the foreclosure process will continue." This correspondence was sent even though CBC Partners I, LLC simultaneously argues to this Court that neither notice constitutes an Eviction or Foreclosure proceeding.

40. Further, CBC Partners I, LLC seeks to avoid injunctive relief to prevent foreclosure while simultaneously arguing it is not pursuing foreclosure or eviction activity.

41. Additionally, CBC Partners I, LLC seeks to argue that its foreclosure and eviction actions are acceptable under the Governor's exemption to the moratorium on foreclosures and evictions, while simultaneously arguing it is not pursuing foreclosure or eviction activity.

42. On April 4, 2020, April 6, 2020, and April 7, 2020, Spanish Heights Acquisition Company (at the direction of its majority owner and sole, exclusive and irrevocable Manager) sent correspondence to defendant CBC Partners I, LLC, demanding that defendant CBC Partners I, LLC rescind its illegal foreclosure and eviction action notices that were issued after Governor Sisolak's Emergency Directive placing a moratorium on foreclosure actions.

43. CBC Partners I, LLC simultaneously refused to rescind its illegal foreclosure and eviction action notices and also denied its actions were foreclosure and eviction actions, thus prompting this litigation.

44. Upon information and belief, defendant CBC Partners I, LLC contends it is exempt from following Governor Sisolak's Emergency Directive 008 because it alleges certain activities purportedly exist which CBC Partners asserts are qualifying as exemptions from the Governor's Emergency Executive Order as the purported activities pose imminent threat to the community or are

1 illegal.

2 45. CBC Partners 1, LLC relies on alleged “health and safety” violations from July 2019 assessed
3 by the Home Owners Association as the basis for its claimed exceptions from the Governor’s
4 moratorium on foreclosure and eviction activities.

5 46. Among the “health and safety” items cited by the HOA are:

- 6 a. Failure to provide a guest list 10 days prior to an event in 2019
- 7 b. Utilizing a resident transponder to provide access to residents and guests unlawfully
8 denied access to the real property in 2019, and
- 9 c. Allegations that fireworks were set off from and an incendiary device was used at the
10 Property in July of 2019.

11 47. All violations are presently disputed and are before the Nevada Real Estate Division.

12 48. In reality, the property owned by defendant DACIA, LLC (located at 5212 Spanish Heights
13 Drive) which is in the same neighborhood as the Property at issue, set off fireworks and was the
14 location of the use of the incendiary device in July of 2019.

15 49. To date, defendant CBC Partners I, LLC is attempting to violate the Merger Doctrine by
16 attempting to hold both legal title and equitable title in the Property, thus prompting this litigation.
17 Absent the application of de facto Merger, Defendant purports to be both Lender and Borrower for
18 the same real property collateral on the same Note.

19 50. To date, defendant CBC Partners 1, LLC is attempting to violate the One Action Rule, having
20 elected its remedy to accept equity in the entity pledged as additional collateral, it is now barred from
21 further selecting a foreclosure remedy against the real property as it indicated in its April 8, 2020
22 correspondence is its intention to do so under its former note (again extinguished under the de facto
23 merger).

24 **FIRST CAUSE OF ACTION**

25 **(Declaratory Relief as to the Obligation to Abide by Governor Sisolak’s Emergency Directive** 26 **Placing a Moratorium on Foreclosure and Eviction Actions) – Against All Defendants**

27 51. Plaintiffs incorporate by reference paragraphs 1 through 50 as though fully set forth herein.

28 52. A true and justiciable controversy exists between the Plaintiffs and the Defendants concerning

1 the rights, status, and legal relations of the parties to this action.

2 53. The Plaintiffs' interests are adverse to those of the Defendants.

3 54. The Plaintiffs' rights, status, and legal relations in relation to the Defendants are affected by
4 statute, including NRS 107.

5 55. The Plaintiffs' rights, status, and legal relations in relation to the Defendants are also effected
6 by the State of Nevada, Executive Department, Declaration of Emergency Directive 008, dated March
7 29, 2020, which placed a moratorium on foreclosure actions as it relates to residential or commercial
8 real estate.

9 56. This matter is filed in part under the Uniform Declaratory Judgment Act.

10 57. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
11 and legal relations at issue in this matter and a declaration that the State of Nevada, Executive
12 Department, Declaration of Emergency Directive 008, dated March 29, 2020, which placed a
13 moratorium on foreclosure actions, is enforceable by the Plaintiffs against the Defendants.

14 58. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
15 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
16 attorneys' fees and interest thereon.

17 **SECOND CAUSE OF ACTION**

18 **(Declaratory Relief Regarding CBC Partners 1, LLC's Lack Of Rights To Foreclose Or Evict**
19 **As It Admits It Sold And No Longer Possesses The Purported Note)**

20 **– Against CBC Partners I, LLC**

21 59. Plaintiffs incorporate by reference paragraphs 1 through 58 as though fully set forth herein.

22 60. A true and justiciable controversy exists between the Plaintiffs and the Defendant concerning
23 the rights, status, and legal relations of the parties to this action.

24 61. The Plaintiffs' interests are adverse to those of the Defendant.

25 62. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are affected by
26 statute, including NRS 107.

27 63. CBC Partners 1, LLC acknowledges that it no longer possesses or has any interest in the
28 underlying Third Position Note.

1 64. As such, CBC Partners 1, LLC has no authority to conduct any foreclosure or eviction action
2 under NRS 107.

3 65. This matter is filed in part under the Uniform Declaratory Judgment Act.

4 66. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
5 and legal relations at issue in this matter and a declaration that CBC Partners 1, LLC admits that, as
6 of at least April 8, 2020, it does not maintain any secured interest in the property as a lender and as
7 such has no authority to continue any foreclosure or eviction action, and is enforceable by the Plaintiffs
8 against the Defendant.

9 67. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
10 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
11 attorneys' fees and interest thereon.

12 **THIRD CAUSE OF ACTION**

13 **(Declaratory Relief Regarding the Application of the One Action Rule) – Against CBC**

14 **Partners I, LLC and 5148 Spanish Heights, LLC**

15 68. Plaintiffs incorporate by reference paragraphs 1 through 67 as though fully set forth herein.

16 69. A true and justiciable controversy exists between the Plaintiffs and the Defendants concerning
17 the rights, status, and legal relations of the parties to this action.

18 70. The Plaintiffs' interests are adverse to those of the Defendants CBC Partners I, LLC and 5148
19 Spanish Heights, LLC.

20 71. The Plaintiffs' rights, status, and legal relations in relation to the Defendants are affected by
21 statute, including NRS 107.

22 72. This matter is filed in part under the Uniform Declaratory Judgment Act.

23 73. Pursuant to NRS 40.430 and 30.040, the Plaintiffs are entitled to declaratory relief as to rights,
24 statutes, and legal relations at issue in this matter and a declaration that the defendants CBC Partners
25 I, LLC and 5148 Spanish Heights, LLC are precluded from pursuing any foreclosure action against
26 the subject real property pursuant to the One Action Rule.

27 74. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
28 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all

1 attorneys' fees and interest thereon.

2 **FOURTH CAUSE OF ACTION**

3 **(Declaratory Relief Regarding the Applicability of the Doctrine of Merger) – Against**
4 **CBC Partners I, LLC and 5148 Spanish Heights, LLC**

5 75. Plaintiffs incorporate by reference paragraphs 1 through 74 as though fully set forth herein.

6 76. A true and justiciable controversy exists between the Plaintiffs and the Defendants concerning
7 the rights, status, and legal relations of the parties to this action.

8 77. The Plaintiffs' interests are adverse to those of the Defendants CBC Partners I, LLC and 5148
9 Spanish Heights, LLC.

10 78. The Plaintiffs' rights, status, and legal relations in relation to the Defendants are affected by
11 statute, including NRS 107.

12 79. This matter is filed in part under the Uniform Declaratory Judgment Act.

13 80. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
14 and legal relations at issue in this matter and a declaration that the purported Note that defendants
15 CBC Partners I, LLC and 5148 Spanish Heights, LLC claim to be secured by a Deed of Trust recorded
16 against the Property has been extinguished via the Merger Doctrine in light of CBC Partners I, LLC
17 attempting to exercise purported rights to become legal owner of the Property.

18 81. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
19 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
20 attorneys' fees and interest thereon.

21 **FIFTH CAUSE OF ACTION**

22 **(Declaratory Relief Regarding the Status of SJC Ventures Holding, LLC as Sole and**
23 **Exclusive Manager of Spanish Heights Acquisition Company, LLC)**

24 **– Against All Defendants**

25 82. Plaintiffs incorporate by reference paragraphs 1 through 81 as though fully set forth herein.

26 83. A true and justiciable controversy exists between the Plaintiffs and the Defendant concerning
27 the rights, status, and legal relations of the parties to this action.

28 84. The Plaintiffs' interests are adverse to those of the Defendants.

1 85. This matter is filed in part under the Uniform Declaratory Judgment Act.

2 86. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
3 and legal relations at issue in this matter and a declaration that SJC Ventures Holding, LLC is named
4 the Sole and Exclusive Irrevocable Manager of Spanish Heights Acquisition Company, LLC under
5 such company's Operating Agreement.

6 87. No event has occurred which would abdicate SJC Ventures Holding, LLC's position as sole,
7 irrevocable and exclusive Manager of Spanish Heights Acquisition Company, LLC.

8 88. As such, SJC Ventures Holding, LLC is recognized and continues to be the Sole and Exclusive
9 Irrevocable Manager of Spanish Heights Acquisition Company, LLC under such company's
10 Operating Agreement

11 89. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit. Therefore,
12 Plaintiffs are seeking recovery of any and all expenses incurred including, without limitation, all
13 attorneys' fees and interest thereon.

14 **SIXTH CAUSE OF ACTION**

15 **(Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction) –**
16 **Against CBC Partners I, LLC and 5148 Spanish Heights, LLC**

17 90. Plaintiffs incorporate by reference paragraphs 1 through 89 as though fully set forth herein.

18 91. Plaintiffs have multiple justiciable controversies with Defendants CBC Partners I, LLC. and
19 5148 Spanish Heights, LLC.

20 92. On the basis of the facts described herein, Plaintiffs have a reasonable probability of success
21 on the merits of their claims and have no other adequate remedies of law.

22 93. Plaintiffs have a probable right to relief and will suffer immediate, severe, and irreparable
23 injury unless the Defendants, their respective agents, servants, employers, principals, assignees,
24 transferees, and/or beneficiaries, and all those in active concert and participation with Defendants are
25 immediately restrained and enjoined from: (1) engaging in any further foreclosure activities against
26 the Property or eviction activity against the tenants; (2) proceeding on the current Notices of Default
27 and/or Notice to Vacate (including the tolling of any time under the Notice or Agreements); and (3)
28 attempting to foreclose on the Property through an extinguished purported interest.

1 94. The actions of Defendant CBC Partners I, LLC described herein have resulted in immediate
2 harm to, among other things, Plaintiffs' Property interests and tenant rights.

3 95. Plaintiffs are entitled to injunctive relief to end such actions and prevent further harm.

4 96. Plaintiffs have been required to retain the services of an attorney to file and prosecute this
5 action and have thereby been damaged. Accordingly, Plaintiffs seek an award of reasonable attorneys'
6 fees and costs incurred in this action.

7 **SEVENTH CAUSE OF ACTION**

8 **(Declaratory Relief Regarding the Antos Trust's Purported Assignment of Membership** 9 **Interest in Spanish Heights Acquisition Company, LLC) – Against the Antos Trust**

10 97. Plaintiffs incorporate by reference paragraphs 1 through 96 as though fully set forth herein.

11 98. A true and justiciable controversy exists between the Plaintiffs and the Defendant Antos Trust
12 concerning the rights, status, and legal relations of the parties to this action.

13 99. The Plaintiffs' interests are adverse to those of the Defendant the Antos Trust.

14 100. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are affected by
15 statute, including NRS 107.

16 101. This matter is filed in part under the Uniform Declaratory Judgment Act.

17 102. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
18 and legal relations at issue in this matter and a declaration that upon purportedly assigning its
19 membership interest in Spanish Heights Acquisition Company, LLC to CBC Partners I, LLC,
20 defendant the Antos Trust did not agree to waive or exclude the applicability of the Merger Doctrine,
21 and further, the Antos Trust was provided no consideration for their equitable interest in the property
22 other than the extinguishment of the Note under the De Facto Merger occurring on April 1, 2020.

23 103. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit.
24 Therefore, Plaintiffs are seeking recovery of any and all expenses incurred including, without
25 limitation, all attorneys' fees and interest thereon.

26 **EIGHTH CAUSE OF ACTION**

27 **(Breach of Contract as to the Forbearance Agreement) – Against CBC Partners I, LLC**

28 104. Plaintiffs incorporate by reference paragraphs 1 through 103 as though fully set forth herein.

105. On or around September 27, 2017, defendant CBC Partners I, LLC executed the Forbearance Agreement, which upon information and belief is a valid contract.

106. On or around December 1, 2019, defendant CBC Partners I, LLC executed the Amendment to Forbearance Agreement and Related Agreements, which served as an amendment to the Forbearance Agreement and which extended the forbearance period through March 31, 2020.

107. Pursuant to the plain language of the Forbearance Agreement: “[d]uring the Forbearance Period, [CBC Partners I, LLC] shall continue to make payments to the first mortgagee and second mortgagee to prevent the default of the 1st Mortgage and the 2nd Mortgage.”

108. Upon information and belief, starting on or around January 2020, CBC Partners I, LLC materially breached the Forbearance Agreement by failing to continue to make payments to the first and second mortgagee.

109. CBC Partners I, LLC also materially breached the Forbearance Agreement by issuing a “Notice of Default” correspondence on March 16, 2020 which prematurely claimed that there was a default under the Forbearance Agreement even though the only performance deadline set forth in the Forbearance Agreement was March 31, 2020.

110. CBC Partners I, LLC’s material breach discharged the non-breaching party’s duty to perform, thus Plaintiffs had no further duty to perform under the Forbearance Agreement.

111. As a direct and proximate result of CBC Partners I, LLC’s material breach of contract, to the extent that Plaintiffs’ damages can be calculated with certainty, Plaintiffs have been and will be damaged in an amount in excess of \$15,000.00.

112. As a direct and proximate result of the aforementioned actions and/or omissions of CBC Partners I, LLC, Plaintiffs have been required to engage the services of an attorney, incurring attorneys’ fees and costs to bring this action, and Plaintiffs are therefore entitled to reasonable attorneys’ fees and costs incurred in this action.

NINTH CAUSE OF ACTION

(Contractual Breach of the Covenant of Good Faith and Fair Dealing) – Against CBC Partners I, LLC

113. Plaintiffs incorporate by reference paragraphs 1 through 112 as though fully set forth herein.

1 114. On or around September 27, 2017, defendant CBC Partners I, LLC executed the Forbearance
2 Agreement, which upon information and belief is a valid contract.

3 115. On or around December 1, 2019, defendant CBC Partners I, LLC executed the Amendment
4 to Forbearance Agreement and Related Agreements, which served as an amendment to the
5 Forbearance Agreement and which extended the forbearance period through March 31, 2020.

6 116. Pursuant to the plain language of the Forbearance Agreement: “[d]uring the Forbearance
7 Period, [CBC Partners I, LLC] shall continue to make payments to the first mortgagee and second
8 mortgagee to prevent the default of the 1st Mortgage and the 2nd Mortgage.”

9 117. Defendant CBC Partners I, LLC owed a duty of good faith to Plaintiffs.

10 118. Plaintiffs reasonably expected that defendant CBC Partners I, LLC would fulfill its
11 responsibilities under the Forbearance Agreement by continuing to make payments to the first and
12 second mortgagee.

13 119. Upon information and belief, starting on or around January 2020, while collecting payments
14 due each month from Spanish Heights Acquisition Company, LLC, CBC Partners I, LLC, materially
15 breached the Forbearance Agreement by failing to continue to make its payments to the first and
16 second mortgagee.

17 120. CBC Partners I, LLC also materially breached the Forbearance Agreement by issuing a
18 “Notice of Default” correspondence on March 16, 2020 which prematurely claimed that there was a
19 default under the Forbearance Agreement even though the only performance deadline set forth in the
20 Forbearance Agreement was March 31, 2020.

21 121. Accordingly, Plaintiffs’ justified expectations were denied.

22 122. As a direct and proximate result of CBC Partners I, LLC’s contractual breach of the duty of
23 good faith and fair dealing, to the to the extent that Plaintiffs’ damages can be calculated with
24 certainty, Plaintiffs have been and will be damaged in an amount in excess of \$15,000.00.

25 123. As a direct and proximate result of the aforementioned actions and/or omissions of CBC
26 Partners I, LLC, Plaintiffs have been required to engage the services of an attorney, incurring
27 attorneys’ fees and costs to bring this action, and Plaintiffs are therefore entitled to reasonable
28 attorneys’ fees and costs incurred in this action.

1 **TENTH CAUSE OF ACTION**

2 **(Declaratory Relief as to Plaintiffs' Lack of Liability for Fireworks Set off And The Use Of An**
3 **Incendiary Device By a Different Property) – Against DACIA, LLC**

4 124. Plaintiffs incorporate by reference paragraphs 1 through 123 as though fully set forth herein.

5 125. A true and justiciable controversy exists between the Plaintiffs and the Defendant concerning
6 the rights, status, and legal relations of the parties to this action.

7 126. The Plaintiffs' interests are adverse to those of the Defendant DACIA, LLC.

8 127. The Plaintiffs' rights, status, and legal relations in relation to the Defendant are affected by
9 statute, including NRS 107.

10 128. This matter is filed in part under the Uniform Declaratory Judgment Act.

11 129. It is Plaintiffs' understanding that CBC Partners I, LLC contends it is exempt from following
12 Governor Sisolak's Emergency Directive 008 because it alleges fireworks were set off from and an
13 incendiary device was used at the Property in July of 2019.

14 130. In reality, the property owned by defendant DACIA, LLC, which is in the same
15 neighborhood as the Property at issue, set off fireworks and used an incendiary device in July of 2019.

16 131. Pursuant to NRS 30.040, the Plaintiffs are entitled to declaratory relief as to rights, statutes,
17 and legal relations at issue in this matter and a declaration that CBC Partners I, LLC is not entitled to
18 claim an exemption to Governor Sisolak's Emergency Directive 008 based on fireworks that were not
19 set off from or an incendiary device used at the Property but that were actually set off by property
20 owned by defendant DACIA, LLC in July of 2019 – to the extent such fireworks or incendiary device
21 even constitute the type of serious endangerment to the public or other residents or criminal activity
22 referenced in the Governor's Emergency Directive, which has not been established.

23 132. Plaintiffs have found it necessary to employ the undersigned attorney to bring suit.
24 Therefore, Plaintiffs are seeking recovery of any and all expenses incurred including, without
25 limitation, all attorneys' fees and interest thereon.

26 **ELEVENTH CAUSE OF ACTION**

27 **(Indemnity) – Against DACIA, LLC**

28 133. Plaintiffs incorporate by reference paragraphs 1 through 132 as though fully set forth herein.

1 134. Plaintiffs are informed and believe, and based thereon allege, that they are in no way
2 responsible for causing any fireworks to be set off from or the use of an incendiary device at the
3 Property in July of 2019, and that any such fireworks were set off from the property owned by DACIA,
4 LLC.

5 135. Therefore, if the Court determines that an exemption to Governor Sisolak's Emergency
6 Directive 008 exists as a result of fireworks being set off or the use of an incendiary device in July of
7 2019, then Plaintiffs are informed and believe, and on that basis allege, that the conduct, in whole or
8 in part of DACIA, LLC, as the owner of the Property that actually set off fireworks or used of an
9 incendiary device at in July 2019, contributed to the happening of the fireworks being set off or the
10 use of an incendiary device in the neighborhood.

11 136. By reason of the foregoing allegations, if the Court determines that an exemption to
12 Governor Sisolak's Emergency Directive 008 exists as a result of fireworks being set off or the use of
13 an incendiary device in July of 2019, then Plaintiffs are entitled to be indemnified by defendant
14 DACIA, LLC, for its fair share of any judgment or fines imposed rendered against Plaintiffs as a result
15 of that decision.

16 **TWELFTH CAUSE OF ACTION**

17 **(Contribution) – Against DACIA, LLC**

18 137. Plaintiffs incorporate by reference paragraphs 1 through 136 as though fully set forth herein.

19 138. A right to contribution exists “where two or more persons become jointly or severally liable
20 in tort for the same injury to [a] person ... even though judgment has not been recovered against all or
21 any of them.” NRS 17.225(1).

22 139. Plaintiffs are informed and believe, and based thereon allege, that they are in no way
23 responsible for causing any fireworks to be set off from or the use of an incendiary device at the
24 Property in July of 2019, and that any such fireworks were set off from the property owned by DACIA,
25 LLC.

26 140. Therefore, if the Court determines that an exemption to Governor Sisolak's Emergency
27 Directive 008 exists as a result of fireworks being set off or the use of an incendiary device in July of
28 2019, then Plaintiffs are informed and believe, and on that basis allege, that the conduct, in whole or

1 in part of DACIA, LLC, as the owner of the Property that actually set off fireworks or used an
2 incendiary device in July 2019, contributed to and caused the happening of the fireworks being set off
3 in or the use of an incendiary device in the neighborhood.

4 141. By reason of the foregoing allegations, if the Court determines that an exemption to
5 Governor Sisolak's Emergency Directive 008 exists as a result of fireworks being set off or the use of
6 an incendiary device in July of 2019, then Plaintiffs are entitled to a judgment, over and against
7 defendant DACIA, LLC, for its fair share of any judgment rendered against Plaintiffs as a result of
8 that decision.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

11 1. For an entry of Declaratory Judgment pursuant to NRS 107 and 30.040 that the State
12 of Nevada, Executive Department, Declaration of Emergency Directive 008, dated March 29, 2020,
13 which placed a moratorium on eviction and foreclosure actions, is enforceable by the Plaintiffs
14 against the Defendant and therefore Defendant's Notice of Default and Notice to Vacate are in
15 violation of the Governor's Executive Order 008 and are null and void ab initio;

16 2. For an entry of Declaratory Judgment pursuant to NRS 107 and 30.040 that CBC
17 Partners 1, LLC, as of at least April 8, 2020, by its own admission, is not a secured creditor against
18 the subject real property, has no basis under which it can claim rights to undertake either a non-
19 judicial foreclosure or eviction, has no basis under which it may continue any further foreclosure or
20 eviction activity and is enforceable by the Plaintiffs against the Defendant and therefore Defendant's
21 Notice of Default and Notice to Vacate are null and void ab initio;

22 3. For an entry of Declaratory Judgment pursuant to NRS 107 and 30.040 that the
23 purported Note that defendant CBC Partners I, LLC claims to be secured by a Deed of Trust recorded
24 against the Property has been extinguished via the Merger Doctrine in light of CBC Partners I, LLC
25 exercising its purported rights to become partial legal owner of the Property;

26 4. For an entry of Declaratory Judgment pursuant to NRS 40.430 and 30.040 that
27 defendant CBC Partners I, LLC is precluded from pursuing any foreclosure action against the subject
28 real property pursuant to the One Action Rule;

1 5. For an entry of Declaratory Judgment that SJC Ventures Holding, LLC is recognized
2 as the sole, exclusive and irrevocable Manager of SJC Ventures Holding, LLC as per the Four
3 Corners of the SJC Ventures Holding, LLC Operating Agreement;

4 6. For an entry of Declaratory Judgment pursuant to NRS 40.430 and 30.040 that upon
5 purportedly assigning its membership interest in Spanish Heights Acquisition Company, LLC to
6 CBC Partners I, LLC, defendant the Antos Trust did not agree to waive or exclude the applicability
7 of the Merger Doctrine;

8 7. For an entry of Declaratory Judgment pursuant to NRS 40.430 and 30.040 that CBC
9 Partners I, LLC is not entitled to claim an exemption to Governor Sisolak's Emergency Directive
10 008 based on last year's allegations of Spanish Heights Acquisitions Company, LLC's alleged failure
11 to provide a guest list 10 days in advance of an event, using a residents transponder to allow entry to
12 residents and guests wrongfully detained at the gate, or for fireworks or use of an incendiary device
13 that were not set off from the Property but that were actually set off by property owned by defendant
14 DACIA, LLC in July of 2019 – to the extent such fireworks on the Fourth of July 2019 or the use of
15 an incendiary device during 2019, even constitute the type of serious endangerment to the public or
16 other residents or criminal activity referenced in the Governor's Emergency Directive, which has not
17 been established;

18 8. For an entry of Declaratory Judgment pursuant to NRS 40.430 and 30.040 that the
19 lease agreement between Spanish Heights Acquisitions Company, LLC, as landlord and SJC
20 Ventures Holding, LLC as tenant is valid and binding unto all parties and is not subject to being
21 voided or terminated prior to the expiration of the two extensions recognized by all parties;

22 9. Judgment in favor of Plaintiffs on the complaint and all claims for relief asserted
23 therein;

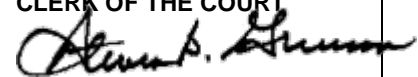
24 10. For such injunctive relief as necessary;

25 11. For an award of reasonable attorneys' fees and costs incurred by Plaintiffs;

26 12. For an award of pre and post-judgment interest; and

27 ///

28 ///



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.**

CBC PARTNERS, LLC

A civil complaint has been filed by the plaintiffs against you for the relief set forth in the

1 complaint.

2 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
3 you, exclusive of the day of service, you must do the following:

4 (a) File with the Clerk of the Court, whose address is shown below, a formal
5 written response to the Complaint in accordance with the rules of the Court,
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9 2. Unless you respond, your default will be entered upon application of the plaintiffs and
10 failure to so respond will result in a judgment of default against you for the relief demanded in the
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4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file and Answer or other responsive pleading to the complaint.

STEVEN D. GRIERSON
CLERK OF THE COURT
CLERK OF THE COURT

Deputy Clerk **Laurie Williams** Date _____
Regional Justice Court
200 Lewis Avenue
Las Vegas, Nevada 89155

5/18/2020

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.

Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.

Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

TANNER TREWET, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 5/19/2020 a copy of the:
SUMMONS; FIRST AMENDED COMPLAINT

I served the same on **5/20/2020** at **11:04 AM** to:

**Defendant CBC PARTNERS, LLC, A FOREIGN LIMITED LIABILITY COMPANY, BY SERVING
MICHAEL MUSHKIN, ESQ., ATTORNEY OF RECORD**

by leaving the copies with or in the presence of **TRACI BAEZ, LEGAL ASSISTANT**, at **6070 S
EASTERN AVE STE 270, LAS VEGAS, NV 89119**.

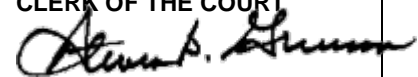
Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Thursday, May 21, 2020



TANNER TREWET

Registered Work Card R-2019-07712



SUMM

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.**

5148 SPANISH HEIGHTS, LLC

A civil complaint has been filed by the plaintiffs against you for the relief set forth in the

1 complaint.

2 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
3 you, exclusive of the day of service, you must do the following:

4 (a) File with the Clerk of the Court, whose address is shown below, a formal
5 written response to the Complaint in accordance with the rules of the Court,
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3 within which to file and Answer or other responsive pleading to the complaint.

STEVEN D. GRIERSON
CLERK OF THE COURT
CLERK OF THE COURT

Laurie Williams

Deputy Clerk Laurie Williams
Regional Justice Court
200 Lewis Avenue
Las Vegas, Nevada 89155

Date

5/18/2020

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

TANNER TREWET, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 5/19/2020 a copy of the:
SUMMONS; FIRST AMENDED COMPLAINT


I served the same on **5/20/2020 at 11:04 AM** to:

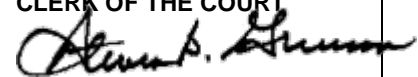
**Defendant 5148 SPANISH HEIGHTS, LLC, A NEVADA LIMITED LIABILITY COMPANY, BY
SERVING MICHAEL R. MUSHKIN, REGISTERED AGENT**

by leaving the copies with or in the presence of **TRACI BAEZ, LEGAL ASSISTANT FOR MICHAEL
R. MUSHKIN**, at 6070 S EASTERN AVE STE 270, LAS VEGAS, NV 89119, pursuant to **NRS 14.020**.

Pursuant to NRS 53.045, I declare under penalty
of perjury under the law of the State of Nevada that
the forgoing is true and correct.

Executed: Thursday, May 21, 2020


TANNER TREWET
Registered Work Card R-2019-07712



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

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CBC PARTNERS I, LLC

A civil complaint has been filed by the plaintiffs against you for the relief set forth in the

1 complaint.

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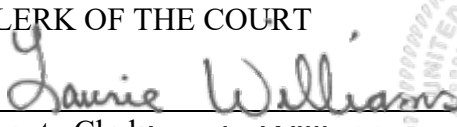
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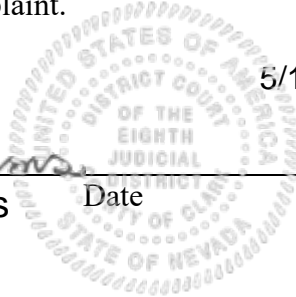
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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
2 members, commission members and legislators each have 45 days after service of this Summons
3 within which to file and Answer or other responsive pleading to the complaint.

STEVEN D. GRIERSON
CLERK OF THE COURT
CLERK OF THE COURT

5/18/2020


Deputy Clerk **Laurie Williams** Date
Regional Justice Court
200 Lewis Avenue
Las Vegas, Nevada 89155



9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

12 /s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

TANNER TREWET, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 5/19/2020 a copy of the:
SUMMONS; FIRST AMENDED COMPLAINT

I served the same on **5/20/2020** at **11:04 AM** to:

**Defendant CBC PARTNERS I, LLC, A FOREIGN LIMITED LIABILITY COMPANY, BY SERVING
MICHAEL MUSHKIN, ESQ., ATTORNEY OF RECORD**

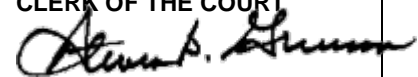
by leaving the copies with or in the presence of **TRACI BAEZ, LEGAL ASSISTANT**, at **6070 S
EASTERN AVE STE 270, LAS VEGAS, NV 89119**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Thursday, May 21, 2020



TANNER TREWET
Registered Work Card R-2019-07712



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
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THE INFORMATION BELOW.**

DACIA, LLC

A civil complaint has been filed by the plaintiffs against you for the relief set forth in the

1 complaint.

2 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
3 you, exclusive of the day of service, you must do the following:

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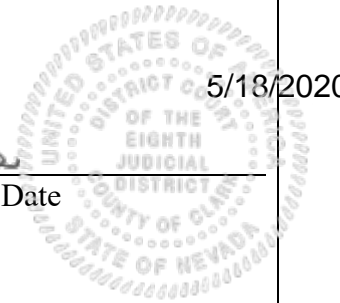
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STEVEN D. GRIERSON
CLERK OF THE COURT
CLERK OF THE COURT

Laurie Williams

Deputy Clerk Laurie Williams Date
Regional Justice Court
200 Lewis Avenue
Las Vegas, Nevada 89155



9 Respectfully submitted,

10 **MAIER GUTIERREZ & ASSOCIATES**

12 /s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

TANNER TREWET, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 5/19/2020 a copy of the:
SUMMONS; FIRST AMENDED COMPLAINT

I served the same on **5/20/2020 at 11:04 AM** to:

Defendant DACIA, LLC, A FOREIGN LIMITED LIABILITY COMPANY, BY SERVING MICHAEL R. MUSHKIN, REGISTERED AGENT

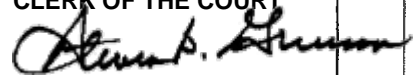
by leaving the copies with or in the presence of **TRACI BAEZ, LEGAL ASSISTANT FOR MICHAEL R. MUSHKIN**, at 6070 S EASTERN AVE STE 270, LAS VEGAS, NV 89119, pursuant to **NRS 14.020**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Thursday, May 21, 2020



TANNER TREWET
Registered Work Card R-2019-07712



ORDR
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES,
LLC, a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B
Dept. No.: 11

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION ON A LIMITED BASIS**

Hearing Date: May 14, 2020
Hearing Time: 9:30 a.m.

This matter came on for hearing before the Court on May 14, 2020, at 9:30 a.m., on plaintiffs Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company, LLC d/b/a SJC Ventures LLC's (collectively "Plaintiffs") motion for preliminary injunction (the "Motion").

Plaintiffs were represented by Joseph A. Gutierrez, Esq. and Danielle J. Barraza, Esq., of the

1 law firm MAIER GUTIERREZ & ASSOCIATES. Defendant CBC Partners I, LLC, was represented by
2 Michael R. Mushkin, Esq. of the law firm MUSHKIN & COPPEDGE.

3 The Court, having reviewed the pleadings and papers on file herein relative to the Motion,
4 having heard the argument of counsel present at the hearing, and good cause appearing, hereby rules
5 as follows:

6 The Court FINDS that the April 3, 2020 Notice to Vacate violates Nevada Governor's
7 Emergency Directive 008 because there is not an establishment of a serious endangerment of the
8 public or other residents or serious criminal activity or significant damage to the property at issue
9 (5148 Spanish Heights Drive, Las Vegas, NV 89148), which is required under Section 1 of the
10 Governor's Emergency Directive 008.

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion is hereby
13 GRANTED on the merits in a limited way and pursuant to EDCR 2.20 to prevent any further action
14 related to the Notice to Vacate, by Defendant and/or any successor in interest, until after expiration of
15 the Governor's Emergency Directive 008;

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall provide
17 appropriate security pursuant to NRCP 65(c) for the payment of such costs and damages sustained by
18 any party who is found to have been wrongfully enjoined or restrained in this action. This security
19 shall consist of the \$1,000 bond that Plaintiffs posted in accordance with the Temporary Restraining
20 Order in this matter. This security shall also consist of Plaintiff Spanish Heights Acquisition Company
21 tendering payments which come due on the first mortgage (to City National Bank) and the second
22 mortgage (to Northern Trust Bank) while this injunction is in place, although Plaintiff Spanish Heights
23 Acquisition Company will not be required to make any payments on any claimed third mortgage (to
24 CBC Partners I, LLC or any purported transferee or assignee of the Note associated with the third
25 mortgage). Additionally, this security shall further consist of Plaintiff Spanish Heights Acquisition
26 Company paying the standard real property taxes, real property insurance, and monthly HOA dues

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1 which come due only during the time this injunction is in place, not before.

2 DATED this 29th day of May, 2020.

3
4 
DISTRICT COURT JUDGE

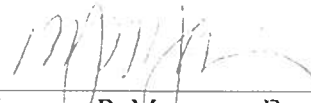
5 Respectfully submitted,

Approved as to form and content:

6 MAIER GUTIERREZ & ASSOCIATES

MUSHKIN & COPPEDGE

7 



8 JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046

MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421

9 DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822

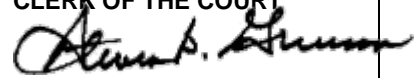
L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954

10 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119

11 *Attorneys for Plaintiffs*

*Attorneys for Defendant and Third-Party
Plaintiffs 5148 Spanish Heights, LLC and CBC
Partners I, LLC*



NEOJ

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
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Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that an **NOTICE OF ENTRY OF**

///

1 **ORDER** was hereby entered on the 29th day of May, 2020. A copy of which is attached hereto.

2 DATED this 29th day of May, 2020.

3 Respectfully submitted,

4 **MAIER GUTIERREZ & ASSOCIATES**

5 /s/ Danielle J. Barraza

6 JOSEPH A. GUTIERREZ, ESQ.

7 Nevada Bar No. 9046

8 DANIELLE J. BARRAZA, ESQ.

9 Nevada Bar No. 13822

10 8816 Spanish Ridge Avenue

11 Las Vegas, Nevada 89148

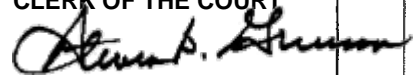
12 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 29th day of May, 2020, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

6 Michael R. Mushkin, Esq.
7 MUSHKIN & COPPEDGE
8 6070 South Eastern Avenue, Suite 270
9 Las Vegas, Nevada 89119
10 *Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,*
11 *5148 Spanish Heights, LLC, and Dacia LLC*

12 /s/ Natalie Vazquez
13 An Employee of MAIER GUTIERREZ & ASSOCIATES
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ORDR
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES,
LLC, a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B
Dept. No.: 11

**ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION ON A LIMITED BASIS**

Hearing Date: May 14, 2020
Hearing Time: 9:30 a.m.

This matter came on for hearing before the Court on May 14, 2020, at 9:30 a.m., on plaintiffs Spanish Heights Acquisition Company, LLC and SJC Ventures Holding Company, LLC d/b/a SJC Ventures LLC's (collectively "Plaintiffs") motion for preliminary injunction (the "Motion").

Plaintiffs were represented by Joseph A. Gutierrez, Esq. and Danielle J. Barraza, Esq., of the

1 law firm MAIER GUTIERREZ & ASSOCIATES. Defendant CBC Partners I, LLC, was represented by
2 Michael R. Mushkin, Esq. of the law firm MUSHKIN & COPPEDGE.

3 The Court, having reviewed the pleadings and papers on file herein relative to the Motion,
4 having heard the argument of counsel present at the hearing, and good cause appearing, hereby rules
5 as follows:

6 The Court FINDS that the April 3, 2020 Notice to Vacate violates Nevada Governor's
7 Emergency Directive 008 because there is not an establishment of a serious endangerment of the
8 public or other residents or serious criminal activity or significant damage to the property at issue
9 (5148 Spanish Heights Drive, Las Vegas, NV 89148), which is required under Section 1 of the
10 Governor's Emergency Directive 008.

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion is hereby
13 GRANTED on the merits in a limited way and pursuant to EDCR 2.20 to prevent any further action
14 related to the Notice to Vacate, by Defendant and/or any successor in interest, until after expiration of
15 the Governor's Emergency Directive 008;

16 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall provide
17 appropriate security pursuant to NRCP 65(c) for the payment of such costs and damages sustained by
18 any party who is found to have been wrongfully enjoined or restrained in this action. This security
19 shall consist of the \$1,000 bond that Plaintiffs posted in accordance with the Temporary Restraining
20 Order in this matter. This security shall also consist of Plaintiff Spanish Heights Acquisition Company
21 tendering payments which come due on the first mortgage (to City National Bank) and the second
22 mortgage (to Northern Trust Bank) while this injunction is in place, although Plaintiff Spanish Heights
23 Acquisition Company will not be required to make any payments on any claimed third mortgage (to
24 CBC Partners I, LLC or any purported transferee or assignee of the Note associated with the third
25 mortgage). Additionally, this security shall further consist of Plaintiff Spanish Heights Acquisition
26 Company paying the standard real property taxes, real property insurance, and monthly HOA dues

27 ///

28 ///

1 which come due only during the time this injunction is in place, not before.

2 DATED this 29th day of May, 2020.

3
4 
DISTRICT COURT JUDGE

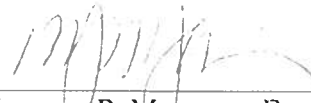
5 Respectfully submitted,

Approved as to form and content:

6 MAIER GUTIERREZ & ASSOCIATES

MUSHKIN & COPPEDGE

7 



8 JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046

MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421

9 DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822

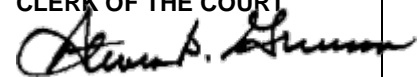
L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954

10 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119

11 *Attorneys for Plaintiffs*

*Attorneys for Defendant and Third-Party
Plaintiffs 5148 Spanish Heights, LLC and CBC
Partners I, LLC*



SUMM

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

Facsimile: 702.629.7925

E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.**

**KENNETH ANTOS, AS TRUSTEE OF THE KENNETH & SHEILA ANTOS LIVING
TRUST AND THE KENNETH M. ANTOS & SHEILA M. NEUMANN-ANTOS TRUST**

A civil complaint has been filed by the plaintiffs against you for the relief set forth in the

1 complaint.

2 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
3 you, exclusive of the day of service, you must do the following:

4 (a) File with the Clerk of the Court, whose address is shown below, a formal
5 written response to the Complaint in accordance with the rules of the Court,
6 with the appropriate filing fee.

7 (b) Serve a copy of your response upon the attorney whose name and address is
8 shown below.

9 2. Unless you respond, your default will be entered upon application of the plaintiffs and
10 failure to so respond will result in a judgment of default against you for the relief demanded in the
11 complaint, which could result in the taking of money or property or other relief requested in the
12 complaint.

13 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
14 so that your response may be filed on time.

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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
2 members, commission members and legislators each have 45 days after service of this Summons
3 within which to file and Answer or other responsive pleading to the complaint.

STEVEN D. GRIERSON
CLERK OF THE COURT

CLERK OF THE COURT

Laurie Williams

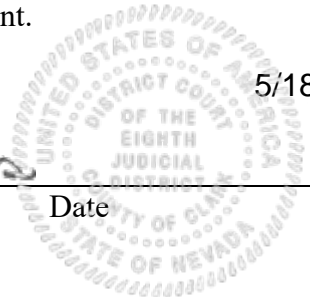
Deputy Clerk **Laurie Williams**

Date

Regional Justice Court

200 Lewis Avenue

Las Vegas, Nevada 89155



5/18/2020

Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Attorneys for Plaintiffs

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

JORDAN MCDUFFIE, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on Tuesday, May 19, 2020 a copy of the:
SUMMONS; FIRST AMENDED COMPLAINT

I served the same on **6/2/2020 at 10:45 AM** to:

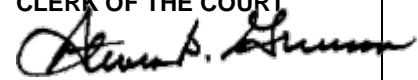
Defendant KENNETH ANTOS, AS TRUSTEE OF THE KENNETH & SHEILA ANTOS LIVING TRUST AND THE KENNETH M. ANTOS & SHEILA M. NEUMANN-ANTOS TRUST

by leaving the copies with or in the presence of **KENNETH ANTOS at 4968 MOUNTAIN FOLIAGE DR, LAS VEGAS, NV 89148.**

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Tuesday, June 2, 2020


JORDAN MCDUFFIE
Registered Work Card R-2020-03366



SUMM

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jag@mgalaw.com
djb@mgalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

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SPANISH HEIGHTS, LLC, a Nevada Limited
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CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B

Dept. No.: 11

SUMMONS - CIVIL

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ
THE INFORMATION BELOW.**

**SHEILA NEUMANN-ANTOS, AS TRUSTEE OF THE KENNETH & SHEILA ANTOS
LIVING TRUST AND THE KENNETH M. ANTOS & SHEILA M. NEUMANN-ANTOS
TRUST**

A civil complaint has been filed by the plaintiffs against you for the relief set forth in the

1 complaint.

2 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
3 you, exclusive of the day of service, you must do the following:

4 (a) File with the Clerk of the Court, whose address is shown below, a formal
5 written response to the Complaint in accordance with the rules of the Court,
6 with the appropriate filing fee.

7 (b) Serve a copy of your response upon the attorney whose name and address is
8 shown below.

9 2. Unless you respond, your default will be entered upon application of the plaintiffs and
10 failure to so respond will result in a judgment of default against you for the relief demanded in the
11 complaint, which could result in the taking of money or property or other relief requested in the
12 complaint.

13 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
14 so that your response may be filed on time.

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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
2 members, commission members and legislators each have 45 days after service of this Summons
3 within which to file and Answer or other responsive pleading to the complaint.

STEVEN D. GRIERSON
CLERK OF THE COURT
CLERK OF THE COURT

5/18/2020


Deputy Clerk Laurie Williams Date
Regional Justice Court
200 Lewis Avenue
Las Vegas, Nevada 89155



4 Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Joseph A. Gutierrez

JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION COMPANY, LLC, ET AL.
Plaintiff

vs

CBC PARTNERS I, LLC, ET AL.
Defendant

Case Number: A-20-813439-B

Dept:

PROOF OF SERVICE

JORDAN MCDUFFIE, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on Tuesday, May 19, 2020 a copy of the:
SUMMONS; FIRST AMENDED COMPLAINT

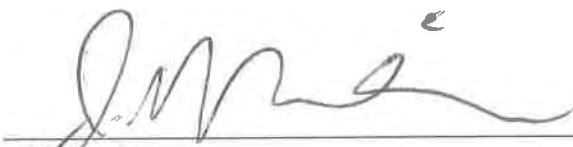
I served the same on **6/2/2020** at **10:45 AM** to:

Defendant SHEILA NEUMANN-ANTOS, AS TRUSTEE OF THE KENNETH & SHEILA ANTOS LIVING TRUST AND THE KENNETH M. ANTOS & SHEILA M. NEUMANN-ANTOS TRUST

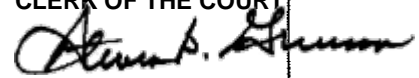
by leaving the copies with or in the presence of **SHEILA NEUMANN-ANTOS** at **4968 MOUNTAIN FOLIAGE DR, LAS VEGAS, NV 89148**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Tuesday, June 2, 2020



JORDAN MCDUFFIE
Registered Work Card R-2020-03366



Michael R. Mushkin, Esq.
Nevada Bar No. 2421
L. Joe Coppedge, Esq.
Nevada Bar No. 4954
MUSHKIN & COPPEDGE
6070 South Eastern Ave Ste 270
Las Vegas, NV 89119
Telephone: 702-454-3333
Facsimile: 702-386-4979
Michael@mccnvlaw.com
jcoppedge@mccnvlaw.com

Attorneys for Defendants
5148 Spanish Heights, LLC and
CBC Partners I, LLC, CBC Partners, LLC and
Counterclaimants

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC
a Delaware limited liability company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign limited
liability company; CBC PARTNERS, LLC, a
foreign limited liability company, 5148
SPANISH HEIGHTS, LLC, a Nevada limited
liability company; KENNETH ANTOS and
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Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign limited liability
company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

DEFENDANTS

**CBC PARTNERS I, LLC, CBC
PARTNERS, LLC, AND 5148
SPANISH HEIGHTS, LLC ANSWER
TO FIRST AMENDED COMPLAINT**

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC PARTNERS
I, LLC, a Washington limited liability company,

3 Counterclaimants,

4 v.

5
6 SPANISH HEIGHTS ACQUISITION
7 COMPANY, LLC, a Nevada Limited Liability
8 Company; SJC VENTURES, LLC, a Delaware
9 limited liability company; SJC VENTURES
10 HOLDING COMPANY, LLC, a Delaware
11 limited liability company; JAY BLOOM,
individually and as Manager, DOE
DEFENDANTS 1-10; and ROE DEFENDANTS
11-20,

12 Counterdefendants.

13 **DEFENDANT CBC PARTNERS I, LLC, CBC PARTNERS, LLC, AND 5148 SPANISH**
14 **HEIGHTS, LLC ANSWER TO FIRST AMENDED COMPLAINT**

15 Defendant, CBC Partners I, LLC, CBC Partners, LLC, AND 5148 Spanish Heights, LLC
16 (“Defendants”), by and through their attorney Michael R. Mushkin, of the law firm of Mushkin
17 & Coppedge, for its Answer to Plaintiffs’ First Amended Complaint (“FAC”) hereby admits,
18 deny, and affirmatively alleges as follows in response to the FAC on file in the above-entitled
19 action:

20 **PARTIES**

21 1. In answering Paragraph 1 of the FAC, Defendants are without knowledge
22 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
23 contained therein.

24 2. In answering Paragraph 2 of the FAC, Defendants admit that there is a property
25 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor’s Parcel
26 Number of 163-29-615-007 and Defendants are without knowledge sufficient to form a belief as
27 to the truth of the remainder of the allegations and therefore deny the allegations contained
28 therein.

1 3. In answering Paragraph 3 of the FAC, Defendants are without knowledge
2 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
3 contained therein.

4 4. In answering Paragraph 4 of the FAC, Defendants are without knowledge
5 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
6 contained therein.

7 5. In answering Paragraph 5 of the FAC, Defendants are without knowledge
8 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
9 contained therein.

10 6. In answering Paragraph 6 of the FAC, Defendants admit that CBC Partners I, LLC
11 is a foreign company; however Defendants deny that CBC Partners I, LLC is doing business in
12 Clark County, State of Nevada pursuant to NRS 80.015 and therefore is not required to register
13 as a foreign entity in Nevada.

14 7. In answering Paragraph 7 of the FAC, Defendants admit that CBC Partners, LLC
15 is a foreign company; however Defendants deny that CBC Partners, LLC is doing business in
16 Clark County, State of Nevada pursuant to NRS 80.015 and therefore is not required to register
17 as a foreign entity in Nevada.

18 8. In answering Paragraph 8 of the FAC, Defendants admit the allegations contained
19 therein.

20 9. In answering Paragraph 9 of the FAC, Defendants admit the allegations contained
21 therein.

22 10. In answering Paragraph 10 of the FAC, Defendants are without knowledge
23 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
24 contained therein.

25 11. In answering Paragraph 11 of the FAC, Defendants are without knowledge
26 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
27 contained therein.

28 12. In answering Paragraph 12 of the FAC, Defendants are without knowledge

1 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
2 contained therein.

3 **GENERAL ALLEGATIONS**

4 13. In answering Paragraph 13 of the FAC, Defendants are without knowledge
5 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
6 contained therein.

7 14. In answering Paragraph 14 of the FAC, Defendants are without knowledge
8 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
9 contained therein.

10 15. In answering Paragraph 15 of the FAC, Defendants are without knowledge
11 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
12 contained therein.

13 16. In answering Paragraph 16 of the FAC, Defendants are without knowledge
14 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
15 contained therein.

16 17. In answering Paragraph 17 of the FAC, Defendants are without knowledge
17 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
18 contained therein.

19 18. In answering Paragraph 18 of the FAC, Defendants are without knowledge
20 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
21 contained therein.

22 19. In answering Paragraph 19 of the FAC, Defendants are without knowledge
23 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
24 contained therein.

25 20. In answering Paragraph 20 of the FAC, Defendants deny the allegations contained
26 therein.

27 21. In answering Paragraph 21 of the FAC, Defendants are without knowledge
28 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations

1 contained therein.

2 22. In answering Paragraph 22 of the FAC, Defendants are without knowledge
3 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
4 contained therein.

5 23. In answering Paragraph 23 of the FAC, Defendants are without knowledge
6 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
7 contained therein.

8 24. In answering Paragraph 24 of the FAC, Defendants are without knowledge
9 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
10 contained therein.

11 25. In answering Paragraph 25 of the FAC, Defendants are without knowledge
12 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
13 contained therein.

14 26. In answering Paragraph 26 of the FAC, Defendants admit the allegations contained
15 therein.

16 27. In answering Paragraph 27 of the FAC, Defendants deny the allegations contained
17 therein.

18 28. In answering Paragraph 28 of the FAC, Defendants deny the allegations contained
19 therein.

20 29. In answering Paragraph 29 of the FAC, Defendants deny the allegations contained
21 therein.

22 30. In answering Paragraph 30 of the FAC, Defendants deny the allegations contained
23 therein.

24 31. In answering Paragraph 31 of the FAC, Defendants deny the allegations contained
25 therein.

26 32. In answering Paragraph 32 of the FAC, Defendants deny the allegations contained
27 therein.

28 33. In answering Paragraph 33 of the FAC, Defendants are without knowledge

1 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
2 contained therein.

3 34. In answering Paragraph 34 of the FAC, Defendants are without knowledge
4 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
5 contained therein.

6 35. In answering Paragraph 35 of the FAC, Defendants are without knowledge
7 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
8 contained therein.

9 36. In answering Paragraph 36 of the FAC, Defendants are without knowledge
10 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
11 contained therein.

12 37. In answering Paragraph 37 of the FAC, Defendants admit that a Notice to Vacate
13 was issued and Defendants are without knowledge sufficient to form a belief as to the truth of the
14 remainder of the allegations and therefore deny the allegations contained therein.

15 38. In answering Paragraph 38 of the FAC, Defendants deny the allegations contained
16 therein.

17 39. In answering Paragraph 39 of the FAC, Defendants admit the allegations contained
18 therein.

19 40. In answering Paragraph 40 of the FAC, Defendants are without knowledge
20 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
21 contained therein.

22 41. In answering Paragraph 41 of the FAC, Defendants are without knowledge
23 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
24 contained therein.

25 42. In answering Paragraph 42 of the FAC, Defendants admit the allegations contained
26 therein.

27 43. In answering Paragraph 43 of the FAC, Defendants are without knowledge
28 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations

1 contained therein.

2 44. In answering Paragraph 44 of the FAC, Defendants are without knowledge
3 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
4 contained therein.

5 45. In answering Paragraph 45 of the FAC, Defendants admit the allegations contained
6 therein.

7 46. In answering Paragraph 46 of the FAC, Defendants admit the allegations contained
8 therein.

9 47. In answering Paragraph 47 of the FAC, Defendants are without knowledge
10 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
11 the allegations contained therein.

12 48. In answering Paragraph 48 of the FAC, Defendants are without knowledge
13 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
14 the allegations contained therein.

15 49. In answering Paragraph 49 of the FAC, Defendants deny the allegations contained
16 therein.

17 50. In answering Paragraph 50 of the FAC, Defendants deny the allegations contained
18 therein.

19 **FIRST CAUSE OF ACTION**

20 **(Declaratory Relief as to the Obligation to Abide by Governor Sisolak's Emergency**

21 **Directive Placing a Moratorium on Foreclosure and Eviction Actions)**

22 **Against all Defendants**

23 51. In answering Paragraph 51 of the FAC, Defendants repeat and reallege all answers
24 as though fully set forth herein.

25 52. In answering Paragraph 52 of the FAC, Defendants admit the allegations contained
26 therein.

27 53. In answering Paragraph 53 of the FAC, Defendants admit the allegations contained
28 therein.

1 54. In answering Paragraph 54 of the FAC, Defendants are without knowledge
2 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
3 the allegations contained therein.

4 55. In answering Paragraph 55 of the FAC, Defendants are without knowledge
5 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
6 the allegations contained therein.

7 56. In answering Paragraph 56 of the FAC, Defendants are without knowledge
8 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
9 the allegations contained therein.

10 57. In answering Paragraph 57 of the FAC, Defendants are without knowledge
11 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
12 the allegations contained therein.

13 58. In answering Paragraph 58 of the FAC, Defendants deny the allegations contained
14 therein.

15 **SECOND CAUSE OF ACTION**

16 **(Declaratory Relief Regarding CBC Partners I, LLC's Lack of Rights to Foreclose or to**
17 **Evict as it Admits it Sold and no longer Possesses the Purported Note)**

18 **Against CBC Partners I, LLC**

19 59. In answering Paragraph 59 of the FAC, Defendants repeat and reallege all answers
20 as though fully set forth herein.

21 60. In answering Paragraph 60 of the FAC, Defendants are without knowledge
22 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
23 the allegations contained therein.

24 61. In answering Paragraph 61 of the FAC, Defendants admit the allegations contained
25 therein.

26 62. In answering Paragraph 62 of the FAC, Defendants are without knowledge
27 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
28 the allegations contained therein.

1 63. In answering Paragraph 63 of the FAC, Defendants admit the allegations contained
2 therein.

3 64. In answering Paragraph 64 of the FAC, Defendants are without knowledge
4 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
5 contained therein.

6 65. In answering Paragraph 65 of the FAC, Defendants are without knowledge
7 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
8 contained therein.

9 66. In answering Paragraph 66 of the FAC, Defendants are without knowledge
10 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
11 contained therein.

12 67. In answering Paragraph 67 of the FAC, Defendants deny the allegations contained
13 therein.

14 **THIRD CAUSE OF ACTION**

15 **(Declaratory Relief of the Application of the One Action Rule)**

16 **Against CBC Partners I, LLC and 5148 Spanish Heights, LLC**

17 68. In answering Paragraph 68 of the FAC, Defendants repeat and reallege all answers
18 as though fully set forth herein.

19 69. In answering Paragraph 69 of the FAC, Defendants are without knowledge
20 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
21 contained therein.

22 70. In answering Paragraph 70 of the FAC, Defendants admit the allegations contained
23 therein.

24 71. In answering Paragraph 71 of the FAC, Defendants are without knowledge
25 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
26 contained therein.

27 72. In answering Paragraph 72 of the FAC, Defendants are without knowledge
28 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations

1 contained therein.

2 73. In answering Paragraph 73 of the FAC, Defendants are without knowledge
3 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
4 contained therein.

5 74. In answering Paragraph 74 of the FAC, Defendants deny the allegations contained
6 therein.

7 **FOURTH CAUSE OF ACTION**

8 **(Declaratory Relief Regarding the Applicability of the Doctrine of Merger)**

9 **Against CBC Partners I, LLC and 5148 Spanish Heights, LLC**

10 75. In answering Paragraph 75 of the FAC, Defendant repeat and reallege all answers
11 as though fully set forth herein.

12 76. In answering Paragraph 76 of the FAC, Defendants are without knowledge
13 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
14 contained therein.

15 77. In answering Paragraph 77 of the FAC, Defendants admit the allegations contained
16 therein.

17 78. In answering Paragraph 78 of the FAC, Defendants are without knowledge
18 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
19 contained therein.

20 79. In answering Paragraph 79 of the FAC, Defendants are without knowledge
21 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
22 contained therein.

23 80. In answering Paragraph 80 of the FAC, Defendants are without knowledge
24 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
25 contained therein.

26 81. In answering Paragraph 81 of the FAC, Defendants deny the allegations contained
27 therein.

28

1 **FIFTH CAUSE OF ACTION**

2 **(Declaratory Relief Regarding the Status of SJC Ventures Holding, LLC as Sole and**
3 **Exclusive Manager of Spanish Heights Acquisition Company, LLC)**
4 **Against all Defendants**

5 82. In answering Paragraph 82 of the FAC, Defendants repeat and reallege all answers
6 as though fully set forth herein.

7 83. In answering Paragraph 83 of the FAC, Defendants are without knowledge
8 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
9 contained therein.

10 84. In answering Paragraph 84 of the FAC, Defendants admit the allegations contained
11 therein.

12 85. In answering Paragraph 85 of the FAC, Defendants are without knowledge
13 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
14 contained therein.

15 86. In answering Paragraph 86 of the FAC, Defendants are without knowledge
16 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
17 contained therein.

18 87. In answering Paragraph 87 of the FAC, Defendants deny the allegations contained
19 therein.

20 88. In answering Paragraph 88 of the FAC, Defendants deny the allegations contained
21 therein.

22 89. In answering Paragraph 89 of the FAC, Defendants deny the allegations contained
23 therein.

24 **SIXTH CAUSE OF ACTION**

25 **(Temporary Restraining Order, Preliminary Injunction, and permanent Injunction)**
26 **Against CBC Partners I, LLC and 5148 Spanish Heights, LLC**

27 90. In answering Paragraph 90 of the FAC, Defendants repeat and reallege all answers
28 as though fully set forth herein.

1 91. In answering Paragraph 91 of the FAC, Defendants are without knowledge
2 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
3 contained therein.

4 92. In answering Paragraph 92 of the FAC, Defendants deny the allegations contained
5 therein.

6 93. In answering Paragraph 93 of the FAC, Defendants deny the allegations contained
7 therein.

8 94. In answering Paragraph 94 of the FAC, Defendants deny the allegations contained
9 therein.

10 95. In answering Paragraph 95 of the FAC, Defendants deny the allegations contained
11 therein.

12 96. In answering Paragraph 96 of the FAC, Defendants deny the allegations contained
13 therein.

14 **SEVENTH CAUSE OF ACTION**

15 **(Declaratory Relief Regarding the Antos Trust's Purported Assignment of Membership**
16 **Interest in Spanish Heights Acquisition Company)**

17 **Against the Antos Trust**

18 97. In answering Paragraph 97 of the FAC, Defendants repeat and reallege all answers
19 as though fully set forth herein.

20 98. In answering Paragraph 98 of the FAC, Defendants are without knowledge
21 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
22 contained therein.

23 99. In answering Paragraph 99 of the FAC, Defendants are without knowledge
24 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
25 contained therein.

26 100. In answering Paragraph 100 of the FAC, Defendants are without knowledge
27 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
28 contained therein.

101. In answering Paragraph 101 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

102. In answering Paragraph 102 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

103. In answering Paragraph 103 of the FAC, Defendants deny the allegations contained therein.

EIGHTH CAUSE OF ACTION

(Breach of Contract as to the Forbearance Agreement)

Against CBC partners I, LLC

104. In answering Paragraph 104 of the FAC, Defendants repeat and reallege all answers as though fully set forth herein.

105. In answering Paragraph 105 of the FAC, Defendants admit the allegations contained therein.

106. In answering Paragraph 106 of the FAC, Defendants admit the allegations contained therein.

107. In answering Paragraph 107 of the FAC, Defendants admit the allegations contained therein.

108. In answering Paragraph 108 of the FAC, Defendants deny the allegations contained therein.

109. In answering Paragraph 109 of the FAC, Defendants deny the allegations contained therein.

110. In answering Paragraph 110 of the FAC, Defendants deny the allegations contained therein.

111. In answering Paragraph 111 of the FAC, Defendants deny the allegations contained therein.

112. In answering Paragraph 112 of the FAC, Defendants deny the allegations

1 contained therein.

2 **NINTH CAUSE OF ACTION**

3 **(Contractual Breach of the Covenant of Good Faith and Fair Dealing)**

4 **Against CBC Partners I, LLC**

5 113. In answering Paragraph 113 of the FAC, Defendants repeat and reallege all
6 answers as though fully set forth herein.

7 114. In answering Paragraph 114 of the FAC, Defendants admit the allegations
8 contained therein.

9 115. In answering Paragraph 115 of the FAC, Defendants admit the allegations
10 contained therein.

11 116. In answering Paragraph 116 of the FAC, Defendants admit the allegations
12 contained therein.

13 117. In answering Paragraph 117 of the FAC, Defendants admit the allegations
14 contained therein.

15 118. In answering Paragraph 118 of the FAC, Defendants admit the allegations
16 contained therein.

17 119. In answering Paragraph 119 of the FAC, Defendants deny the allegations
18 contained therein.

19 120. In answering Paragraph 120 of the FAC, Defendants deny the allegations
20 contained therein.

21 121. In answering Paragraph 121 of the FAC, Defendants deny the allegations
22 contained therein.

23 122. In answering Paragraph 122 of the FAC, Defendants deny the allegations
24 contained therein.

25 123. In answering Paragraph 123 of the FAC, Defendants deny the allegations
26 contained therein.

1 **TENTH CAUSE OF ACTION**

2 **(Declaratory Relief as to Plaintiffs' Lack of Liability for Fireworks Set Off and the Use of**
3 **an Incendiary Device by a Different Property)**

4 **Against Dacia, LLC**

5 124. In answering Paragraph 124 of the FAC, Defendants repeat and reallege all
6 answers as though fully set forth herein.

7 125. In answering Paragraph 125 of the FAC, Defendants deny the allegations
8 contained therein.

9 126. In answering Paragraph 126 of the FAC, Defendants deny the allegations
10 contained therein.

11 127. In answering Paragraph 127 of the FAC, Defendants deny the allegations
12 contained therein.

13 128. In answering Paragraph 128 of the FAC, Defendants deny the allegations
14 contained therein.

15 129. In answering Paragraph 129 of the FAC, Defendants deny the allegations
16 contained therein.

17 130. In answering Paragraph 130 of the FAC, Defendants deny the allegations
18 contained therein.

19 131. In answering Paragraph 131 of the FAC, Defendants deny the allegations
20 contained therein.

21 132. In answering Paragraph 132 of the FAC, Defendants deny the allegations
22 contained therein.

23 **ELEVENTH CAUSE OF ACTION**

24 **(Indemnity)**

25 **Against Dacia, LLC**

26 133. In answering Paragraph 133 of the FAC, Defendants repeat and reallege all
27 answers as though fully set forth herein.

28 134. In answering Paragraph 134 of the FAC, Defendants deny the allegations

1 contained therein.

2 135. In answering Paragraph 135 of the FAC, Defendants deny the allegations
3 contained therein.

4 136. In answering Paragraph 136 of the FAC, Defendants deny the allegations
5 contained therein.

6 **TWELFTH CAUSE OF ACTION**

7 **(Contribution)**

8 **Against Dacia, LLC**

9 137. In answering Paragraph 137 of the FAC, Defendants repeat and reallege all
10 answers as though fully set forth herein.

11 138. In answering Paragraph 138 of the FAC, Defendants are without knowledge
12 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
13 contained therein.

14 139. In answering Paragraph 139 of the FAC, Defendants deny the allegations
15 contained therein.

16 140. In answering Paragraph 140 of the FAC, Defendants deny the allegations
17 contained therein.

18 141. In answering Paragraph 141 of the FAC, Defendants deny the allegations
19 contained therein.

20 **AFFIRMATIVE DEFENSES**

21 1) Defendant deny each and every allegation contained in the First Amended
22 Complaint not otherwise specifically admitted or denied herein.

23 2) Plaintiffs have failed to state a claim against Defendant upon which relief may be
24 granted.

25 3) Plaintiffs' claims are barred because the grant of relief would unjustly enrich them.

26 4) Plaintiff's claims are barred because they failed to satisfy a condition precedent
27 and/or a condition subsequent.

28 5) Defendant's actions upon which Plaintiffs' First Amended Complaint is based

1 were reasonable, justified, undertaken in good faith, and lawful.

2 6) Plaintiffs' claims against Defendant are barred as a matter of law as Plaintiffs'
3 Complaint makes numerous blatantly false claims.

4 7) Plaintiffs have failed to mitigate their damages.

5 8) Plaintiffs' claims are barred by the doctrine of laches.

6 9) Plaintiffs' claims are barred by the doctrine of unclean hands.

7 10) Plaintiff's claims are barred by a failure of consideration.

8 11) Plaintiffs are estopped from asserting the claims set forth in the Complaint because
9 of improper conduct, acts, or omissions.

10 12) Plaintiffs' claims are barred by lack of authority.

11 13) Plaintiffs' claims are barred because Plaintiffs did not suffer any damages and, to
12 the extent Plaintiffs have suffered any losses, they are speculative and vague.

13 14) Defendant has incurred attorneys' fees and costs in the defense of this action and
14 is entitled to full reimbursement thereof.

15 15) Defendant hereby incorporates those affirmative defenses enumerated in NRCP 8
16 as if fully set forth herein. Such defenses are herein incorporated by reference for the specific
17 purpose of not waiving any such defense. In the event further investigation or discovery reveals
18 the applicability of any such defenses, Defendant reserves the right to seek leave of the Court to
19 amend this Answer to the Complaint and to specifically assert any such defense. Such defenses
20 are herein incorporated by reference for the specific purpose of not waiving any such defense.

21 16) Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged
22 herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the
23 Answer to First Amended Complaint. Therefor Defendant reserves the right to amend this
24 Answer, including adding affirmative defenses, based upon discovery, review of documents, and
25 development of evidence in this case.

26 WHEREFORE, Defendant prays for judgment as follows:

27 1. That Plaintiffs take nothing by way of their claims, and the same be dismissed with
28 prejudice;

2. That Defendant be awarded its attorneys' fees and costs incurred in the defense of this action; and

3. Such other and further relief as the Court deems just and proper.

DATED this 10 day of June, 2020

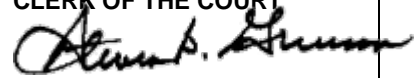
MUSHKIN & COPPEDGE

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Nevada Bar No. 2421
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Defendants CBC Partners I, LLC, CBC Partners, LLC, and 5148 Spanish Heights, LLC Answer to First Amended Complaint** was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 10th day of June, 2020. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list:

An Employee of
MUSHKIN & COPPEDGE



AACC
JOSEPH A. GUTIERREZ, ESQ.
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*Attorneys for Spanish Heights Acquisition Company,
LLC, SJC Ventures, LLC, SJC Ventures Holding
Company, LLC, and Jay Bloom*

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-20-813439-B
Dept. No.: 11

**SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, SJC VENTURES, LLC,
SJC VENTURES HOLDING COMPANY,
LLC, AND JAY BLOOM'S ANSWER TO
COUNTERCLAIM**

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC
3 PARTNERS I, LLC, a Washington limited
liability company,

4 Counterclaimants,

5 v.

6 SPANISH HEIGHTS ACQUISITION
7 COMPANY, LLC, a Nevada Limited Liability
8 Company; SJC VENTURES, LLC, a Delaware
9 limited liability company; SJC VENTURES
10 HOLDING COMPANY, LLC, a Delaware
11 limited liability company; JAY BLOOM,
individually and as Manager, DOE
DEFENDANTS 1-10; and ROE
DEFENDANTS 11-20,

12 Counterdefendants.

13 Counterdefendants Spanish Heights Acquisition Company, LLC, SJC Ventures LLC, SJC
14 Ventures Holding Company, LLC, and Jay Bloom (“Counterdefendants”), by and through their
15 attorneys of record, MAIER GUTIERREZ & ASSOCIATES, answer the counterclaim of
16 defendants/counterclaimants CBC Partners I, LLC and 5148 Spanish Heights, LLC
17 (“Counterclaimants”) as follows:

18 Counterdefendants deny each and every allegation in the complaint except those allegations
19 which are hereinafter admitted, qualified, or otherwise answered.

20 JURISDICTION AND VENUE

- 21 1. Answering paragraph 1 of the counterclaim, Counterdefendants admit the allegations.
- 22 2. Answering paragraph 2 of the counterclaim, Counterdefendants admit the allegations.

23 THE PARTIES

24 3. Answering paragraph 3 of the counterclaim, Counterdefendants admit that 5148
25 Spanish Heights, LLC is registered as a Nevada limited liability company. As to the remaining
26 allegations, Counterdefendants are without sufficient knowledge or information upon which to form
27 a belief as to the truth of the allegation contained in said paragraph, and therefore generally and
28 specifically deny the allegations contained therein.

1 4. Answering paragraph 4 of the counterclaim, Counterdefendants admit that CBC
2 Partners I, LLC is registered as a Washington limited liability company, doing business in Nevada
3 without having registered as a foreign entity to do business in Nevada.

4 5. Answering paragraph 5 of the counterclaim, Counterdefendants admit that Spanish
5 Heights Acquisition Company, LLC (“SHAC”), is, and at all relevant times was, a Nevada limited
6 liability company.

7 6. Answering paragraph 6 of the counterclaim, Counterdefendants admit that SJC
8 Ventures, LLC (“SJCVC”) is, and at all relevant times was, a Nevada limited liability.

9 7. Answering paragraph 7 of the counterclaim, Counterdefendants admit that SJC
10 Ventures Holding Company, LLC (“Holding”) is, and at all relevant times was, a Delaware limited
11 liability company.

12 8. Answering paragraph 8 of the counterclaim, Counterdefendants admit that Jay Bloom
13 (“Bloom”) is an individual residing in Clark County, Nevada.

14 9. Answering paragraph 9 of the counterclaim, Counterdefendants admit that Bloom is
15 the manager of SJCVC and Holding, and Holding (with Bloom as its manager) is the sole, exclusive,
16 and irrevocable managing entity of SHAC.

17 10. Answering paragraph 10 of the counterclaim, to the extent the allegations are
18 Counterclaimants’ legal conclusions, no response is required. To the extent a response is required,
19 Counterdefendants generally and specifically deny the allegations contained therein.

20 11. Answering paragraph 11 of the counterclaim, Counterdefendants are without sufficient
21 knowledge or information upon which to form a belief as to the truth of the allegation contained in
22 said paragraph, and therefore generally and specifically deny the allegations contained therein.

23 12. Answering paragraph 12 of the counterclaim, Counterdefendants are without sufficient
24 knowledge or information upon which to form a belief as to the truth of the allegation contained in
25 said paragraph, and therefore generally and specifically deny the allegations contained therein.

26 **FACTUAL ALLEGATIONS RELATED TO ALL CLAIMS**

27 13. Answering paragraph 13 of the counterclaim, Counterdefendants are without sufficient
28 knowledge or information upon which to form a belief as to the truth of the allegation contained in

1 said paragraph, and therefore generally and specifically deny the allegations contained therein.

2 14. Answering paragraph 14 of the counterclaim, this paragraph references a document
3 which speaks for itself, therefore no response is necessary. To the extent a response is required,
4 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to
5 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
6 the allegations contained therein.

7 15. Answering paragraph 15 of the counterclaim, this paragraph references a document
8 which speaks for itself, therefore no response is necessary. To the extent a response is required,
9 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to
10 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
11 the allegations contained therein.

12 16. Answering paragraph 16 of the counterclaim, this paragraph references a document
13 which speaks for itself, therefore no response is necessary. To the extent a response is required,
14 Counterdefendants admit that a Deed of Trust, Assignment of Rents, Security Assignment and Fixture
15 Filing (“Deed of Trust”) was recorded against the Property in the Clark County Recorder’s Office as
16 Instrument No. 201412290002856 on or about December 29, 2014. As to the remaining allegations,
17 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to
18 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
19 the allegations contained therein.

20 17. Answering paragraph 17 of the counterclaim, this paragraph references a document
21 which speaks for itself, therefore no response is necessary. To the extent a response is required,
22 Counterdefendants admit that there are two (2) additional Deeds of Trust recorded against the
23 Property. As to the remaining allegations, Counterdefendants are without sufficient knowledge or
24 information upon which to form a belief as to the truth of the allegation contained in said paragraph,
25 and therefore generally and specifically deny the allegations contained therein.

26 18. Answering paragraph 18 of the counterclaim, this paragraph references a document
27 which speaks for itself, therefore no response is necessary. To the extent a response is required,
28 Counterdefendants admit that a “First Modification to Deed of Trust, Assignments of Rents, Security

1 Agreement and Fixture Filing” was recorded against the Property on December 19, 2016. As to the
2 remaining allegations, Counterdefendants are without sufficient knowledge or information upon
3 which to form a belief as to the truth of the allegation contained in said paragraph, and therefore
4 generally and specifically deny the allegations contained therein.

5 19. Answering paragraph 19 of the counterclaim, this paragraph references a document
6 which speaks for itself, therefore no response is necessary. To the extent a response is required,
7 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to
8 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
9 the allegations contained therein.

10 20. Answering paragraph 20 of the counterclaim, this paragraph references a document
11 which speaks for itself, therefore no response is necessary. To the extent a response is required,
12 Counterdefendants admit that the Property was conveyed to SHAC and SHAC leased the Property to
13 SJCVC. As to the remaining allegations, Counterdefendants are without sufficient knowledge or
14 information upon which to form a belief as to the truth of the allegation contained in said paragraph,
15 and therefore generally and specifically deny the allegations contained therein.

16 21. Answering paragraph 21 of the counterclaim, this paragraph references a document
17 which speaks for itself, therefore no response is necessary. To the extent a response is required,
18 Counterdefendants admit that SHAC leased the Property to SJCVC.

19 22. Answering paragraph 22 of the counterclaim, this paragraph references a document
20 which speaks for itself, therefore no response is necessary. To the extent a response is required,
21 Counterdefendants deny that this paragraph represents the full language of the Consent to Lease.

22 23. Answering paragraph 23 of the counterclaim, this paragraph references a document
23 which speaks for itself, therefore no response is necessary. To the extent a response is required,
24 Counterdefendants deny that this paragraph represents the full language of the Forbearance
25 Agreement.

26 24. Answering paragraph 24 of the counterclaim, this paragraph references a document
27 which speaks for itself, therefore no response is necessary. To the extent a response is required,
28 Counterdefendants deny that this paragraph represents the full language of the Forbearance

1 Agreement.

2 25. Answering paragraph 25 of the counterclaim, Counterdefendants admit the allegations.

3 26. Answering paragraph 26 of the counterclaim, Counterdefendants admit the allegations.

4 27. Answering paragraph 27 of the counterclaim, this paragraph references a document
5 which speaks for itself, therefore no response is necessary. To the extent a response is required,
6 Counterdefendants deny the allegations.

7 28. Answering paragraph 28 of the counterclaim, this paragraph references a document
8 which speaks for itself, therefore no response is necessary. To the extent a response is required,
9 Counterdefendants deny the allegations.

10 29. Answering paragraph 29 of the counterclaim, this paragraph references a document
11 which speaks for itself, therefore no response is necessary. To the extent a response is required,
12 Counterdefendants deny the allegations.

13 30. Answering paragraph 30 of the counterclaim, this paragraph references a document
14 which speaks for itself, therefore no response is necessary. To the extent a response is required,
15 Counterdefendants deny the allegations.

16 31. Answering paragraph 31 of the counterclaim, Counterdefendants admit the allegations.

17 32. Answering paragraph 32 of the counterclaim, Counterdefendants admit the allegations.

18 33. Answering paragraph 33 of the counterclaim, this paragraph references a document
19 which speaks for itself, therefore no response is necessary. To the extent a response is required,
20 Counterdefendants deny that this paragraph represents the full and accurate language of the SHAC
21 Operating Agreement.

22 34. Answering paragraph 34 of the counterclaim, this paragraph references a document
23 which speaks for itself, therefore no response is necessary. To the extent a response is required,
24 Counterdefendants admit the allegations.

25 35. Answering paragraph 35 of the counterclaim, this paragraph references a document
26 which speaks for itself, therefore no response is necessary. To the extent a response is required,
27 Counterdefendants deny the allegations.

28 36. Answering paragraph 36 of the counterclaim, this paragraph references a document

1 which speaks for itself, therefore no response is necessary. To the extent a response is required,
2 Counterdefendants deny that this paragraph represents the full and accurate language of the SHAC
3 Operating Agreement.

4 37. Answering paragraph 37 of the counterclaim, Counterdefendants deny the allegations.

5 38. Answering paragraph 38 of the counterclaim, this paragraph references a document
6 which speaks for itself, therefore no response is necessary. To the extent a response is required,
7 Counterdefendants deny that this paragraph represents the full and accurate language of the
8 Amendment to Forbearance Agreement.

9 39. Answering paragraph 39 of the counterclaim, Counterdefendants are without sufficient
10 knowledge or information upon which to form a belief as to the truth of the allegation contained in
11 said paragraph, and therefore generally and specifically deny the allegations contained therein.

12 40. Answering paragraph 40 of the counterclaim, this paragraph references a document
13 which speaks for itself, therefore no response is necessary. To the extent a response is required,
14 Counterdefendants admit that on or about March 12, 2020, Spanish Hills Community Association
15 recorded an improper Health and Safety Lien against the Property which is replete with false
16 information regarding alleged “nuisances” and “hazardous activities.”

17 41. Answering paragraph 41 of the counterclaim, this paragraph references a document
18 which speaks for itself, therefore no response is necessary. To the extent a response is required,
19 Counterdefendants admit that on or about March 16, 2020, after CBCI had already breached the
20 Forbearance Agreement, CBCI caused to be mailed an improper notice of non-monetary default to
21 SHAC and SJVC.

22 42. Answering paragraph 42 of the counterclaim, this paragraph references a document
23 which speaks for itself, therefore no response is necessary. To the extent a response is required,
24 Counterdefendants admit that on or about March 23, 2020, counsel for SHAC and Jay Bloom sent
25 correspondence to counsel for CBCI. Counterdefendants deny the remaining allegations.

26 43. Answering paragraph 43 of the counterclaim, Counterdefendants are without sufficient
27 knowledge or information upon which to form a belief as to the truth of the allegation contained in
28 said paragraph, and therefore generally and specifically deny the allegations contained therein.

1 44. Answering paragraph 44 of the counterclaim, Counterdefendants are without sufficient
2 knowledge or information upon which to form a belief as to the truth of the allegation contained in
3 said paragraph, and therefore generally and specifically deny the allegations contained therein.

4 45. Answering paragraph 45 of the counterclaim, this paragraph references a document
5 which speaks for itself, therefore no response is necessary. To the extent a response is required,
6 Counterdefendants admit that on or about April 1, 2020, an improper Notice of Default and Demand
7 for Payment was sent to SHAC and SJCVC. Counterdefendants deny the remaining allegations.

8 46. Answering paragraph 46 of the counterclaim, this paragraph references a document
9 which speaks for itself, therefore no response is necessary. To the extent a response is required,
10 Counterdefendants admit that on or about April 1, 2020, an improper correspondence was sent to
11 SHAC and SJCVC, claiming that CBCI was transferring the pledged collateral to CBCI's nominee CBC
12 Partners, LLC. Counterdefendants deny the remaining allegations.

13 47. Answering paragraph 47 of the counterclaim, Counterdefendants are without sufficient
14 knowledge or information upon which to form a belief as to the truth of the allegation contained in
15 said paragraph, and therefore generally and specifically deny the allegations contained therein.

16 48. Answering paragraph 48 of the counterclaim, Counterdefendants are without sufficient
17 knowledge or information upon which to form a belief as to the truth of the allegation contained in
18 said paragraph, and therefore generally and specifically deny the allegations contained therein.

19 49. Answering paragraph 49 of the counterclaim, Counterdefendants admit that on April
20 3, 2020, an improper and illegal Notice to Vacate was sent to SJCVC, which forced SHAC and SJVC
21 to commence this litigation due to the obvious violation of Nevada Governor Steve Sisolak's
22 Emergency Directive 008.

23 50. Answering paragraph 50 of the counterclaim, Counterdefendants admit that further
24 improper correspondence was sent from CBCI's counsel to counsel for SJCVC and SHAC on April 6,
25 2020. Counterdefendants deny the remaining allegations.

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1 **FIRST CLAIM FOR RELIEF**

2 **Breach of Contract (Forbearance Agreement)**

3 **Against SHAC, SJCV, and Holdings**

4 51. Answering paragraph 51 of the counterclaim, Counterdefendants repeat and reallege
5 their answers to paragraphs 1 through 50 above, and incorporate the same herein by reference as
6 though fully set forth herein.

7 52. Answering paragraph 52 of the counterclaim, Counterdefendants deny the allegations.

8 53. Answering paragraph 53 of the counterclaim, Counterdefendants deny the allegations.

9 54. Answering paragraph 54 of the counterclaim, Counterdefendants deny the allegations.

10 55. Answering paragraph 55 of the counterclaim, Counterdefendants deny the allegations.

11 56. Answering paragraph 56 of the counterclaim, Counterdefendants deny the allegations.

12 **SECOND CLAIM FOR RELIEF**

13 **Breach of the Covenant of Good Faith and Fair Dealing (Forbearance Agreement)**

14 **Against SHAC, SJCV, and Holdings**

15 57. Answering paragraph 57 of the counterclaim, Counterdefendants repeat and reallege
16 their answers to paragraphs 1 through 56 above, and incorporate the same herein by reference as
17 though fully set forth herein.

18 58. Answering paragraph 58 of the counterclaim, this paragraph only contains a legal
19 conclusion and no actual facts, therefore no response is required.

20 59. Answering paragraph 59 of the counterclaim, to the extent the allegations are
21 Counterclaimants' legal conclusions, no response is required. To the extent an answer is required,
22 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to
23 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
24 the allegations contained therein.

25 60. Answering paragraph 60 of the counterclaim, Counterdefendants deny the allegations.

26 61. Answering paragraph 61 of the counterclaim, Counterdefendants deny the allegations.

27 62. Answering paragraph 62 of the counterclaim, Counterdefendants deny the allegations.

28 63. Answering paragraph 63 of the counterclaim, Counterdefendants deny the allegations.

1 **THIRD CLAIM FOR RELIEF**

2 **Unlawful Detainer NRS 40.250 – Against SJCV and Bloom**

3 64. Answering paragraph 64 of the counterclaim, Counterdefendants repeat and reallege
4 their answers to paragraphs 1 through 63 above, and incorporate the same herein by reference as
5 though fully set forth herein.

6 65. Answering paragraph 65 of the counterclaim, Counterdefendants deny the allegations.

7 66. Answering paragraph 66 of the counterclaim, Counterdefendants deny the allegations.

8 67. Answering paragraph 67 of the counterclaim, Counterdefendants admit that SJCV and
9 Bloom continue to occupy the Property and the Property is being used as Bloom's personal family
10 residence.

11 68. Answering paragraph 68 of the counterclaim, Counterdefendants deny the allegations.

12 69. Answering paragraph 69 of the counterclaim, Counterdefendants deny the allegations.

13 **FOURTH CLAIM FOR RELIEF**

14 **Fraud in the Inducement – Against SJCV, Holding, and Bloom**

15 70. Answering paragraph 70 of the counterclaim, Counterdefendants repeat and reallege
16 their answers to paragraphs 1 through 69 above, and incorporate the same herein by reference as
17 though fully set forth herein.

18 71. Answering paragraph 71 of the counterclaim, Counterdefendants deny the allegations.

19 72. Answering paragraph 72 of the counterclaim, these allegations are unintelligible and
20 as a result, Counterdefendants deny the allegations.

21 73. Answering paragraph 73 of the counterclaim, Counterdefendants admit that after CBC
22 had already breached the Forbearance Agreement, improper demands were made upon
23 Counterdefendants to provide certain documentation. Counterdefendants deny the remaining
24 allegations.

25 74. Answering paragraph 74 of the counterclaim, Counterdefendants deny the allegations.

26 75. Answering paragraph 75 of the counterclaim, Counterdefendants deny the allegations.

27 76. Answering paragraph 76 of the counterclaim, Counterdefendants deny the allegations.

28 ///

1 **FIFTH CLAIM FOR RELIEF**

2 **Abuse of Process/Fraud Upon the Court – Against SJCVC and Bloom**

3 77. Answering paragraph 77 of the counterclaim, Counterdefendants repeat and reallege
4 their answers to paragraphs 1 through 76 above, and incorporate the same herein by reference as
5 though fully set forth herein.

6 78. Answering paragraph 78 of the counterclaim, Counterdefendants deny the allegations.

7 79. Answering paragraph 79 of the counterclaim, this paragraph references a document
8 which speaks for itself, therefore no response is necessary. To the extent a response is required,
9 Counterdefendants admit the allegations but deny that such statements in Bloom’s Declaration filed
10 on April 23, 2020 constitute a “material misrepresentation to the Court.”

11 80. Answering paragraph 80 of the counterclaim, this paragraph references a document
12 which speaks for itself, therefore no response is necessary. To the extent a response is required,
13 Counterdefendants deny that SJC Ventures, LLC was a pledger or a signatory to the Pledge
14 Agreement.

15 81. Answering paragraph 81 of the counterclaim, Counterdefendants admit that Bloom
16 signed the Pledge Agreement on behalf of SHAC only. Counterdefendants deny all other allegations.

17 82. Answering paragraph 82 of the counterclaim, Counterdefendants admit that Bloom is
18 the manager of SJCVC and of Holding, and Holding (with Bloom as its manager) is the sole, exclusive,
19 and irrevocable managing entity of SHAC.

20 83. Answering paragraph 83 of the counterclaim, Counterdefendants deny the allegations.

21 84. Answering paragraph 84 of the counterclaim, Counterdefendants deny the allegations.

22 85. Answering paragraph 85 of the counterclaim, Counterdefendants deny the allegations.

23 **SIXTH CLAIM FOR RELIEF**

24 **Breach of Fiduciary Duty – Against SJCVC, Holdings, and Bloom**

25 86. Answering paragraph 86 of the counterclaim, Counterdefendants repeat and reallege
26 their answers to paragraphs 1 through 85 above, and incorporate the same herein by reference as
27 though fully set forth herein.

28 87. Answering paragraph 87 of the counterclaim, Counterdefendants deny the allegations.

- 1 88. Answering paragraph 88 of the counterclaim, Counterdefendants deny the allegations.
- 2 89. Answering paragraph 89 of the counterclaim, Counterdefendants deny the allegations.
- 3 90. Answering paragraph 90 of the counterclaim, Counterdefendants deny the allegations.
- 4 91. Answering paragraph 91 of the counterclaim, Counterdefendants deny the allegations.
- 5 92. Answering paragraph 92 of the counterclaim, Counterdefendants deny the allegations.
- 6 93. Answering paragraph 93 of the counterclaim, Counterdefendants deny the allegations.

7 **SEVENTH CLAIM FOR RELIEF**

8 **Breach of Contract (Operating Agreement)**

9 **SJCV, Holdings, and Bloom**

10 94. Answering paragraph 94 of the counterclaim, Counterdefendants repeat and reallege
11 their answers to paragraphs 1 through 93 above, and incorporate the same herein by reference as
12 though fully set forth herein.

- 13 95. Answering paragraph 95 of the counterclaim, Counterdefendants deny the allegations.
- 14 96. Answering paragraph 96 of the counterclaim, Counterdefendants deny the allegations.
- 15 97. Answering paragraph 97 of the counterclaim, Counterdefendants deny the allegations.
- 16 98. Answering paragraph 98 of the counterclaim, Counterdefendants deny the allegations.
- 17 99. Answering paragraph 99 of the counterclaim, Counterdefendants deny the allegations.

18 **EIGHTH CLAIM FOR RELIEF**

19 **Breach of the Covenant of Good Faith and Fair Dealing (Operating Agreement)**

20 **SJCV, Holdings, and Bloom**

21 100. Answering paragraph 100 of the counterclaim, Counterdefendants repeat and reallege
22 their answers to paragraphs 1 through 99 above, and incorporate the same herein by reference as
23 though fully set forth herein.

24 101. Answering paragraph 101 of the counterclaim, this paragraph only contains a legal
25 conclusion and no actual facts, therefore no response is required.

26 102. Answering paragraph 102 of the counterclaim, to the extent the allegations are
27 Counterclaimants' legal conclusions, no response is required. To the extent an answer is required,
28 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to

1 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
2 the allegations contained therein.

3 103. Answering paragraph 103 of the counterclaim, Counterdefendants deny the
4 allegations.

5 104. Answering paragraph 104 of the counterclaim, Counterdefendants deny the
6 allegations.

7 105. Answering paragraph 105 of the counterclaim, Counterdefendants deny the
8 allegations.

9 106. Answering paragraph 106 of the counterclaim, Counterdefendants deny the
10 allegations.

11 **NINTH CLAIM FOR RELIEF**

12 **Breach of Contract (Pledge Agreement)**

13 **SJCV, Holdings, and Bloom**

14 107. Answering paragraph 107 of the counterclaim, Counterdefendants repeat and reallege
15 their answers to paragraphs 1 through 106 above, and incorporate the same herein by reference as
16 though fully set forth herein.

17 108. Answering paragraph 108 of the counterclaim, Counterdefendants deny the
18 allegations.

19 109. Answering paragraph 109 of the counterclaim, Counterdefendants deny the
20 allegations.

21 110. Answering paragraph 110 of the counterclaim, Counterdefendants deny the
22 allegations.

23 111. Answering paragraph 111 of the counterclaim, Counterdefendants deny the
24 allegations.

25 **TENTH CLAIM FOR RELIEF**

26 **Breach of Covenant of Good Faith and Fair Dealing (Pledge Agreement)**

27 **SJCV, Holdings, and Bloom**

28 112. Answering paragraph 112 of the counterclaim, Counterdefendants repeat and reallege

1 their answers to paragraphs 1 through 111 above, and incorporate the same herein by reference as
2 though fully set forth herein.

3 113. Answering paragraph 113 of the counterclaim, this paragraph only contains a legal
4 conclusion and no actual facts, therefore no response is required.

5 114. Answering paragraph 114 of the counterclaim, to the extent the allegations are
6 Counterclaimants' legal conclusions, no response is required. To the extent an answer is required,
7 Counterdefendants are without sufficient knowledge or information upon which to form a belief as to
8 the truth of the allegation contained in said paragraph, and therefore generally and specifically deny
9 the allegations contained therein.

10 115. Answering paragraph 115 of the counterclaim, Counterdefendants deny the
11 allegations.

12 116. Answering paragraph 116 of the counterclaim, Counterdefendants deny the
13 allegations.

14 117. Answering paragraph 117 of the counterclaim, Counterdefendants deny the
15 allegations.

16 118. Answering paragraph 118 of the counterclaim, Counterdefendants deny the
17 allegations.

18 **ELEVENTH CLAIM FOR RELIEF**

19 **Unjust Enrichment – Against all Counterdefendants**

20 119. Answering paragraph 119 of the counterclaim, Counterdefendants repeat and reallege
21 their answers to paragraphs 1 through 118 above, and incorporate the same herein by reference as
22 though fully set forth herein.

23 120. Answering paragraph 120 of the counterclaim, Counterdefendants deny the
24 allegations..

25 121. Answering paragraph 121 of the counterclaim, Counterdefendants deny the
26 allegations.

27 122. Answering paragraph 122 of the counterclaim, Counterdefendants deny the
28 allegations.

1 **TWELFTH CLAIM FOR RELIEF**

2 **Declaratory Relief – Against all Counterdefendants**

3 123. Answering paragraph 123 of the counterclaim, Counterdefendants repeat and reallege
4 their answers to paragraphs 1 through 122 above, and incorporate the same herein by reference as
5 though fully set forth herein.

6 124. Answering paragraph 124 of the counterclaim, Counterdefendants admit that disputes
7 and controversies have arisen between Counterclaimants and Counterdefendants relative to the
8 Contracts and Agreements.

9 125. Answering paragraph 125 of the counterclaim, this paragraph only contains a legal
10 conclusion and no actual facts, therefore no response is required.

11 126. Answering paragraph 126 of the counterclaim, this paragraph only contains a legal
12 conclusion and no actual facts, therefore no response is required.

13 127. Answering paragraph 127 of the counterclaim, Counterdefendants deny the
14 allegations, and point out that nowhere in the Twelfth Claim for Relief did Counterclaimants set forth
15 what, if any, declaratory relief they are actually seeking.

16 **ANSWER TO PRAYER FOR RELIEF**

17 Answering the allegations contained in the entirety of Counterclaimants' prayer for relief,
18 Counterdefendants deny that Counterclaimants are entitled to the relief being sought therein or to any
19 relief in this matter.

20 **AFFIRMATIVE DEFENSES**

21 Counterdefendants, without altering the burdens of proof the parties must bear, assert the
22 following affirmative defenses to Counterclaimants' counterclaim, and all causes of action alleged
23 therein, and specifically incorporate into these affirmative defenses their answers to the preceding
24 paragraphs of the counterclaim as if fully set forth herein.

25 **First Affirmative Defense**

26 The counterclaim, and all the claims for relief alleged therein, fails to state a claim against
27 Counterdefendants upon which relief can be granted.

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Eleventh Affirmative Defense

Counterclaimants are not in possession and/or control of the documents and/or witnesses necessary to prove its alleged causes of action against Counterdefendants.

Twelfth Affirmative Defense

The claims, and each of them, are barred by the failure of Counterclaimants to plead those claims with sufficient particularity.

Thirteenth Affirmative Defense

Counterclaimants are attempting to deprive Counterdefendants of Counterdefendants' property without due process of law.

Fourteenth Affirmative Defense

Any recovery by Counterclaimants must be settled, reduced, abated, set-off, or apportioned to the extent that any other party's actions or non-party's actions, including those of Counterclaimants, caused or contributed to Counterclaimants' damages, if any.

Fifteenth Affirmative Defense

Counterclaimants have waived any right of recovery against Counterdefendants.

Sixteenth Affirmative Defense

Counterdefendants owe no duty to Counterclaimants.

Seventeenth Affirmative Defense

Counterclaimants have failed to allege sufficient facts and cannot carry the burden of proof imposed on them by law to recover attorney's fees incurred to bring this action, and have failed to plead attorneys' fees as special damages.

Eighteenth Affirmative Defense

Counterdefendants allege that the occurrences referred to in the counterclaim, and all alleged damages, if any, resulting therefrom, were caused by the acts or omissions of a third party over whom Counterdefendants had no control.

Nineteenth Affirmative Defense

Counterclaimants' counterclaim is void and invalid as a matter of law.

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1 **Twentieth Affirmative Defense**

2 Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have
3 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the
4 filing of this answer and, therefore, Defendant reserves the right to amend this answer to allege
5 additional affirmative defenses if subsequent investigation warrants.

6 WHEREFORE, Counterdefendants pray for judgment as follows:

- 7 1. Counterclaimants take nothing by way of their counterclaim;
8 2. The counterclaim, and all causes of action against Counterdefendants alleged therein,
9 be dismissed with prejudice;
10 3. For reasonable attorney fees and costs to be awarded to Counterdefendants; and
11 4. For such other and further relief the Court may deem just and proper.

12 DATED this 10th day of July, 2020.

13 Respectfully submitted,

14 **MAIER GUTIERREZ & ASSOCIATES**

15 /s/ Danielle J. Barraza

16 JOSEPH A. GUTIERREZ, ESQ.

17 Nevada Bar No. 9046

18 DANIELLE J. BARRAZA, ESQ.

19 Nevada Bar No. 13822

20 8816 Spanish Ridge Avenue

21 Las Vegas, Nevada 89148

22 *Attorneys for Spanish Heights Acquisition*
23 *Company, LLC, SJC Ventures, LLC, SJC*
24 *Ventures Holding Company, LLC, and Jay*
25 *Bloom*
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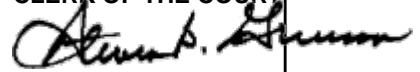
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*Attorneys for Defendants
Sheila Antos and Kenneth Antos,
As Trustees of the Kenneth & Sheila
Antos Living Trust and the Kenneth M.
Antos & Sheila M. Neumann-Antos Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC
a Delaware limited liability company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign limited
liability company; CBC PARTNERS, LLC, a
foreign limited liability company, 5148
SPANISH HEIGHTS, LLC, a Nevada limited
liability company; KENNETH ANTOS and
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign limited liability
company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

**DEFENDANTS SHEILA ANTOS AND
KENNETH ANTOS, AS TRUSTEES
OF THE KENNETH & SHEILA
ANTOS LIVING TRUST AND THE
KENNETH M. ANTOS & SHEILA M.
NEUMANN-ANTOS TRUST
ANSWER TO FIRST AMENDED
COMPLAINT AND
COUNTERCLAIM**

EXEMPT FROM ARBITRATION:

1. Request for Declaratory Relief
2. Action Concerning Real Property

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC PARTNERS
3 I, LLC, a Washington limited liability company,

4 Counterclaimants,

5 v.

6 SPANISH HEIGHTS ACQUISITION
7 COMPANY, LLC, a Nevada Limited Liability
8 Company; SJC VENTURES, LLC, a Delaware
9 limited liability company; SJC VENTURES
10 HOLDING COMPANY, LLC, a Delaware
11 limited liability company; JAY BLOOM,
12 individually and as Manager, DOE
13 DEFENDANTS 1-10; and ROE DEFENDANTS
14 11-20,

15 Counterdefendants.

16 KENNETH ANTOS and SHEILA NEUMANN-
17 ANTOS, as Trustees of the Kenneth & Sheila
18 Antos Living Trust and the Kenneth M. Antos &
19 Sheila M. Nuemann-Antos Trust,

20 Counterclaimants,

21 v.

22 SJC VENTURES HOLDING COMPANY,
23 LLC, d/b/a SJC VENTURES, LLC a Delaware
24 limited liability Company, DOES I though X;
25 and ROE CORPORATIONS I through X,
26 inclusive,

27 Counterdefendants.

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**DEFENDANTS SHEILA ANTOS AND KENNETH ANTOS, AS TRUSTEES OF THE
KENNETH & SHEILA ANTOS LIVING TRUST AND THE KENNETH M. ANTOS &
SHEILA M. NEUMANN-ANTOS TRUST ANSWER TO FIRST AMENDED
COMPLAINT AND COUNTERCLAIM**

Defendants, Sheila Antos and Kenneth Antos, as Trustees of the Kenneth & Sheila Antos
Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust Answer to First

1 Amended Complaint ("Defendants"), by and through their attorney Michael R. Mushkin, of the
2 law firm of Mushkin & Coppedge, for their Answer to Plaintiffs' First Amended Complaint
3 ("FAC") hereby admits, deny, and affirmatively alleges as follows in response to the FAC on file
4 in the above-entitled action:

5 **PARTIES**

6 1. In answering Paragraph 1 of the FAC, Defendants are without knowledge
7 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
8 contained therein.

9 2. In answering Paragraph 2 of the FAC, Defendants admit that there is a property
10 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148, with Assessor's Parcel
11 Number of 163-29-615-007 and Defendants are without knowledge sufficient to form a belief as
12 to the truth of the remainder of the allegations and therefore deny the allegations contained
13 therein.

14 3. In answering Paragraph 3 of the FAC, Defendants are without knowledge
15 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
16 contained therein.

17 4. In answering Paragraph 4 of the FAC, Defendants are without knowledge
18 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
19 contained therein.

20 5. In answering Paragraph 5 of the FAC, Defendants are without knowledge
21 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
22 contained therein.

23 6. In answering Paragraph 6 of the FAC, Defendants are without knowledge
24 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
25 contained therein.

26 7. In answering Paragraph 7 of the FAC, Defendants are without knowledge
27 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
28 contained therein.

8. In answering Paragraph 8 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

9. In answering Paragraph 9 of the FAC, Defendants admit the allegations contained therein.

10. In answering Paragraph 10 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

11. In answering Paragraph 11 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

12. In answering Paragraph 12 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

GENERAL ALLEGATIONS

13. In answering Paragraph 13 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

14. In answering Paragraph 14 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

15. In answering Paragraph 15 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

16. In answering Paragraph 16 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

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1 17. In answering Paragraph 17 of the FAC, Defendants are without knowledge
2 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
3 contained therein.

4 18. In answering Paragraph 18 of the FAC, Defendants are without knowledge
5 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
6 contained therein.

7 19. In answering Paragraph 19 of the FAC, Defendants are without knowledge
8 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
9 contained therein.

10 20. In answering Paragraph 20 of the FAC, Defendants deny the allegations contained
11 therein.

12 21. In answering Paragraph 21 of the FAC, Defendants are without knowledge
13 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
14 contained therein.

15 22. In answering Paragraph 22 of the FAC, Defendants are without knowledge
16 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
17 contained therein.

18 23. In answering Paragraph 23 of the FAC, Defendants are without knowledge
19 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
20 contained therein.

21 24. In answering Paragraph 24 of the FAC, Defendants are without knowledge
22 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
23 contained therein.

24 25. In answering Paragraph 25 of the FAC, Defendants are without knowledge
25 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
26 contained therein.

27 26. In answering Paragraph 26 of the FAC, Defendants admit the allegations contained
28 therein.

1 27. In answering Paragraph 27 of the FAC, Defendants deny the allegations contained
2 therein.

3 28. In answering Paragraph 28 of the FAC, Defendants deny the allegations contained
4 therein.

5 29. In answering Paragraph 29 of the FAC, Defendants deny the allegations contained
6 therein.

7 30. In answering Paragraph 30 of the FAC, Defendants deny the allegations contained
8 therein.

9 31. In answering Paragraph 31 of the FAC, Defendants deny the allegations contained
10 therein.

11 32. In answering Paragraph 32 of the FAC, Defendants deny the allegations contained
12 therein.

13 33. In answering Paragraph 33 of the FAC, Defendants are without knowledge
14 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
15 contained therein.

16 34. In answering Paragraph 34 of the FAC, Defendants are without knowledge
17 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
18 contained therein.

19 35. In answering Paragraph 35 of the FAC, Defendants are without knowledge
20 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
21 contained therein.

22 36. In answering Paragraph 36 of the FAC, Defendants are without knowledge
23 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
24 contained therein.

25 37. In answering Paragraph 37 of the FAC, Defendants admit that a Notice to Vacate
26 was issued and Defendants are without knowledge sufficient to form a belief as to the truth of the
27 remainder of the allegations and therefore deny the allegations contained therein.

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1 38. In answering Paragraph 38 of the FAC, Defendants deny the allegations contained
2 therein.

3 39. In answering Paragraph 39 of the FAC, Defendants are without knowledge
4 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
5 contained therein.

6 40. In answering Paragraph 40 of the FAC, Defendants are without knowledge
7 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
8 contained therein.

9 41. In answering Paragraph 41 of the FAC, Defendants are without knowledge
10 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
11 contained therein.

12 42. In answering Paragraph 42 of the FAC, Defendants are without knowledge
13 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
14 contained therein.

15 43. In answering Paragraph 43 of the FAC, Defendants are without knowledge
16 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
17 contained therein.

18 44. In answering Paragraph 44 of the FAC, Defendants are without knowledge
19 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
20 contained therein.

21 45. In answering Paragraph 45 of the FAC, Defendants are without knowledge
22 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
23 contained therein.

24 46. In answering Paragraph 46 of the FAC, Defendants are without knowledge
25 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
26 contained therein.

27 47. In answering Paragraph 47 of the FAC, Defendants are without knowledge
28 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny

1 the allegations contained therein.

2 48. In answering Paragraph 48 of the FAC, Defendants are without knowledge
3 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
4 the allegations contained therein.

5 49. In answering Paragraph 49 of the FAC, Defendants deny the allegations contained
6 therein.

7 50. In answering Paragraph 50 of the FAC, Defendants deny the allegations contained
8 therein.

9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Relief as to the Obligation to Abide by Governor Sisolak's Emergency**

11 **Directive Placing a Moratorium on Foreclosure and Eviction Actions)**

12 **Against all Defendants**

13 51. In answering Paragraph 51 of the FAC, Defendants repeat and reallege all answers
14 as though fully set forth herein.

15 52. In answering Paragraph 52 of the FAC, Defendants are without knowledge
16 sufficient to form a belief a to the truth of the remainder of the allegations and therefore deny the
17 allegations contained therein.

18 53. In answering Paragraph 53 of the FAC, Defendants admit the allegations contained
19 therein.

20 54. In answering Paragraph 54 of the FAC, Defendants are without knowledge
21 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
22 the allegations contained therein.

23 55. In answering Paragraph 55 of the FAC, Defendants are without knowledge
24 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
25 the allegations contained therein.

26 56. In answering Paragraph 56 of the FAC, Defendants are without knowledge
27 sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny
28 the allegations contained therein.

57. In answering Paragraph 57 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny the allegations contained therein.

58. In answering Paragraph 58 of the FAC, Defendants deny the allegations contained therein.

SECOND CAUSE OF ACTION

(Declaratory Relief Regarding CBC Partners I, LLC's Lack of Rights to Foreclose or to Evict as it Admits it Sold and no longer Possesses the Purported Note)

Against CBC Partners I, LLC

59. In answering Paragraph 59 of the FAC, Defendants repeat and reallege all answers as though fully set forth herein.

60. In answering Paragraph 60 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny the allegations contained therein.

61. In answering Paragraph 61 of the FAC, Defendants admit the allegations contained therein.

62. In answering Paragraph 62 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny the allegations contained therein.

63. In answering Paragraph 63 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the remainder of the allegations and therefore deny the allegations contained therein.

64. In answering Paragraph 64 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

65. In answering Paragraph 65 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

66. In answering Paragraph 66 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

67. In answering Paragraph 67 of the FAC, Defendants deny the allegations contained therein.

THIRD CAUSE OF ACTION

(Declaratory Relief of the Application of the One Action Rule)

Against CBC Partners I, LLC and 5148 Spanish Heights, LLC

68. In answering Paragraph 68 of the FAC, Defendants repeat and reallege all answers as though fully set forth herein.

69. In answering Paragraph 69 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

70. In answering Paragraph 70 of the FAC, Defendants admit the allegations contained therein.

71. In answering Paragraph 71 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

72. In answering Paragraph 72 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

73. In answering Paragraph 73 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

74. In answering Paragraph 74 of the FAC, Defendants deny the allegations contained therein.

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1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief Regarding the Applicability of the Doctrine of Merger)**

3 **Against CBC Partners I, LLC and 5148 Spanish Heights, LLC**

4 75. In answering Paragraph 75 of the FAC, Defendant repeat and reallege all answers
5 as though fully set forth herein.

6 76. In answering Paragraph 76 of the FAC, Defendants are without knowledge
7 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
8 contained therein.

9 77. In answering Paragraph 77 of the FAC, Defendants admit the allegations contained
10 therein.

11 78. In answering Paragraph 78 of the FAC, Defendants are without knowledge
12 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
13 contained therein.

14 79. In answering Paragraph 79 of the FAC, Defendants are without knowledge
15 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
16 contained therein.

17 80. In answering Paragraph 80 of the FAC, Defendants are without knowledge
18 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
19 contained therein.

20 81. In answering Paragraph 81 of the FAC, Defendants deny the allegations contained
21 therein.

22 **FIFTH CAUSE OF ACTION**

23 **(Declaratory Relief Regarding the Status of SJC Ventures Holding, LLC as Sole and**

24 **Exclusive Manager of Spanish Heights Acquisition Company, LLC)**

25 **Against all Defendants**

26 82. In answering Paragraph 82 of the FAC, Defendants repeat and reallege all answers
27 as though fully set forth herein.

28 83. In answering Paragraph 83 of the FAC, Defendants are without knowledge

1 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
2 contained therein.

3 84. In answering Paragraph 84 of the FAC, Defendants admit the allegations contained
4 therein.

5 85. In answering Paragraph 85 of the FAC, Defendants are without knowledge
6 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
7 contained therein.

8 86. In answering Paragraph 86 of the FAC, Defendants are without knowledge
9 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
10 contained therein.

11 87. In answering Paragraph 87 of the FAC, Defendants deny the allegations contained
12 therein.

13 88. In answering Paragraph 88 of the FAC, Defendants deny the allegations contained
14 therein.

15 89. In answering Paragraph 89 of the FAC, Defendants deny the allegations contained
16 therein.

17 SIXTH CAUSE OF ACTION

18 (Temporary Restraining Order, Preliminary Injunction, and permanent Injunction)

19 Against CBC Partners I, LLC and 5148 Spanish Heights, LLC

20 90. In answering Paragraph 90 of the FAC, Defendants repeat and reallege all answers
21 as though fully set forth herein.

22 91. In answering Paragraph 91 of the FAC, Defendants are without knowledge
23 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
24 contained therein.

25 92. In answering Paragraph 92 of the FAC, Defendants deny the allegations contained
26 therein.

27 93. In answering Paragraph 93 of the FAC, Defendants deny the allegations contained
28 therein.

94. In answering Paragraph 94 of the FAC, Defendants deny the allegations contained therein.

95. In answering Paragraph 95 of the FAC, Defendants deny the allegations contained therein.

96. In answering Paragraph 96 of the FAC, Defendants deny the allegations contained therein.

SEVENTH CAUSE OF ACTION

**(Declaratory Relief Regarding the Antos Trust's Purported Assignment of Membership
Interest in Spanish Heights Acquisition Company)**

Against the Antos Trust

97. In answering Paragraph 97 of the FAC, Defendants repeat and reallege all answers as though fully set forth herein.

98. In answering Paragraph 98 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

99. In answering Paragraph 99 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

100. In answering Paragraph 100 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

101. In answering Paragraph 101 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

102. In answering Paragraph 102 of the FAC, Defendants are without knowledge sufficient to form a belief as to the truth of the allegations and therefore deny the allegations contained therein.

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1 103. In answering Paragraph 103 of the FAC, Defendants deny the allegations
2 contained therein.

3 **EIGHTH CAUSE OF ACTION**

4 **(Breach of Contract as to the Forbearance Agreement)**

5 **Against CBC partners I, LLC**

6 104. In answering Paragraph 104 of the FAC, Defendants repeat and reallege all
7 answers as though fully set forth herein.

8 105. In answering Paragraph 105 of the FAC, Defendants admit the allegations
9 contained therein.

10 106. In answering Paragraph 106 of the FAC, Defendants admit the allegations
11 contained therein.

12 107. In answering Paragraph 107 of the FAC, Defendants admit the allegations
13 contained therein.

14 108. In answering Paragraph 108 of the FAC, Defendants deny the allegations
15 contained therein.

16 109. In answering Paragraph 109 of the FAC, Defendants deny the allegations
17 contained therein.

18 110. In answering Paragraph 110 of the FAC, Defendants deny the allegations
19 contained therein.

20 111. In answering Paragraph 111 of the FAC, Defendants deny the allegations
21 contained therein.

22 112. In answering Paragraph 112 of the FAC, Defendants deny the allegations
23 contained therein.

24 **NINTH CAUSE OF ACTION**

25 **(Contractual Breach of the Covenant of Good Faith and Fair Dealing)**

26 **Against CBC Partners I, LLC**

27 113. In answering Paragraph 113 of the FAC, Defendants repeat and reallege all
28 answers as though fully set forth herein.

1 114. In answering Paragraph 114 of the FAC, Defendants admit the allegations
2 contained therein.

3 115. In answering Paragraph 115 of the FAC, Defendants admit the allegations
4 contained therein.

5 116. In answering Paragraph 116 of the FAC, Defendants admit the allegations
6 contained therein.

7 117. In answering Paragraph 117 of the FAC, Defendants admit the allegations
8 contained therein.

9 118. In answering Paragraph 118 of the FAC, Defendants admit the allegations
10 contained therein.

11 119. In answering Paragraph 119 of the FAC, Defendants deny the allegations
12 contained therein.

13 120. In answering Paragraph 120 of the FAC, Defendants deny the allegations
14 contained therein.

15 121. In answering Paragraph 121 of the FAC, Defendants deny the allegations
16 contained therein.

17 122. In answering Paragraph 122 of the FAC, Defendants deny the allegations
18 contained therein.

19 123. In answering Paragraph 123 of the FAC, Defendants deny the allegations
20 contained therein.

21 124. In answering Paragraph 124 of the FAC, Defendants repeat and reallege all
22 answers as though fully set forth herein.

23 125. In answering Paragraph 125 of the FAC, Defendants deny the allegations
24 contained therein.

25 126. In answering Paragraph 126 of the FAC, Defendants deny the allegations
26 contained therein.

27 127. In answering Paragraph 127 of the FAC, Defendants deny the allegations
28 contained therein.

1 128. In answering Paragraph 128 of the FAC, Defendants deny the allegations
2 contained therein.

3 129. In answering Paragraph 129 of the FAC, Defendants deny the allegations
4 contained therein.

5 130. In answering Paragraph 130 of the FAC, Defendants deny the allegations
6 contained therein.

7 131. In answering Paragraph 131 of the FAC, Defendants deny the allegations
8 contained therein.

9 132. In answering Paragraph 132 of the FAC, Defendants deny the allegations
10 contained therein.

11 133. In answering Paragraph 133 of the FAC, Defendants repeat and reallege all
12 answers as though fully set forth herein.

13 134. In answering Paragraph 134 of the FAC, Defendants deny the allegations
14 contained therein.

15 135. In answering Paragraph 135 of the FAC, Defendants deny the allegations
16 contained therein.

17 136. In answering Paragraph 136 of the FAC, Defendants deny the allegations
18 contained therein.

19 137. In answering Paragraph 137 of the FAC, Defendants repeat and reallege all
20 answers as though fully set forth herein.

21 138. In answering Paragraph 138 of the FAC, Defendants are without knowledge
22 sufficient to form a belief as to the truth of the allegations and therefore deny the allegations
23 contained therein.

24 139. In answering Paragraph 139 of the FAC, Defendants deny the allegations
25 contained therein.

26 140. In answering Paragraph 140 of the FAC, Defendants deny the allegations
27 contained therein.

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141. In answering Paragraph 141 of the FAC, Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

1) Defendant deny each and every allegation contained in the First Amended Complaint not otherwise specifically admitted or denied herein.

2) Plaintiffs have failed to state a claim against Defendants upon which relief may be granted.

3) Plaintiffs' claims are barred because the grant of relief would unjustly enrich them.

4) Plaintiff's claims are barred because they failed to satisfy a condition precedent and/or a condition subsequent.

5) Defendants' actions upon which Plaintiffs' First Amended Complaint is based were reasonable, justified, undertaken in good faith, and lawful.

6) Plaintiffs' claims against Defendant are barred as a matter of law as Plaintiffs' Complaint makes numerous blatantly false claims.

7) Plaintiffs have failed to mitigate their damages.

8) Plaintiffs' claims are barred by the doctrine of laches.

9) Plaintiffs' claims are barred by the doctrine of unclean hands.

10) Plaintiff's claims are barred by a failure of consideration.

11) Plaintiffs are estopped from asserting the claims set forth in the Complaint because of improper conduct, acts, or omissions.

12) Plaintiffs' claims are barred by lack of authority.

13) Plaintiffs' claims are barred because Plaintiffs did not suffer any damages and, to the extent Plaintiffs have suffered any losses, they are speculative and vague.

14) Defendants have incurred attorneys' fees and costs in the defense of this action and is entitled to full reimbursement thereof.

15) Defendants hereby incorporates those affirmative defenses enumerated in NRCP 8 as if fully set forth herein. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense. In the event further investigation or discovery reveals

1 the applicability of any such defenses, Defendant reserves the right to seek leave of the Court to
2 amend this Answer to the Complaint and to specifically assert any such defense. Such defenses
3 are herein incorporated by reference for the specific purpose of not waiving any such defense.

4 16) Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged
5 herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of the
6 Answer to First Amended Complaint. Therefor Defendants reserve the right to amend this
7 Answer, including adding affirmative defenses, based upon discovery, review of documents, and
8 development of evidence in this case.

9 **COUNTERCLAIMANTS, KENNETH ANTOS AND SHEILA NEUMANN-ANTOS, AS**
10 **TRUSTEES OF THE KENNETH & SHEILA ANTOS LIVING TRUST AND THE**
11 **KENNETH M. ANTOS & SHEILA M. NEUMANN-ANTOS TRUST COUNTERCLAIM**
12 **AGAINST SJC VENUTURES HOLDING COMPANY, LLC, D/B/A SJC VENTURES,**
13 **LLC A DELAWARE**

14 Counterclaimants, Kenneth Antos and Sheila Neumann-Antos, as Trustees of the
15 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-"Antos
16 Trust, allege as follows:

17 **JURISDICTION AND VENUE**

18 1. Pursuant to Nevada's long arm statute codified at NRS 14.065, a Court of this
19 State may exercise jurisdiction over a party to a civil action on any basis not inconsistent with
20 the Constitution of Nevada or the Constitution of the United States.

21 2. Venue is proper pursuant to Nev. Rev. Stat. § 13.040.

22 **THE PARTIES**

23 3. Counterclaimants, Kenneth Antos and Sheila Neumann-Antos, as Trustees of the
24 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
25 Trust, are individuals, residing in Clark County, Nevada.

26 4. Counterdefendant, SJC Ventures, LLC a Delaware limited liability company, upon
27 information and belief, Jay Bloom is the Manager, of SJC Ventures, LLC a Delaware limited
28

1 liability company. Upon information and belief, Jay Bloom is a resident of Clark County, Nevada.

2 5. Upon information and belief, Jay Bloom is the sole member of SJC Ventures, LLC.

3 6. Operating Agreement calls for investor member to perform the following:

4 a. "Provide for the funding of a (sic) **annual** expense reserve account in the
5 amount of \$150,000.00 within ninety days from which non member CBCI is authorized to issue
6 payment against its obligations due from Seller Member should Investor Member fail to effect
7 such payments..." (emphasis added).

8 b. "Provide for a second funding of an annual expense reserve account one
9 year later in the additional amount of \$150,000.00 within ninety days of the first anniversary of
10 the signing from which non Member CBCI is authorized to issue payment against its Note should
11 Investor Member fail to effect such payments..." (emphasis added).

12 c. "Cause the Company to effect repairs to the premises to bring it back to
13 top quality standard and working repair."

14 d. "Cause the Company to pay all HOA assessments and fines."

15 e. "At the earlier of 2 years... pay off in full the CBC revicable (sic) as relates
16 to the property."

17 f. At the earlier of 2 years... either assume service of or retire either or both
18 of the 1st and 2nd position lenders."

19 7. On or about April 16, 2007 nonparties Kenneth M. Antos and Sheila M. Neumann-
20 Antos transferred to Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth
21 and Shelia Antos Living Trust dated April 26, 2007 ("Antos") real property located in Clark
22 County, Nevada commonly known as 5148 Spanish Heights Drive, Las Vegas, Nevada 89148
23 (the "Property").
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8. On or about June 22, 2012, Antos with nonparties KCI Investments, LLC a Nevada limited liability company ("KCI") entered into a Secured Promissory Note with CBC Partners 1, LLC, a Washington limited liability company ("CBCI").

9. The June 22, 2012, Secured Promissory Note (the "Note") was modified and amended several times.

10. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") was recorded against the Property in the Clark County Recorder's Office as Instrument No. 201412290002856, for the purpose of securing the Note. The balance due is approximately \$5,578,459.15 (\$2,935,001.14 for principal, pre-forebearance protection payments of \$1,326,744.55, interest and late charges of \$1,315,105.24 and interest accrued at the rate of 20% in the amount of \$1,608.22 per day from April 1, 2020, *May 14, 2020 Evidentiary Hearing* Exhibit A-003-004).

11. This Deed of Trust is subordinate to two (2) additional Deeds of Trust recorded against the Property. The First Mortgage to City National is in the principal amount of \$3,240,000.00 with monthly payment of \$19,181.07. The Second Mortgage to Northern Trust Bank is in the principal amount of \$599,000.00 with monthly payments of \$3,034.00.

12. The Deed of Trust was subsequently modified on July 22, 2015 and on December 19, 2016 as recorded in the Clark County Recorder's Office Instrument No.'s 201507220001146 and 201612190002739 respectively.

13. On or about September 27, 2017, Antos, SHAC and Counterdefendant SJC Ventures, LLC ("SJC") entered into a Forbearance Agreement of the Note, acknowledging default and affirming CBCI has fully performed.

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1 14. As part of the Forbearance Agreement Antos conveyed the Property to SHAC and
2 SHAC leased the property to SJCVC.

3 15. As part of the Forbearance Agreement SHAC would lease the Property to SJCVC
4 the lease contained a Consent to Lease between SHAC and CBCI.

5 16. Paragraph 2 of the Consent to Lease states: "In the event CBCI... or otherwise
6 exercises its rights under the Forbearance Agreement, CBCI may terminate the Lease."

7 17. Pursuant to the terms of the Forbearance Agreement SHAC was to make certain
8 payments to CBCI and other parties. In addition, a balloon payment of the total amount owing
9 was due on August 31, 2019.

10 18. As part of the Forbearance Agreement there were certain requirements of SHAC
11 attached as Exhibit B to the Forbearance Agreement. Among the certain requirements was the
12 understanding that the First Lien holder would pay the real property taxes, that CBCI would pay
13 the 1st and 2nd Mortgage payments to prevent default, that SHAC would make certain repairs and
14 improvements to the Property in approximately the amount of \$100,000.00, SHAC would deposit
15 \$150,000.00 with Bank of America and replenish the account and provide CBCI with an Account
16 Control Agreement; SHAC would maintain the Property, and SHAC would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 19. On or about August 4, 2017, SHAC was organized with the initial members being
19 SJCVC, CBC Partners, LLC, and Antos.

20 20. On or about August 9, 2017, CBC Partners resigned as a member of SHAC.

21 21. In addition to the certain requirements of the Forbearance Agreement there was
22 certain pledged collateral. Among the pledged collateral Antos and SJCVC pledged 100% of the
23 membership interest in SHAC, the Pledge Agreement.

1 22. The Pledge Agreement was between Antos and SJCVC as Pledgors and CBCI as
2 the Secured Party and was dated September 27, 2017.

3 23. Pursuant to the Pledge Agreement, Antos and SJCVC and pledged all right, title and
4 interest in and to 100% of their membership inters of SHAC to CBCI.

5 24. In addition to pledging membership interest the Pledgors agreed to not "sell, assign
6 (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to,
7 any of the Pledged Collateral..."

8 25. SJC Ventures, LLC has done none of the required acts to fulfill its obligations
9 under the Operating Agreement and Pledge Agreements.

10 26. Plaintiff/Counterdefendant, SJC Ventures, LLC is in default of the Operating
11 Agreement.

12 27. Defendant/Counterclaimant, Kenneth Antos and Sheila Neumann-Antos, as
13 Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M.
14 Neumann-Antos Trust have been damaged in an amount in excess of \$15,000.00 and is entitled
15 to rescission.

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19 **FIRST CLAIM FOR RELIEF**

20 **Breach of Contract**

21 28. Defendants/Counterclaimants repeat and reallege each and every allegation set
22 forth in Paragraphs 1 through 27 above and incorporates the same by reference as though fully
23 set forth herein.

24 29. Counterdefendant has breached the Operating Agreement by failing to perform the
25 terms of the Agreement.

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30. Counterdefendant's actions are in breach of the duties owed to Counterclaimants and Counterdefendant has violated the Agreements.

31. Counterdefendant did not compensate Counterclaimants under the terms of the Agreement, and Defendants/Counterclaimants are entitled to rescission of the Agreement and mandatory damages in excess of \$15,000.00.

32. Counterclaimants are entitled to be compensated for the reasonable attorneys' fees and costs incurred in the prosecution of this action.

SECOND CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

33. Defendants/Counterclaimants hereby repeat and reallege each allegation contained in paragraphs 1 through 20 of this Countercomplaint and incorporate the same herein by reference as though fully set forth herein.

34. It is well settled in Nevada that every contract imposes upon the contracting parties the duty of good faith and fair dealing.

35. Counterdefendant owed Counterclaimants a duty of good faith and fair dealing.

36. Counterdefendant breached the duty of good faith and fair dealings when they performed in a manner that was unfaithful to the purpose of the Agreements and to the justified expectations of Counterclaimants by failing to satisfy the outstanding balance owed to Counterclaimants.

37. As a direct and proximate result of Counterdefendant's breach of the implied covenant of good faith and fair dealing, Counterclaimants have been damaged in any amount in excess of fifteen thousand dollars (\$15,000.00), the exact amount of which will be the subject of proof at trial.

38. Counterdefendant's breaches of their contractual duties were intentionally done to injure Counterclaimants with a willful and conscious disregard for Counterclaimants' rights,

1 constituting oppression, fraud and/or malice.

2 39. Counterclaimants, in addition to compensatory damages, is entitled to recover all
3 attorney's fees it has reasonably incurred and to recover punitive damages for the sake of
4 example and by way of punishing Counterdefendant to deter similar conduct in the future.

5 **THIRD CLAIM FOR RELIEF**

6 **Alter Ego**

7 40. Defendants/Counterclaimants hereby repeat and reallege each allegation
8 contained in paragraphs 1 through 39 of this Countercomplaint and incorporate the same herein
9 by reference as though fully set forth herein.

10 41. Defendants/Counterclaimants are informed and believe and thereupon allege that
11 Counterdefendant, SJC Ventures, LLC was at all times relevant hereto a Delaware Limited
12 Liability Company.

13 42. Plaintiff is informed and believes and thereupon alleges that, in addition to being
14 the Manager of said corporation, Counterdefendant, Jay Bloom, was also the sole owner of said
15 company, and that at all times material hereto said company and businesses existed only as the
16 alter egos of Bloom, and that said company and businesses functioned merely as shells,
17 instrumentalities, and conduits through which Bloom has carried out his business under the
18 corporate and business name exactly as he would have conducted business without
19 incorporation; that Bloom exercised complete control and dominion over said corporations and
20 businesses to such an extent that no practical or real separateness has existed between these
21 named Counterclaimants; that Bloom has at all times material hereto used this legal fiction to
22 avoid payment of the obligations sued upon herein by Counterclaimant, for which Bloom is
23 liable personally by reason of these acts.

24 **PRAYER**

25 WHEREFORE, Defendant prays for judgment as follows:

26 1. That Plaintiffs take nothing by way of their claims, and the same be dismissed with
27 prejudice;

28 2. That Defendants be awarded their attorneys' fees and costs incurred in the defense

1 of this action;


2 3. That Defendants/Counterclaimants be awarded rescission of the Spanish Heights
3 Acquisition Company, LLC's Operating Agreement.

4 4. That Defendants/Counterclaimants be awarded damages in excess of \$15,000.00
5 as proven at trial.

6 5. Such other and further relief as the Court deems just and proper.

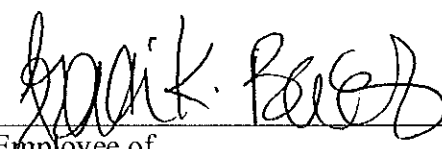
7 DATED this 30 day of September, 2020

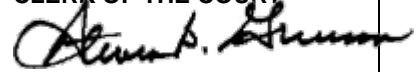
8 MUSHKIN & COPPEDGE

9
10 
11 MICHAEL R. MUSHKIN, ESQ.
12 Nevada Bar No. 2421
13 L. JOE COPPEDGE, ESQ.
14 Nevada Bar No. 4954
15 6070 South Eastern Ave Ste 270
16 Las Vegas, NV 89119

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that the foregoing **Defendants Sheila Antos and Kenneth Antos, as**
19 **Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila**
20 **M. Neumann-Antos Trust Answer to First Amended Complaint** was submitted electronically
21 for filing and/or service with the Eighth Judicial District Court on this 30 day of September,
22 2020. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey
eFileNV service contact list:

23
24 
25 An Employee of
26 MUSHKIN & COPPEDGE
27
28



AACC
JOSEPH A. GUTIERREZ, ESQ.
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djb@mgalaw.com

*Attorneys for SJC Ventures Holding
Company, LLC*

DISTRICT COURT
CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

5148 SPANISH HEIGHTS, LLC, a Nevada
limited liability company; and CBC
PARTNERS I, LLC, a Washington limited
liability company,

Counterclaimants,

v.

Case No.: A-20-813439-B

Dept. No.: 11

**SJC VENTURES HOLDING COMPANY,
LLC, d/b/a SJC VENTURES, LLC'S
ANSWER TO COUNTERCLAIM FILED
BY KENNETH ANTOS AND SHEILA
NEUMANN-ANTOS, AS TRUSTEES OF
THE KENNETH & SHEILA ANTOS
LIVING TRUST AND THE KENNETH M.
ANTOS & SHEILA M. NEUMANN-ANTOS
TRUST**

1 SPANISH HEIGHTS ACQUISITION
2 COMPANY, LLC, a Nevada Limited Liability
3 Company; SJC VENTURES, LLC, a Delaware
4 limited liability company; SJC VENTURES
5 HOLDING COMPANY, LLC, a Delaware
6 limited liability company; JAY BLOOM,
7 individually and as Manager, DOE
8 DEFENDANTS 1-10; and ROE
9 DEFENDANTS 11-20,

10 Counterdefendants.

11 KENNETH ANTOS AND SHEILA
12 NEUMANN-ANTOS, as Trustees of the
13 Kenneth & Sheila Antos Living Trust and the
14 Kenneth M. Antos & Sheila M. Neumann-Antos
15 Trust,

16 Counterclaimants,

17 v.

18 SJC VENTURES HOLDING COMPANY,
19 LLC, d/b/a SJC VENTURES, LLC, a Delaware
20 limited liability company; DOES I through X;
21 and ROE CORPORATIONS I through X,
22 inclusive,

23 Counterdefendants.

24 Counterdefendant SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC
25 (“Counterdefendant”), by and through its attorneys of record, MAIER GUTIERREZ & ASSOCIATES,
26 answer the counterclaim of defendants/counterclaimants Kenneth Antos and Sheila Neumann-Antos,
27 as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M.
28 Neumann-Antos Trust (“Counterclaimants”) as follows:

Counterdefendant denies each and every allegation in the complaint except those allegations
which are hereinafter admitted, qualified, or otherwise answered.

JURISDICTION AND VENUE

1. Answering paragraph 1 of the counterclaim, Counterdefendant admits the allegations.
2. Answering paragraph 2 of the counterclaim, Counterdefendant admits the allegations.

///

THE PARTIES

3. Answering paragraph 3 of the counterclaim, Counterdefendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegation contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

4. Answering paragraph 4 of the counterclaim, Counterdefendant admits that SJC Ventures Holding Company, LLC, d/b/a SJC Ventures, LLC is, and at all relevant times was, a Delaware limited liability company. Counterdefendant admits that Jay Bloom (“Bloom”) is a manager of SJC Ventures Holding Company, LLC, and is an individual residing in Clark County, Nevada.

5. Answering paragraph 5 of the counterclaim, Counterdefendant admits that Jay Bloom is a member of SJC Ventures Holding Company, LLC. As to the remaining portions of this paragraph, Counterdefendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

6. Answering paragraph 6 of the counterclaim, including subparts a-f, this paragraph references a document which speaks for itself, therefore no response is necessary. To the extent a response is required, Counterdefendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

7. Answering paragraph 7 of the counterclaim, this paragraph references a document which speaks for itself, therefore no response is necessary. To the extent a response is required, Counterdefendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

8. Answering paragraph 8 of the counterclaim, this paragraph references a document which speaks for itself, therefore no response is necessary. To the extent a response is required, Counterdefendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

1 9. Answering paragraph 9 of the counterclaim, this paragraph references a document
2 which speaks for itself, therefore no response is necessary. To the extent a response is required,
3 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
4 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
5 the allegations contained therein.

6 10. Answering paragraph 10 of the counterclaim, this paragraph references a document
7 which speaks for itself, therefore no response is necessary. To the extent a response is required,
8 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
9 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
10 the allegations contained therein.

11 11. Answering paragraph 11 of the counterclaim, this paragraph references a document
12 which speaks for itself, therefore no response is necessary. To the extent a response is required,
13 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
14 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
15 the allegations contained therein.

16 12. Answering paragraph 12 of the counterclaim, this paragraph references a document
17 which speaks for itself, therefore no response is necessary. To the extent a response is required,
18 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
19 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
20 the allegations contained therein.

21 13. Answering paragraph 13 of the counterclaim, this paragraph references a document
22 which speaks for itself, therefore no response is necessary. To the extent a response is required,
23 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
24 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
25 the allegations contained therein.

26 14. Answering paragraph 14 of the counterclaim, Counterdefendant admits that the
27 Property was conveyed to SHAC and SHAC leased the Property to Counterdefendant. As to the
28 remaining allegations in this paragraph, Counterdefendant is without sufficient knowledge or

1 information upon which to form a belief as to the truth of the allegations contained in said paragraph,
2 and therefore generally and specifically denies the allegations contained therein.

3 15. Answering paragraph 15 of the counterclaim, Counterdefendant admits that SHAC
4 leased the Property to Counterdefendant. As to the remaining allegations in this paragraph,
5 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
6 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
7 the allegations contained therein.

8 16. Answering paragraph 16 of the counterclaim, this paragraph references a document
9 which speaks for itself, therefore no response is necessary. To the extent a response is required,
10 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
11 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
12 the allegations contained therein.

13 17. Answering paragraph 17 of the counterclaim, this paragraph references a document
14 which speaks for itself, therefore no response is necessary. To the extent a response is required,
15 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
16 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
17 the allegations contained therein.

18 18. Answering paragraph 18 of the counterclaim, this paragraph references a document
19 which speaks for itself, therefore no response is necessary. To the extent a response is required,
20 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
21 the truth of the allegations contained in said paragraph, and therefore generally and specifically denies
22 the allegations contained therein.

23 19. Answering paragraph 19 of the counterclaim, Counterdefendant is without sufficient
24 knowledge or information upon which to form a belief as to the truth of the allegations contained in
25 said paragraph, and therefore generally and specifically denies the allegations contained therein.

26 20. Answering paragraph 20 of the counterclaim, Counterdefendant is without sufficient
27 knowledge or information upon which to form a belief as to the truth of the allegations contained in
28 said paragraph, and therefore generally and specifically denies the allegations contained therein.

21. Answering paragraph 21 of the counterclaim, Counterdefendant denies the allegations.

22. Answering paragraph 22 of the counterclaim, Counterdefendant denies the allegations.

23. Answering paragraph 23 of the counterclaim, Counterdefendant denies the allegations.

24. Answering paragraph 24 of the counterclaim, this paragraph references a document which speaks for itself, therefore no response is necessary. To the extent a response is required, Counterdefendant is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations contained in said paragraph, and therefore generally and specifically denies the allegations contained therein.

25. Answering paragraph 25 of the counterclaim, Counterdefendant denies the allegations and denies that it was required to act at all under the Pledge Agreement, as it did not execute the Pledge Agreement.

26. Answering paragraph 26 of the counterclaim, Counterdefendant denies the allegations.

27. Answering paragraph 27 of the counterclaim, Counterdefendant denies the allegations.

FIRST CLAIM FOR RELIEF

Breach of Contract

28. Answering paragraph 28 of the counterclaim, Counterdefendant repeats and realleges its answers to paragraphs 1 through 27 above, and incorporates the same herein by reference as though fully set forth herein.

29. Answering paragraph 29 of the counterclaim, Counterdefendant denies the allegations.

30. Answering paragraph 30 of the counterclaim, Counterdefendant denies the allegations.

31. Answering paragraph 31 of the counterclaim, Counterdefendant denies the allegations.

32. Answering paragraph 32 of the counterclaim, Counterdefendant denies the allegations.

SECOND CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

33. Answering paragraph 33 of the counterclaim, Counterdefendant repeats and realleges its answers to paragraphs 1 through 32 above, and incorporates the same herein by reference as though fully set forth herein.

34. Answering paragraph 34 of the counterclaim, this paragraph only contains a legal

1 conclusion and no actual factual allegations, therefore no response is required.

2 35. Answering paragraph 35 of the counterclaim, to the extent the allegations are
3 Counterclaimants' legal conclusions, no response is required. To the extent an answer is required,
4 Counterdefendant is without sufficient knowledge or information upon which to form a belief as to
5 the truth of the allegation contained in said paragraph, and therefore generally and specifically denies
6 the allegations contained therein.

7 36. Answering paragraph 36 of the counterclaim, Counterdefendant denies the allegations.

8 37. Answering paragraph 37 of the counterclaim, Counterdefendant denies the allegations.

9 38. Answering paragraph 38 of the counterclaim, Counterdefendant denies the allegations.

10 39. Answering paragraph 39 of the counterclaim, Counterdefendant denies the allegations.

11 **THIRD CLAIM FOR RELIEF**

12 **Alter Ego**

13 40. Answering paragraph 40 of the counterclaim, Counterdefendants repeat and reallege
14 its answers to paragraphs 1 through 39 above, and incorporates the same herein by reference as though
15 fully set forth herein.

16 41. Answering paragraph 41 of the counterclaim, Counterdefendant denies the allegations.

17 42. Answering paragraph 42 of the counterclaim, Counterdefendant denies the allegations.

18 **ANSWER TO PRAYER FOR RELIEF**

19 Answering the allegations contained in the entirety of Counterclaimant's prayer for relief,
20 Counterdefendant denies that Counterclaimants are entitled to the relief being sought therein or to any
21 relief in this matter.

22 **AFFIRMATIVE DEFENSES**

23 Counterdefendant, without altering the burdens of proof the parties must bear, assert the
24 following affirmative defenses to Counterclaimants' counterclaim, and all causes of action alleged
25 therein, and specifically incorporates into these affirmative defenses its answers to the preceding
26 paragraphs of the counterclaim as if fully set forth herein.

27 **First Affirmative Defense**

28 The counterclaim, and all the claims for relief alleged therein, fails to state a claim against

1 Counterdefendant upon which relief can be granted.

2 **Second Affirmative Defense**

3 Counterclaimants have not been damaged directly, indirectly, proximately or in any manner
4 whatsoever by any conduct of Counterdefendant.

5 **Third Affirmative Defense**

6 The occurrences referred to in the counterclaim and all alleged damages, if any, resulting
7 therefrom, were caused by Counterclaimants' own acts, deeds, negligence, conduct, and/or failure or
8 omission to act under the circumstances.

9 **Fourth Affirmative Defense**

10 Counterclaimants have failed to mitigate their damages, if any, as required by law and are
11 barred from recovering by reason thereof.

12 **Fifth Affirmative Defense**

13 Any harm or claim of damage of Counterclaimants or claim for relief of Counterclaimants, as
14 alleged or stated in the counterclaim, is barred by the running of the statute of limitations, doctrines
15 of laches, estoppel, and/or waiver, as to all or part of Counterclaimants' claims.

16 **Sixth Affirmative Defense**

17 Counterclaimants' claims for relief are barred, in whole or in part, by the doctrines of
18 rescission, frustration of purpose, and/or unclean hands.

19 **Seventh Affirmative Defense**

20 Counterclaimants lack standing to bring their counterclaims against Counterdefendant.

21 **Eighth Affirmative Defense**

22 The occurrences referred to in the counterclaim and all alleged damages, if any, resulting
23 therefrom, were caused by a third party of which Counterdefendant had no control.

24 **Ninth Affirmative Defense**

25 Counterclaimants' claims are barred, in whole or in part, by failure of contract or by
26 Counterclaimants' own breach(es) of contract.

27 **Tenth Affirmative Defense**

28 Counterclaimants' claims are barred, in whole or in part, by their failure to perform or satisfy

1 required conditions precedent and by their own bad acts.

2 **Eleventh Affirmative Defense**

3 Counterclaimants are not in possession and/or control of the documents and/or witnesses
4 necessary to prove their alleged causes of action against Counterdefendant.

5 **Twelfth Affirmative Defense**

6 The claims, and each of them, are barred by the failure of Counterclaimants to plead those
7 claims with sufficient particularity.

8 **Thirteenth Affirmative Defense**

9 Any recovery by Counterclaimants must be settled, reduced, abated, set-off, or apportioned to
10 the extent that any other party's actions or non-party's actions, including those of Counterclaimants,
11 caused or contributed to Counterclaimants' damages, if any.

12 **Fourteenth Affirmative Defense**

13 Counterclaimants have waived any right of recovery against Counterdefendant.

14 **Fifteenth Affirmative Defense**

15 Counterdefendant owes no duty to Counterclaimants.

16 **Sixteenth Affirmative Defense**

17 Counterclaimants have failed to allege sufficient facts and cannot carry the burden of proof
18 imposed on them by law to recover attorney's fees incurred to bring this action, and have failed to
19 plead attorneys' fees as special damages.

20 **Seventeenth Affirmative Defense**

21 Counterdefendant allege that the occurrences referred to in the counterclaim, and all alleged
22 damages, if any, resulting therefrom, were caused by the acts or omissions of a third party over whom
23 Counterdefendant had no control.

24 **Eighteenth Affirmative Defense**

25 Counterclaimants' counterclaim is void and invalid as a matter of law.

26 **Nineteenth Affirmative Defense**

27 Pursuant to Nevada Rules of Civil Procedure, all possible affirmative defenses may not have
28 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the

1 filing of this answer and, therefore, Counterdefendant reserves the right to amend this answer to allege
2 additional affirmative defenses if subsequent investigation warrants.

3 WHEREFORE, Counterdefendant prays for judgment as follows:

- 4 1. Counterclaimants take nothing by way of their counterclaim;
- 5 2. The counterclaim, and all causes of action against Counterdefendant alleged therein,
6 be dismissed with prejudice;
- 7 3. For reasonable attorney fees and costs to be awarded to Counterdefendant; and
- 8 4. For such other and further relief the Court may deem just and proper.

9 DATED this 28th day of September, 2020.

10 Respectfully submitted,

11 **MAIER GUTIERREZ & ASSOCIATES**

12 /s/ Danielle J. Barraza

13 JOSEPH A. GUTIERREZ, ESQ.

14 Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

15 Nevada Bar No. 13822

16 8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

17 Attorneys for SJC Ventures Holding Company,
18 LLC

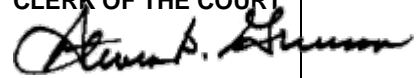
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Michael R. Mushkin, Esq.
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*Attorneys for Defendant and Counterclaimants
5148 Spanish Heights, LLC, CBC Partners I, LLC
and Dacia, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES,
LLC, a Delaware Limited Liability Company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS AS TO DACIA, LLC**

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC PARTNERS
3 I, LLC, a Washington limited liability company,

4 Counterclaimants,

5 v.

6 SPANISH HEIGHTS ACQUISITION
7 COMPANY, LLC, a Nevada Limited Liability
8 Company; SJC VENTURES, LLC, a Delaware
9 limited liability company; SJC VENTURES
10 HOLDING COMPANY, LLC, a Delaware
11 limited liability company; JAY BLOOM,
individually and as Manager, DOE
DEFENDANTS 1-10; and ROE DEFENDANTS
11-20,

12 Counterdefendants.

13 **ORDER GRANTING IN PART AND DENYING IN PART**
14 **MOTION TO DISMISS AS TO DACIA, LLC**

15 This matter came on June 29, 2020 for a hearing before the Honorable Elizabeth Gonzalez,
16 District Court Judge, on the Motion to Dismiss First Amended Complaint as to Dacia, LLC (the
17 “Motion”) with the Defendant, Dacia, LLC (“Plaintiffs”) appearing by and through its attorney,
18 Michael R. Mushkin of Mushkin & Coppedge, and Joseph A. Gutierrez and Danielle J. Barraza
19 of Maier Gutierrez & Associates appearing on behalf of Plaintiffs. After the Court’s review and
20 consideration of the record, the points and authorities on file, and after hearing oral arguments on
21 behalf of each respective party by their respective counsel, the Court finds as follows.

22 1. The Court finds that under NRS Chapter 116, claims arising from events that
23 occurred prior to purchase cannot be pursued against the current owner of a property.

24 Based on the foregoing findings:

25 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss
26 Plaintiffs’ First Amended Complaint as to Dacia, LLC is DENIED with respect to the First Cause
27 of Action.

28 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to the

1 Tenth, Eleventh, and Twelfth Causes of Action, Dacia, LLC's Motion to Dismiss Plaintiffs' First
2 Amended Complaint is GRANTED to the extent that claims against the current owner for events
3 that occurred prior to purchase cannot be pursued under NRS 116; however, to the extent that
4 there are events that occurred during the ownership of Dacia, it is DENIED.

5 Dated this 29th day of September, 2020.

6
7 
8 DISTRICT COURT JUDGE
9

10 Respectfully Submitted by:
11 MUSHKIN & COPPEDGE

Read and Approved:
MAIER GUTIERREZ & ASSOCIATES

12 /s/Michael R. Mushkin
13 MICHAEL R. MUSHKIN, ESQ.,
14 Nevada Bar No. 2421
15 L. JOE COPPEDGE, ESQ.,
16 Nevada Bar. No. 4954
6070 S. Eastern Ave., Suite 270
Las Vegas, Nevada 89119

/s/Danielle J. Barraza
JOSEPH A. GUTIERREZ, ESQ.
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DANIELLE J. BARRAZA, ESQ.
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8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

17 *Attorneys for Defendants/Counterclaimants*

Attorneys for Plaintiffs/Counterdefendants

From: [Danielle Barraza](#)
To: [Karen Foley](#)
Cc: [Michael Mushkin](#); [Joseph Gutierrez](#)
Subject: RE: CBC Partners I adv. SHAC - Orders
Date: Friday, September 18, 2020 10:42:23 AM
Attachments: [200708Draft Order Granting in Part and Denying in Part Dacia's Motion to Dismiss MGA redlines.docx](#)
[200917Draft Order Denying Motion for Unlawful Detainer MGA redlines.docx](#)
[200917Draft Stipulation and Interim Discovery Plan for Disposition of Pending Motions.docx](#)

Michael, our redlines on the 2 orders on the motions are attached. If our redlines are incorporated, you can file with my e-signature.

We are not in agreement with the proposed "interim discovery plan." The minutes indicate the Court will set a schedule for the interim discovery if no agreement is reached, so we are fine with moving forward that way.

Danielle J. Barraza | Associate
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
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djb@mgalaw.com | www.mgalaw.com

From: Karen Foley <KFoley@mccnvlaw.com>
Sent: Thursday, September 17, 2020 2:21 PM
To: Danielle Barraza <djb@mgalaw.com>
Cc: Alexia Anchondo <aa@mgalaw.com>; Jason Maier <jrm@mgalaw.com>; Michael Mushkin <Michael@mccnvlaw.com>
Subject: CBC Partners I adv. SHAC - Orders

Danielle,

Attached, please find drafts of the Order regarding Dacia's Motion to Dismiss, Order Denying Motion for Unlawful Detainer, and Stipulation and Interim Discovery Plan, for your review and approval.

Thank you,

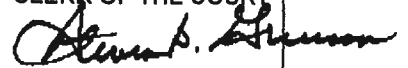
Karen L. Foley
Legal Administrator/Case Manager
MUSHKIN & COPPEDGE
6070 South Eastern Avenue, Suite 270
Las Vegas, NV 89119
Tel. No. (702) 454-3333
Fax No. (702) 386-4979

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12 *Attorneys for Defendant and Counterclaimants*
13 *5148 Spanish Heights, LLC and*
14 *CBC Partners I, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SPANISH HEIGHTS ACQUISITION
18 COMPANY, LLC, a Nevada Limited Liability
19 Company; SJC VENTURES HOLDING
20 COMPANY, LLC, d/b/a SJC VENTURES,
21 LLC, a Delaware Limited Liability Company,

22 Plaintiffs,

23 v.

24 CBC PARTNERS I, LLC, a foreign Limited
25 Liability Company; CBC PARTNERS, LLC, a
26 foreign Limited Liability Company; 5148
27 SPANISH HEIGHTS, LLC, a Nevada Limited
28 Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

NOTICE OF ENTRY OF ORDER

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC PARTNERS
3 I, LLC, a Washington limited liability company,

4 Counterclaimants,

5 v.

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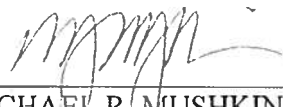
15 Counterdefendants.

16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Motion to
18 Dismiss as to Dacia, LLC was entered in the above-entitled action on September 29, 2020, a copy
19 of which is attached hereto.

20 DATED this 2 day of October, 2020.

21 MUSHKIN & COPPEDGE

22 

23 MICHAEL R. MUSHKIN, ESQ.
24 Nevada State Bar No. 2421
25 L. JOE COPPEDGE, ESQ.
26 Nevada Bar No. 4954
27 6070 South Eastern Ave Ste 270
28 Las Vegas, Nevada 89119

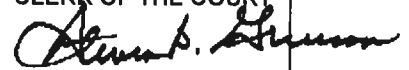
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Notice of Entry of Order** was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 2 day of October, 2020. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list.



An Employee of MUSHKIN & COPPEDGE



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11 jcoppedge@mccnvlaw.com

12 *Attorneys for Defendant and Counterclaimants*
13 *5148 Spanish Heights, LLC, CBC Partners I, LLC*
14 *and Dacia, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SPANISH HEIGHTS ACQUISITION
18 COMPANY, LLC, a Nevada Limited Liability
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27 SPANISH HEIGHTS, LLC, a Nevada Limited
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Defendants.

CAPTION CONTINUES BELOW

Case No. A-20-813439-B

Dept. No.: 11

**ORDER GRANTING IN PART AND
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5 v.

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11 limited liability company; JAY BLOOM,
12 individually and as Manager, DOE
13 DEFENDANTS 1-10; and ROE DEFENDANTS
14 11-20,

15 Counterdefendants.

16 **ORDER GRANTING IN PART AND DENYING IN PART**
17 **MOTION TO DISMISS AS TO DACIA, LLC**

18 This matter came on June 29, 2020 for a hearing before the Honorable Elizabeth Gonzalez,
19 District Court Judge, on the Motion to Dismiss First Amended Complaint as to Dacia, LLC (the
20 "Motion") with the Defendant, Dacia, LLC ("Plaintiffs") appearing by and through its attorney,
21 Michael R. Mushkin of Mushkin & Coppedge, and Joseph A. Gutierrez and Danielle J. Barraza
22 of Maier Gutierrez & Associates appearing on behalf of Plaintiffs. After the Court's review and
23 consideration of the record, the points and authorities on file, and after hearing oral arguments on
24 behalf of each respective party by their respective counsel, the Court finds as follows.

25 1. The Court finds that under NRS Chapter 116, claims arising from events that
26 occurred prior to purchase cannot be pursued against the current owner of a property.

27 Based on the foregoing findings:

28 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss
Plaintiffs' First Amended Complaint as to Dacia, LLC is DENIED with respect to the First Cause
of Action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that with respect to the

1 Tenth, Eleventh, and Twelfth Causes of Action, Dacia, LLC's Motion to Dismiss Plaintiffs' First
2 Amended Complaint is GRANTED to the extent that claims against the current owner for events
3 that occurred prior to purchase cannot be pursued under NRS 116; however, to the extent that
4 there are events that occurred during the ownership of Dacia, it is DENIED.

5 Dated this 29th day of September, 2020.

6
7 
8 DISTRICT COURT JUDGE
9

10 Respectfully Submitted by:
11 MUSHKIN & COPPEDGE

Read and Approved:
MAIER GUTIERREZ & ASSOCIATES

12 /s/Michael R. Mushkin
13 MICHAEL R. MUSHKIN, ESQ.,
14 Nevada Bar No. 2421
15 L. JOE COPPEDGE, ESQ.,
16 Nevada Bar. No. 4954
6070 S. Eastern Ave., Suite 270
Las Vegas, Nevada 89119

/s/Danielle J. Barraza
JOSEPH A. GUTIERREZ, ESQ.
Nevada Bar No. 9046
DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

17 *Attorneys for Defendants/Counterclaimants*
18
19
20
21
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24
25
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28

Attorneys for Plaintiffs/Counterdefendants

From: [Danielle Barraza](#)
To: [Karen Foley](#)
Cc: [Michael Mushkin](#); [Joseph Gutierrez](#)
Subject: RE: CBC Partners I adv. SHAC - Orders
Date: Friday, September 18, 2020 10:42:23 AM
Attachments: [200708Draft Order Granting in Part and Denying in Part Dacia's Motion to Dismiss MGA redlines.docx](#)
[200917Draft Order Denying Motion for Unlawful Detainer MGA redlines.docx](#)
[200917Draft Stipulation and Interim Discovery Plan for Disposition of Pending Motions.docx](#)

Michael, our redlines on the 2 orders on the motions are attached. If our redlines are incorporated, you can file with my e-signature.

We are not in agreement with the proposed "interim discovery plan." The minutes indicate the Court will set a schedule for the interim discovery if no agreement is reached, so we are fine with moving forward that way.

Danielle J. Barraza | Associate
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
djb@mgalaw.com | www.mgalaw.com

From: Karen Foley <KFoley@mccnvlaw.com>
Sent: Thursday, September 17, 2020 2:21 PM
To: Danielle Barraza <djb@mgalaw.com>
Cc: Alexia Anchondo <aa@mgalaw.com>; Jason Maier <jrm@mgalaw.com>; Michael Mushkin <Michael@mccnvlaw.com>
Subject: CBC Partners I adv. SHAC - Orders

Danielle,

Attached, please find drafts of the Order regarding Dacia's Motion to Dismiss, Order Denying Motion for Unlawful Detainer, and Stipulation and Interim Discovery Plan, for your review and approval.

Thank you,

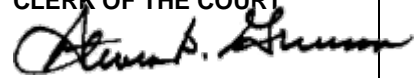
Karen L. Foley
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APP/MOT

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES, LLC,
a Delaware Limited Liability Company,

Plaintiffs,

vs.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X, inclusive,

Defendants.

AND RELATED CLAIMS.

Case No.: A-20-813439-C

Dept. No.: 24

**PLAINTIFFS' RENEWED APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR
PRELIMINARY INJUNCTION**

[HEARING REQUESTED]

Plaintiffs Spanish Heights Acquisition Company, LLC ("SHAC") and SJC Ventures Holding
Company, LLC, d/b/a SJC VENTURES, LLC ("SJC") ("Plaintiffs"), by and through their attorney of
record, MAIER GUTIERREZ & ASSOCIATES, hereby move this Court for a temporary restraining order,

1 and, after notice and a hearing, for a preliminary injunction (the “Motion”).

2 Ignoring the fact that the legitimacy of defendant CBC Partners I, LLC’s alleged third-position
3 “Deed of Trust” has been called into question (as it appears no actual owner of the property ever had
4 anything to do with the underlying commercial loan note that the supposed “Deed of Trust” is meant
5 to secure), along with CBC’s purported attempt to transfer its interest to 5148 Spanish Heights, LLC
6 after having already selected an alternative remedy, which put the defendant CBC in possession of
7 both the note and equity in the real property alleged to have secured such note, Defendants now have
8 caused an improper “Notice of Breach and Election to Sell Under Deed of Trust” to be recorded
9 against the Property and are once again attempting to rush through an improper foreclosure without a
10 basis instead of following Nevada law.

11 Plaintiffs hereby seek a temporary restraining order and a preliminary injunction against
12 Defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and 5148 SPANISH HEIGHTS, LLC
13 (“Defendants”) and their officers, agents, servants, employees, attorneys, and those persons in active
14 concert of participation with them, requiring the Defendants to rescind their improper Notice of
15 Default and Notice of Breach and Election to Sell and further enjoining Defendants from (1)
16 proceeding on any future Notices of Default and Notice of Breach and Election to Sell Under Deed
17 of Trust, which are not only nonsensical but blatantly violate Nevada law; (2) engaging in any further
18 foreclosure activities against the subject Property; and (3) attempting to foreclose on the Property
19 through an extinguished and contested purported interest, until after the hearing on Plaintiffs’ motion
20 for preliminary injunction.

21 This motion is made and based upon the following memorandum of points and authorities, the
22 affidavits and exhibits attached hereto, and the papers and pleadings on file in this matter. An order
23 restraining Defendants is attached hereto to this motion as **Exhibit 21**.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 This action involves the property located at 5148 Spanish Heights Drive, Las Vegas, Nevada
27 89148, with Assessor’s Parcel Number 163-29-615-007 (“Property”). The Property is owned by
28 Plaintiff Spanish Heights Acquisition Company, LLC pursuant to a recorded deed, and leased by

1 Plaintiff SJC Ventures LLC pursuant to a valid lease agreement.

2 Desperate to avoid discovery at all costs and having this matter heard on its merits, Defendants
3 are once again attempting to violate Nevada law through an improper and hastily-constructed
4 foreclosure recordings with clear deficiencies. On September 15, 2020, Defendants caused a “Notice
5 of Breach and Election to Sell Under Deed of Trust” to be recorded in the property records. This
6 “Notice of Breach” references a “Deed of Trust” dated December 17, 2014, which is CBC Partners I,
7 LLC’s alleged third-position “Deed of Trust.”

8 The obvious problem with that is it was recently revealed that the underlying note that the
9 third-position “Deed of Trust” is supposedly securing has nothing to do with any of the owners of the
10 Property, but was actually a commercial loan issued to the Antos’ business entities, with a personal
11 guarantee from the Antos’ individually, years after the Antos’ transferred their individual ownership
12 of the property to a Trust (the Antos Trust). Such Antos Trust is neither a borrower nor lender under
13 the commercial loan and only issued the Deed of Trust years after the Note to which the Antos Trust
14 is not party was executed and further for no consideration. It has also been revealed that the Antos
15 Trust never actually signed off on the underlying promissory note.

16 As such, the Antos Trust never received any consideration for providing a Deed of Trust to
17 CBC Partners I, LLC., nearly two years after the commercial loan transaction that Defendants are now
18 seeking to masquerade as a third mortgage. Thus, there is an issue of fact as to whether the commercial
19 loan to a restaurant, as guaranteed by the Antos’ individually, is actually a third position “Deed of
20 Trust” which is supposedly secured by non-party to the Note. There is an issue as to whether such a
21 Deed of Trust executed a non-party to a Note (the Antos Trust), where no consideration had been
22 provided, is even valid and enforceable.

23 Moreover, the “Notice of Breach” is based on an illegitimate “Notice of Default” dated July
24 2, 2020, which states that “**CBC Partners I, LLC**, at its option, without further demand, may evoke
25 the power of sale and any other remedies permitted by Nevada law.” CBC Partners I, LLC has already
26 testified that as of April 1, 2020 it had already sold its interest in the commercial loan to the Antos’
27 restaurant. As such, by July 2, 2020, when CBC Partners I, LLC had already taken the position that
28 it had no further interest in either the Note nor Property, it has no standing in any dispute regarding

1 the Property, as it sold all of its interest to defendant 5148 Spanish Heights, LLC. As such, the 5148
2 Spanish Heights, LLC “Notice of Breach” is based on a void and defective CBC Partners I, LLC
3 “Notice of Default” because CBC Partners I, LLC had no ability to issue a “Notice of Default” in July
4 2020, months after it testified that it divested itself of any interest in the commercial loan or equity in
5 the real property.

6 Further, even if somehow a commercial loan can mutate into a third-position “Deed of Trust”
7 for an unrelated party’s interest in real property and it is deemed valid, which is unlikely, the
8 Defendants are trying to exercise lien rights even though any alleged lien rights have been
9 extinguished as a result of Defendants purportedly obtaining a partial ownership interest in the
10 Property pursuant to the Merger Doctrine.

11 And lastly, the One Action Rule precludes foreclosure activity subsequent to the election of
12 an alternative remedy to attach alternative collateral pledged.

13 Thus, it is clear that absent the requested relief, Plaintiffs will suffer irreparable harm.

14 As such, the exigent circumstances present in this case require granting Plaintiffs’ application
15 for a temporary restraining order. Further, Plaintiffs possess a high probability of success on the
16 merits and will be irreparably harmed without such relief, thus a preliminary injunction should be
17 ordered until this case can be fully decided on the merits.

18 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

19 The original owners of the Property were Kenneth and Sheila Antos as joint tenants, with the
20 original deed recorded in April 2007. *See Exhibit 1*, First Grant, Bargain, Sale Deed.

21 On October 14, 2010, a new Grant, Bargain, Sale Deed was recorded, transferring the Property
22 to the Kenneth and Sheila Antos Living Trust dated April 26, 2007. *See Exhibit 2*, 10/14/2010 Grant,
23 Bargain, Sale Deed.

24 The underlying CBC Secured Promissory Note was issued in June 2012 (over 5 years after
25 Kenneth and Sheila Antos purchased the Property and nearly two years after they transferred the
26
27
28

1 property to the Kenneth & Sheila Antos Living Trust). *See Exhibit 3*, Secured Promissory Note.¹

2 The underlying Promissory Note had nothing to do with the Property but was actually a
3 \$300,000 commercial loan issued to KCI Investments, LLC, which is one of Kenneth Antos'
4 companies that was in the business of operating restaurants. Ex. 3. *See also, Exhibit 4*, Deposition
5 Transcript of Kenneth Antos at p. 54.

6 Q: Okay. And what company was CBC loaning that money to?

7 A: KCI Investments

8 Q: And what was KCI Investments in the business of doing?

9 A: Opening restaurants.

10 Q: Okay. Now, were there – so there was an underlying note, correct, between
11 CBC and KCI; is that correct?

12 A: Correct.

13 The Promissory Note is secured by a “Security Agreement” dated June 22, 2012, where the
14 security interest included KCI’s intellectual property, goods, tools, furnishings, furniture, equipment
15 and fixtures, accounts, deposit accounts, chattel paper, and receivables. Ex. 3 at PLTFS00931.
16 Notably, the Security Agreement does not include the subject real property owned by the Antos Trust,
17 non-party to the commercial loan.

18 Kenneth and Sheila Antos were personal guarantors on the underlying Promissory Note in
19 their individual capacity, but not in their capacity as trustees to the Antos Trust. **Exhibit 5**, Guaranty
20 and Acknowledgement and Agreement of Guarantors. *See also*, Ex. 4 at p. 61.

21 Q: Okay. Now what did you understand this guarantee to be?

22 A: Guaranteeing that 300,000.

23 Q: Okay. And did you understand that this would be a personal guarantee, that
24 you and Sheila are personally guaranteeing this?

25 A: Yes.

26 The Promissory Note was modified several times due to KCI wanting further loan funds from

27
28 ¹ Kenneth Antos verified the authenticity and legitimacy of the underlying note documents attached
herein during his deposition.

1 CBC Partners I, LLC. Ex. 4 at p. 66.

2 At some point, CBC Partners I, LLC obtained a “deed of trust” on the property that the Antos’
3 resided in but did not own, as the property was already transferred to the Antos Trust years before
4 CBC Partners I, LLC became involved as a lender to KCI. Ex. 4 at pp. 66-67.

5 Q Okay. So you’re saying that there were – there were numerous modifications
6 to this loan; correct?

7 A: Correct.

8 Q: Okay. And you’re saying that in one of the modifications, it got to the point
9 where CBC was demanding to also have a deed of trust on the property; is that
correct?

10 A: Correct.

11 Attached as **Exhibit 6** are numerous other loan modifications to the underlying Promissory
12 Note, none of which mention the Antos Trust, and none of which the Antos Trust executed. See Ex.
13 4 at p. 67.

14 Q: And then looking through these documents, do you have any recollection of the
– the trust signing off on any – on any of these modifications?

15 A: No.

16 On December 29, 2014, years after the commercial loan to KCI was made, a third position
17 “Deed of Trust” was recorded, in which the Antos Trust, again, a non-party to the commercial loan,
18 purported to provide a deed of trust to CBC Partners I, LLC. **Exhibit 7**, Deed of Trust. Subsequently
19 a First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing
20 was recorded in the Property records through the Clark County Recorder’s Office on December 19,
21 2016. See **Exhibit 8**, First Modification to Deed of Trust (collectively referred to as “Deed of Trust”).

22 The “Deed of Trust” specifically mentions that it is securing that Promissory Note dated June
23 22, 2012, as modified, that was executed “by KCI Investments, LLC, a Nevada limited liability
24 company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively,
25 “Borrower”). Ex. 7 at PLTFS00705. Kenneth and Sheila Antos signed this “Deed of Trust” on behalf
26 of the Antos Trust. Ex. 7 at PLTFS00723. In other words, the Antos Trust attempted to provide a
27 Deed of Trust to CBC Partners I, LLC in order to secure a Promissory Note that the Antos Trust never
28 executed or even guaranteed and with which it had no nexus whatsoever. Ex. 4 at p. 69.

1 Q: And did you ever have any legal counsel when you were signing off on all these
2 modifications of the note between KCI and CBC?

3 A: Other than CBC's, no.

4 Q: Okay. And was CBC drafting all these modifications to the note?

5 A: As far as I can remember.

6 Q: Okay. And did you ever have a conversation with CBC about you and Sheila
7 Antos not being the owners of the property, the owners of record of the
8 property?

9 A: No.

10 Crucially, the Antos Trust did not receive any consideration whatsoever in exchange for
11 providing a "Deed of Trust" to CBC Partners I, LLC. Ex. 4 at p. 69.

12 Q: Now, do you have any recollection of the trust ever receiving any kind of
13 consideration in return for this Deed of Trust being signed?

14 A: Trust specifically, no I don't.

15 The Antos Trust, as owner of the real property, was not a borrower on the underlying Note,
16 and the Antos Trust was not a guarantor on the underlying Note. Even further, the Antos Trust
17 testified that it had no business relationship whatsoever with CBC Partners I, LLC, making it highly
18 inappropriate for CBC Partners I, LLC to be attempting to get a "Deed of Trust" from the Antos Trust,
19 as there was no underlying promissory note in which the Antos Trust was involved. Ex. 4 at pp. 71-
20 72.

21 Q: Now, I just want to clarify for the record. So the Antos – the trust itself was
22 not the borrower on this commercial loan with CBC; is that correct?

23 A: That is correct.

24 Q: Okay. And the trust itself also was not a guarantor on the note; is that correct?

25 A: That is correct.

26 Q: Okay. And so what exactly did the trust get for signing that Deed of Trust for
27 the property?

28 ...

29 A: It got a, you know, continued good relationship with the Otters and with CBC.

30 Q: And I just want to clarify, there – isn't going to be any documentation showing
31 the trust getting any kind of monetary consideration; correct?

32 A: Not that I –

1 Q: Okay. All right. And so what kind of a relationship did the trust have with
2 CBC? Any kind of business relationship between the trust and CBC?

3 A: No.

4 As reflected on a Deed recorded on November 3, 2017, Plaintiff Spanish Heights Acquisition
5 Company, LLC owns the residential Property at issue. *See Exhibit 9*, Deed.

6 As documented by a real property lease, SJC Ventures LLC is the lawful tenant of the Property,
7 with Plaintiff Spanish Heights Acquisition Company, LLC being the lawful Landlord. *See Exhibit*
8 **10**, Lease Agreement.

9 Defendant CBC Partners I, LLC also purports to have secured certain remedies in the event of
10 a default on the Note through a Forbearance Agreement dated September 27, 2017, and an
11 Amendment to Forbearance Agreement dated December 1, 2019 (collectively the "Forbearance
12 Agreement") which extended Spanish Heights Acquisition Company, LLC's purported obligations
13 under the Note through March 31, 2020, and recognizes by CBC's President, the SJC Lease
14 Agreement and subsequent extensions. *See Exhibit 11*, Forbearance Agreement; **Exhibit 12**,
15 Amendment to Forbearance Agreement.

16 One of the purported remedies under the Forbearance Agreement that Defendant CBC Partners
17 I, LLC claims to have is a right to exercise a pledged membership interest in Spanish Heights
18 Acquisition Company, LLC, through a separately-executed Pledge Agreement dated September 27,
19 2017. **Exhibit 13**, Pledge Agreement.

20 On March 29, 2020, Nevada Governor Sisolak issued Declaration of Emergency Directive
21 008, issued on March 29, 2020 in response to the coronavirus/COVID-19 pandemic, which states as
22 follows:

23 No lockout, notice to vacate, notice to pay or quit, eviction, foreclosure action, or other
24 proceeding involving residential or commercial real estate based upon a tenant or
25 mortgagee's default of any contractual obligations imposed by a rental agreement or
26 mortgage may be initiated under any provision of Nevada law effective March 29,
27 2020, at 11:59 p.m., until the state of emergency under the March 12, 2020 Declaration
28 of Emergency terminates, expires, or this Directive is rescinded by order of the
Governor.

///

1 See State of Nevada, Executive Department, Declaration of Emergency Directive 008.²

2 Through correspondence dated April 1, 2020, defendant CBC Partners I, LLC elected to select
3 its claimed remedy by seeking to exercise its purported rights under the Pledge Agreement by having
4 the pledged collateral shares of Spanish Heights Acquisition Company, LLC transferred to CBC
5 Partners I, LLC's nominee and alter ego company, CBC Partners, LLC. That letter states that "on
6 April 15, 2020, CBC Partners I, LLC will exercise its rights under the Pledge Agreement by
7 transferring the pledged collateral to CBC Partners I, LLC's." See **Exhibit 14**, 4/1/2020
8 Correspondence.

9 Sometime after receiving the April 1, 2020 correspondence from defendant CBC Partners I,
10 LLC, representatives of the Kenneth & Sheila Antos Living Trust and Kenneth Ms. Antos Sheila M.
11 Neumann-Antos Trust assigned any right, title, interest, and membership interest they had in Spanish
12 Heights Acquisition Company, LLC to CBC Partners, LLC, thus effectuating defendant CBC Partners
13 I, LLC's remedy selection. **Exhibit 15**, Executed Assignment of Interest.

14 However, this "Assignment" makes no reference of the Antos Trust waiving off on the
15 Doctrine of Merger applying to this transaction. *Id.* Kenneth Antos testified that he did not speak
16 with anyone other than CBC Partners before signing the "Assignment." Ex. 4 at p. 33. It became
17 clear during Kenneth Antos' deposition that the Doctrine of Merger was not waived at the time the
18 Antos Trust tendered their equity in SHAC. Ex. 4 at p. 35; 41.

19 Q: Now, did anybody speak to you about the doctrine of merger before you had
20 signed off on this document?

21 A: I don't even know what a doctrine of merger is.

22 Q: Okay. So nobody had spoken to you about what it was and what it would mean;
correct?

23 A: That's correct.

24 . . .

25 Q: Okay. Well, let me ask you this: Do you have any specific personal recollection
26 of ever waiving off a doctrine of merger?

27 A: No.

28 ² Available at http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-29_-_COVID-19_Declaration_of_Emergency_Directive_008/.

1 Nevertheless, defendants CBC Partners I, LLC and its successor 5148 Spanish Heights, LLC
2 are claiming to be a part-owner of the Property, by means of its nominee and alter ego company CBC
3 Partners, LLC purportedly taking ownership of a partial membership interest in Spanish Heights
4 Acquisition Company, LLC. which owns the real property at the time it held the Note which it asserts
5 is secured by the very same real property, by way of its defective “Deed of Trust”.

6 On April 3, 2020, even though it had just selected its remedy of attempting to become a partial
7 legal owner of the Property, in satisfaction of its commercial note alleged to have been so secured,
8 defendant CBC Partners I, LLC then attempted to select an additional equitable remedy by issuing a
9 Notice to Vacate to SJC Ventures LLC, which demanded that SJC Ventures LLC vacate the Property.
10 *See Exhibit 16*, Notice to Vacate.

11 As found by this Court, the April 3, 2020 Notice to Vacate was in contravention to Governor
12 Sisolak’s March 29, 2020 Executive Directive placing a moratorium on all foreclosure and eviction
13 actions. Plaintiffs later learned that Defendants’ counsel, Michael Mushkin, Esq., apparently went
14 rogue and issued the Notice to Vacate and subsequent April 8, 2020 correspondence without his own
15 client’s knowledge or consent, as CBC Partners testified that it did not have notice of Mr. Mushkin’s
16 actions on its behalf, nor did it have any standing to issue any Notice to Vacate since it allegedly sold
17 its note on April 1, 2020. *See Exhibit 17*, Transcript of Proceedings from May 14, 2020 at pp. 233-
18 234 (CBC Partners I, LLC’s corporate representative admitting that CBC attempted to sell its note on
19 April 1, 2020 and that he never authorized the Notice to Vacate correspondence).

20 It therefore became apparent that CBC Partners I, LLC was attempting to exercise both legal
21 title (ownership of the Property) and equitable title (exercising foreclosure actions), in violation of the
22 Merger Doctrine.

23 The matter proceeded to an evidentiary hearing. During the preliminary injunction
24 proceedings, CBC Partners I, LLC’s counsel argued that the foreclosure and eviction actions he was
25 advocating for (apparently without his client’s consent) were acceptable under the Governor’s
26 exemption to the moratorium on foreclosures and evictions, while simultaneously arguing it is not
27 pursuing foreclosure or eviction activity.
28

1 The Court ruled otherwise, determining that the Notice to Vacate violated the Governor's
2 Emergency Directive 008 and setting in place an injunction. *See* 5/29/2020 Order Granting Plaintiffs'
3 motion for preliminary injunction, *on file*.

4 Instead of cooperating in the discovery process, Defendants have sloppily tried to re-engage
5 in their illegal and improper foreclosure activities.

6 On or around July 2, 2020, three months after it sold its alleged Note, Defendants' counsel
7 sent Plaintiffs a "Notice of Default" claiming that the **CBC Partners** loan was in default (which is
8 disputed and has never been made a finding by this Court) and that "CBC Partners I, LLC, at its
9 option, without further demand, may evoke the power of sale and any other remedies permitted by
10 Nevada law." **Exhibit 18**, Notice of Default. Such July 2, 2020 Notice was issued during the
11 pendency of and is also in contravention to Governor Sisolak's March 29, 2020 Executive Directive
12 placing a moratorium on all foreclosure and eviction actions, specifically prohibiting "other
13 proceeding involving residential or commercial real estate based upon a tenant or mortgagee's default
14 of any contractual obligations imposed by a rental agreement or mortgage."

15 And again, the problem with that is CBC Partners I, LLC has already testified that it sold its
16 note in April 2020, so it had no standing to be issuing any "Notice of Default" correspondence in July
17 2020. *See* Ex. 17 at pp. 218-219 (CBC Partners testifying that it sold its note "the first couple days of
18 April [2020]" to 5148 Spanish Heights, LLC.). Thus, the underlying Notice of Default is void and
19 unenforceable.

20 Disregarding that, on September 15, 2020, defendant 5148 Spanish Heights, LLC moved
21 forward with causing a "Notice of Breach and Election to Sell Under Deed of Trust" to be recorded
22 against the Property. **Exhibit 19**, Notice of Breach. This Notice of Breach, issued without the
23 requisite Notice of Default by 5148 Spanish Heights, LLC, is based on the false narrative and
24 unfounded conclusion that there has been a breach of the obligations for which the Deed of Trust has
25 secured. *Id.*

26 To be clear, various communications from City National Bank (the holder of the first
27 mortgage on the Property) and Northern Trust Bank (the holder of the second mortgage on the
28 Property) indicate that on or around January 2020, CBC Partners I, LLC materially breached the

1 Forbearance Agreement by failing to continue to make payments to the first and second mortgagee.
2 *See, e.g. Exhibit 20*, PLTFS00261-Correspondence from Jonathan Ukeiley of Northern Trust Bank
3 stating that there are past due bills from “January, February, March and April 2020.” This CBC
4 breach of the Forbearance Agreement remains in breach to this day.

5 The Notice of Breach is replete with concerning misrepresentations, but most perplexing is
6 the representation by Michael Mushkin, on behalf of 5148 Spanish Heights, LLC that there was no
7 need to provide the borrower with each of the disclosures identified in NRS 107.500(1) because the
8 beneficiary (defined as 5148 Spanish Heights, LLC) “is a financial institution or lender, that, during
9 its immediately preceding annual reporting period, as established with its primary regulator, has
10 foreclosed on 100 or fewer real properties located in this State which constitute owner-occupied
11 housing, as defined by NRS 107.460.” *See* Ex. 19 at p. 7.

12 There is no indication that defendant 5148 Spanish Heights, LLC is a financial institution or
13 lender. Thus, even if defendant 5148 Spanish Heights, LLC had the ability to issue a Notice of Breach
14 stemming from an invalid Notice of Default (which it does not), it appears that 5148 Spanish Heights,
15 LLC did not follow the correct protocol set forth in NRS 107 for providing certain disclosures in that
16 Notice of Breach, and Mr. Mushkin has made yet another false representation in the course of these
17 proceedings.

18 With all of these open questions, including: (1) whether the third-position “Deed of Trust” is
19 even a valid and enforceable document in light of the fact that the signatories to that document and
20 the original owners of the Property (the Antos Trust) had no involvement whatsoever in the underlying
21 Note that was issued to the Antos’ business entities and never received any consideration for signing
22 off on the “Deed of Trust”; (2) whether the doctrine of merger and the One Action Rule should apply
23 in this case; (3) the issues surrounding the impropriety of the July 2020 Notice of Default that indicated
24 “CBC Partners” was exercising its options even though CBC Partners had already purportedly sold
25 its note by that point; and (4) the sloppy and improper drafting of the “Notice of Breach” which
26 appears to misrepresent that 5148 Spanish Heights, LLC is a financial institution or lender, which it
27 is not, the Court should order that Defendants be enjoined from proceeding on the Notice of Default
28 and Notice of Breach and from engaging in any further foreclosure activities regarding the Property

1 until after this case has been fully heard on its merits.

2 **III. LEGAL ANALYSIS**

3 **A. STANDARD OF REVIEW**

4 As the Nevada Supreme Court has explained, injunctions are issued to protect plaintiffs
5 from irreparable injury and to preserve the court's power to render a meaningful decision after a trial
6 on the merits. *See Ottenheimer v. Real Estate Division*, 91 Nev. 338, 535 P.2d 1284 (1975). The
7 decision whether to grant a preliminary injunction is within the sound discretion of the district court,
8 whose decision will not be disturbed on appeal absent an abuse of discretion. *Number One Rent-A-*
9 *Car v. Ramada Inns*, 94 Nev. 779, 781, 587 P.2d 1329, 1330 (1978).

10 Rule 33.010 of the NRS provides that an injunction may be granted "when it shall appear by
11 the complaint that the plaintiff is entitled to the requested relief, and such relief or any part thereof
12 consists in restraining the commission or continuance of the act complained of, either for a limited
13 period or perpetually." NRS 33.010(1). Thus, courts have held that "[a] preliminary injunction is
14 available if the applicant can show a likelihood of success on the merits and a reasonable probability
15 that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which
16 compensatory damages is an inadequate remedy." *Dangberg Holdings Nevada, LLC v. Douglas*
17 *County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). A court must also weigh the potential
18 hardships to the relative parties, and consider the public interest. *See Univ. & Cmty. Coll. Sys. of*
19 *Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

20 The purpose of a preliminary injunction is to preserve the status quo until a trial on the merits
21 can be held. *Ottenheimer v. Real Estate Div. of Nevada Dep't of Commerce*, 91 Nev. 338, 342, 535
22 P.2d 1284, 1285 (1975). Thus, even if the harmful act has been completed before the complaint is
23 filed, an injunction may be granted in order to restore the status quo. *Memory Gardens of Las Vegas,*
24 *Inc. v. Pet Ponderosa Mem'l Gardens, Inc.*, 88 Nev. 1, 4, 492 P.2d 123, 124 (1972). "Given this
25 limited purpose, and given the haste that is often necessary if those positions are to be preserved, a
26 preliminary injunction is customarily granted on the basis of procedures that are less formal and
27 evidence that is less complete than in a trial on the merits. A party thus is not required to prove his
28 case in full at a preliminary-injunction hearing." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395, 101

1 S. Ct. 1830, 1834 (1981) (cited with approval by *Alliance for Am.'s Future v. State ex rel. Miller*,
2 56283, 2012 WL 642540 (Nev. Feb. 24, 2012)).

3 Likewise, an *ex parte* temporary restraining order “should be restricted to serving [its]
4 underlying purpose of preserving the status quo and preventing irreparable harm just so long as is
5 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto*
6 *Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439, 94 S. Ct. 1113, 1124 (1974). The
7 standard for a temporary restraining order is essentially the same as that for a preliminary injunction
8 without a likelihood of success on the merits. Nev. R. Civ. P. 65 provides that a court may issue an
9 *ex parte* temporary restraining order if (1) it clearly appears from specific facts shown by affidavit or
10 by the verified complaint that immediate and irreparable injury, loss or damage will result to the
11 applicant; and (2) the applicant’s attorney certified to the court in writing, the efforts, if any, which
12 have been made to give notice of the hearing. *See* Nev. R. Civ. P. 65(b).

13 As discussed in further detail below, Defendants’ conduct will cause substantial and
14 irreparable harm to Plaintiffs unless injunctive relief is granted immediately. Such relief should
15 remain in place throughout the pendency of this litigation, and Plaintiffs will likely succeed on the
16 merits of their claims. Furthermore, public policy and the balance of hardships weigh in favor of
17 Plaintiffs. Accordingly, Plaintiffs ask this Court to maintain the status quo and issue a temporary
18 restraining order and preliminary injunction against Defendants.

19 **B. PLAINTIFFS WILL LIKELY SUCCEED ON THE MERITS OF THEIR CLAIMS**

20 To grant a preliminary injunction, the court must “assess the plaintiff’s likelihood of success
21 on the merits, not whether the plaintiff has actually succeeded on the merits.” *Southern Oregon Barter*
22 *Fair v. Jackson County*, 372 F.3d 1128, 1136 (9th Cir. 2004). Moreover, “decisions on preliminary
23 injunctions are just that--preliminary--and must often be made hastily and on less than a full record.”
24 *Id.* Thus, “the possibility that the party obtaining a preliminary injunction may not win on the merits
25 at the trial is not determinative of the propriety or validity of the trial court’s granting the preliminary
26 injunction.” *B.W. Photo Utilities v. Republic Molding Corp.*, 280 F.2d 806, 807 (9th Cir.1960).

27 Here, Plaintiffs can show a likelihood of success on the merits as to each of their claims for
28 declaratory relief. However, Plaintiffs need only show a likelihood of success on the merits for one

1 cause of action to qualify for injunctive relief.

2 **1. Plaintiffs Will Likely Succeed on All Declaratory Relief Actions as it Appears there**
3 **is No Valid Third-Position “Deed of Trust” at All**

4 Declaratory relief is available if: (1) a justiciable controversy exists between persons with
5 adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the
6 controversy, and (3) the issue is ripe for judicial determination. *Knittle v. Progressive Casualty Ins.*
7 *Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996).

8 Here, a justiciable controversy exists as to whether there even is a valid and enforceable third-
9 position “Deed of Trust” which goes to all of Plaintiffs’ declaratory relief claims. This issue is ripe
10 for judicial termination, as Defendants have insisted on moving forward with improper foreclosure
11 actions despite being previously enjoined from doing so by the Court after violating the Emergency
12 Executive Order during the global Covid-19 pandemic and despite the fact that these issues are all
13 topics of discovery in this litigation.

14 The depositions of the Antos’ were devastating for the Defendants’, as the truth regarding the
15 underlying Note (which was really just a commercial loan issued to the Antos’ business entities and
16 had nothing to do with the actual owner of the Property whatsoever) illuminated the lack of legitimacy
17 of the “Deed of Trust.”

18 It has now been determined that the purported third position “Deed of Trust” has serious
19 legitimacy issues, as it is apparently “securing” a promissory note for a commercial loan that was
20 issued to the Antos’ companies – not to the actual owner of the property, the Antos Trust. The Antos
21 Trust never actually signed off on the underlying promissory note in any capacity whatsoever, and
22 even more illuminating, the Antos Trust never received any consideration for providing a Deed of
23 Trust to CBC Partners I, LLC. *See* Ex. 4. Thus, there is an issue of fact as to whether the third position
24 “Deed of Trust” which is securing a commercial loan to the Antos’ companies and has nothing to do
25 with the owners of the Property, is even valid and enforceable.

26 This precludes the Defendants from acting on that “Deed of Trust,” which means Defendants
27 should be compelled to rescind the existing improper Notice of Default and Notice of Breach and
28 further be enjoined from issuing any more Notices of Default or Notices of Breach, and should be

1 enjoined from acting on the ones they improperly issued during the course of this litigation.

2 It appears that CBC Partners I, LLC learned of the Property that was owned by the Antos Trust
3 and demanded that the Antos Trust sign off on a Deed of Trust years after the commercial loan to the
4 Antos' restaurant was made. Kenneth Antos has testified that the Antos Trust had no business
5 relationship whatsoever with CBC Partners I, LLC, and the Antos Trust certainly did not receive
6 anything in return for executing the Deed of Trust, thus making the document invalid for want of
7 consideration. *See* Ex. 4 at pp. 71-72.

8 **2. Defendant CBC Partners I, LLC Had No Standing to Issue a Notice of Default in July**
9 **2020**

10 It should not be ignored that underlying 5148 Spanish Heights, LLC's Notice of Breach that
11 was recorded in September 2020 is a Notice of Default that was issued in July 2020 by CBC Partners
12 I, LLC. Ex. 15.

13 But CBC Partners I, LLC has insisted that it sold its Note to 5148 Spanish Heights, LLC in
14 April of 2020. Ex. 17 at pp. 218-219.

15 Thus, the 5148 Spanish Heights Notice of Breach relies on and references an invalid CBC
16 Partner's I, LLC Notice of Default, as CBC Partners I, LLC had no authority or standing to issue a
17 Notice of Default in July 2020. Further, 5148 Spanish Heights, LLC never issued a Notice of Default
18 itself upon which it could base its defective and improper Notice of Breach.

19 This is important because per NRS 107.500, the beneficiary of the Deed of Trust is required
20 to mail a notice to the borrower specifically detailing:

- 21 (1) The total amount of payment necessary to cure the default and reinstate the residential
22 mortgage loan or to bring the residential mortgage loan into current status;
23 (2) The amount of the principal obligation under the residential mortgage loan;
24 (3) The date through which the borrower's obligation under the residential mortgage loan is
25 paid;
26 (4) The date of the last payment by the borrower;
27 (5) The current interest rate in effect for the residential mortgage loan, if the rate is effective
28 for at least 30 calendar days;
(6) The date on which the interest rate for the residential mortgage loan may next reset or
adjust, unless the rate changes more frequently than once every 30 calendar days;
(7) The amount of the prepayment fee charged under the residential mortgage loan, if any;
(8) A description of any late payment fee charged under the residential mortgage loan;
(9) A telephone number or electronic mail address that the borrower may use to obtain

1 information concerning the residential mortgage loan; and

2 (10) The names, addresses, telephone numbers and Internet website addresses of one or more
3 counseling agencies or programs approved by the United States Department of Housing and Urban
4 Development.

5 *See* NRS 107.500. As of April 2020, the claimed beneficiary of the supposed “third-position Deed of
6 Trust” is defendant 5148 Spanish Heights, LLC.

7 However, the “Notice of Default” issued in July 2020 does not mention 5148 Spanish Heights,
8 LLC at all, thus making it void. Ex. 18. This means that at no point in either the July 2020 Notice of
9 Default or the September 2020 Notice of Breach did any actual claimed beneficiary of the supposed
10 “third-position Deed of Trust” set forth the amount purportedly owed to cure the alleged default,
11 which is a clear breach of NRS 107.500.

12 Even more egregious, defendant 5148 Spanish Heights, LLC contended in its September 2020
13 “Notice of Breach” that it was not obligated to follow NRS 107.500 because it is purportedly a
14 “financial institution or lender,” (Ex. 19 at p. 7) but in reality, 5148 Spanish Heights, LLC has not
15 loaned anything to Plaintiffs. In fact, as evidenced by the name itself, it is a special purpose entity
16 created specifically for this single transaction, and is in no way a lender, as misrepresented by Mr.
17 Mushkin. Nor is there any indication in the record that 5148 Spanish Heights, LLC is actually a
18 certified financial institution or lender. This appears to be a misrepresentation that 5148 Spanish
19 Heights, LLC made in a failed attempt to evade its requirements to follow NRS 107.500, which
20 naturally makes the “Notice of Breach” void and unenforceable.

21 **3. Declaratory Relief as to the Extinguishment of the Note**

22 Here, a justiciable controversy exists as to whether the Merger Doctrine prevents CBC Partners
23 I, LLC from exercising equitable rights when it has already attempted to select its remedy of obtaining
24 legal title of the Property. As the record owner of the Property, plaintiff Spanish Heights Acquisition
25 Company, LLC has a protectable interest in the controversy, as does plaintiff SJC Ventures LLC, the
26 lawful tenant of the Property. This issue is ripe for judicial termination, as defendant CBC Partners
27 I, LLC claims to have obtained an assignment of interest from partial Spanish Heights Acquisition
28 Company, LLC owners (the Antos Trust). Ex. 8.

But the problem with that “Assignment” is it makes no reference of the Antos Trust waiving

1 off on the Doctrine of Merger applying to this transaction. *Id.* Kenneth Antos testified that he did not
2 speak with anyone other than CBC Partners before signing the “Assignment.” Ex. 4 at p. 33. Further,
3 Mr. Antos testified that the Doctrine of Merger was not waived at the time the Antos Trust tendered
4 their equity in SHAC. Ex. 4 at p. 35; 41.

5 Q: Now, did anybody speak to you about the doctrine of merger before you had
6 signed off on this document?

7 A: I don’t even know what a doctrine of merger is.

8 Q: Okay. So nobody had spoken to you about what it was and what it would mean;
9 correct?

10 A: That’s correct.

11 . . .

12 **Q: Okay. Well, let me ask you this: Do you have any specific personal
13 recollection of ever waiving off a doctrine of merger?**

14 **A: No.**

15 The doctrine of merger in the context of real property specifically precludes CBC Partners, I,
16 LLC’s theory that it may hold a lien in (or sell its interest in) its own collateral to the detriment of the
17 other secured lenders, owners and to the tenant SJC Ventures. Nevada Courts, indeed Courts across
18 the country, have long held that when legal title (ownership of the property) and equitable title (lien
19 encumbering the property) is held by the same person, those interests merge, leaving only legal title.
20 *See First National Bank v. Kreig*, 32 P. 641 (Nev. 1893)(holding that when property conveyed to a
21 trustee by way of mortgage is deeded back to the original grantor with the consent of the beneficiaries,
22 their lien is lost.); *See also US. Leather, Inc. v. Mitchell Mfg Group, Inc.*, 276 F.3d 782, 2002 FED
23 App. 0003P (6 111 Cir., 2002)(holding that Michigan law indicates that when a holder of a real estate
24 mortgage becomes the owner of the fee, the mortgage and the fee are merged. Thus, the mortgage is
25 extinguished.); *See also Mid Kansas Federal Sav. and Loan Ass 'n of Wichita v. Dynamic*
26 *Development Corp.*, 167 Ariz. 122, 804 P.2d 1310 (1991)(holding when one person obtains both a
27 greater and a lesser interest in the same property and no intermediate interest exists in the property,
28 merger occurs and the lesser interest is extinguished).

This same concept of merger is squarely on point as to the actions of Defendants and should

1 be applied to this matter, as CBC Partners I, LLC cannot be both a borrower and a lender in the same
2 transaction, thus it had no ability to “transfer” its interest in the Note to 5148 Spanish Heights, LLC.
3 Defendant CBC Partners I, LLC has attempted to select its remedy of owning an interest in the
4 Property owner Spanish Heights Acquisition Company, LLC (whether or not the timing of that
5 remedy or the manner in which that remedy is being sought is proper), and it cannot now continue to
6 send “Notice of Default” correspondence like the letter issued in July 2020 – foreclosure actions that
7 CBC Partners I, LLC has waived by selecting an alternative remedy.

8 **4. Declaratory Relief as to the preclusion of Foreclosure as a Remedy under the One**
9 **Action Rule**

10 Nevada’s one-action rule (NRS 40.430(1)) states that:

11 there may be but one action for the recovery of any debt, or for the enforcement of
12 any right secured by a mortgage or other lien upon real estate.... In that action, the
13 judgment must be rendered for the amount found due the plaintiff, and the court, by
its decree or judgment, may direct a sale of the encumbered property, or such part
thereof as is necessary

14 NRS 40.430(1). The “purpose behind the one-action rule in Nevada is to prevent harassment of
15 debtors by creditors attempting double recovery by seeking a full money judgment against the debtor
16 and by seeking to recover the real property securing the debt.” *McDonald v. D.P. Alexander & Las*
17 *Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 751 (2005).

18 Here, on April 1, 2020, defendant CBC Partners I, LLC chose its remedy by electing to obtain
19 an ownership interest in Spanish Heights Acquisition Company, the owner of the real property. Ex.
20 8. It does not now get to seek a double recovery by trying initiate a foreclosure action on the Property.
21 Such conduct violates Nevada’s one-action rule.

22 As such, Plaintiffs have demonstrated a likelihood of success as to its actions for declaratory
23 relief. Thus, a temporary restraining order and preliminary injunction are warranted against
24 Defendant.

25 **C. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IF AN INJUNCTION IS NOT ISSUED**

26 In the absence of immediate injunctive relief by this Court, Plaintiffs will suffer irreparable
27 harm for which no monetary damages are adequate. The Nevada Supreme Court has held that
28 “[g]enerally harm is ‘irreparable’ if it cannot adequately be remedied by compensatory damages.”

1 *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 28, 183 P.2d 895, 901 (2008) (citing *Univ. Sys.*
2 *v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 87 (2004)). "[A]n injury is not fully
3 compensable by money damages if the nature of the plaintiffs' loss would make damages difficult to
4 calculate." *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992).

5 Nevada courts have repeatedly held that real property is unique and interference with real
6 property rights usually leads to irreparable harm. See *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d
7 1029, 1030 (1987) "[R]eal property and its attributes are considered unique and loss of
8 real property rights generally results in irreparable harm." See also, *Leonard v. Stoebling*, 102 Nev.
9 543, 728 P.2d 1358 (1986) (view from home is unique asset; injunction issued to preserve view); see
10 also *Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975) (denial of injunction
11 to stop foreclosure reversed because legal remedy inadequate).

12 As such, Plaintiffs would likely suffer irreparable injury if Defendants' conduct is permitted
13 to continue because allowing Defendants to continue their foreclosure conduct unfettered will result
14 in a potential loss of the Property as to owner Spanish Heights Acquisition Company, and, if
15 Defendants had their way, as to tenant and renter SJC Ventures.

16 As it would be nearly impossible for Plaintiffs to quantify the harm that Spanish Heights
17 Acquisition Company, LLC would suffer if divested of its ownership interest in real property and SJC
18 Ventures especially will endure as a result of losing access to the Property as a tenant through actual
19 damages, the harm is irreparable, and can only be prevented through injunctive relief. Thus, in order
20 to preserve this Court's power to render a meaningful decision after a trial on the merits, this Court
21 should issue a temporary restraining order and preliminary injunction enjoining the Defendants'
22 conduct.

23 **D. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST WEIGH HEAVILY IN FAVOR**
24 **OF PLAINTIFFS**

25 "In considering preliminary injunctions, courts also weigh the potential hardships to the
26 relative parties and other, and the public interest. *Univ. & Cmty. Coll. Sys. of Nev.*, 120 Nev. at 721,
27 100 P.3d at 187 (citation omitted).

28 Here, the balance of harm in this case heavily favors Plaintiffs. Spanish Heights Acquisition

1 Company, LLC faces the potential loss of a real property interest, and SJC Ventures LLC faces the
2 loss of the real property that it currently leases, and with the knowledge and consent of the Defendants
3 has now prepaid rents through November 30, 2023 to fund the SHAC obligations under the injunction.

4 Issuance of a preliminary injunction would prevent the Defendants from continuing their
5 wrongful foreclosure actions. In sum, a preliminary injunction would stop defendant CBC Partners I,
6 LLC from issuing void and unenforceable “Notices of Default” even though it has no standing to do
7 so, and would stop defendant 5148 Spanish Heights, LLC from causing “Notices of Breach” from
8 being recorded that rely on such void “Notices of Default” and that do not even follow the protocol
9 set forth in NRS 107.500. More importantly, a preliminary injunction will stop Defendants from
10 acting on a “Deed of Trust” that is in all likelihood is completely invalid due to lack of consideration
11 and the non-existence of an underlying Note to which the owner of the property is party, as required
12 to issue a valid Deed of Trust against.

13 Further, issuance of the injunction will merely maintain the status quo. “[T]he status quo is
14 the last uncontested status which preceded the pending controversy.” *Tanner Motor Livery, Ltd. v.*
15 *Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963), cert denied, 375 U.S. 821 (1963). Here, an injunction
16 would merely return the parties to the status quo that existed prior to the Defendants’ contested and
17 improper conduct.

18 Public policy also weighs in favor of not fast-tracking a foreclosure while there is an ongoing
19 global pandemic. There was simply no need for Defendants to illegally initiate foreclosure actions
20 while there are a plethora of disputed facts that the Court still needs to adjudicate, most importantly
21 the legitimacy of the third-position “Deed of Trust” itself in light of the fact that the Antos Trust never
22 received anything in return of execution of the “Deed of Trust.” And for which there is no underlying
23 Note to which the property owner is party that would be secured by such “Deed of Trust.”

24 Accordingly, the balance of hardships favor Plaintiffs, and the injunctive relief requested
25 herein should be granted.

26 **E. A BOND IS NOT WARRANTED**

27 Rule 65 requires “the giving of security by the applicant in such sum as the court deems proper,
28 for the payment of such costs and damages as may be incurred or suffered by any party who is found

1 to have been wrongfully enjoined or restrained.” Nev. R. Civ. P. 65(c).

2 Because Defendants will not suffer any cognizable harm as a result of the injunctive relief
3 requested, a bond is not appropriate. Even if it is later determined that the injunctive relief was
4 wrongful, Defendants would still not suffered any loss, other than perhaps attorney’s fees incurred in
5 opposing the motion. Common sense dictates that Plaintiffs should not have to put up a bond to enjoin
6 Defendants from attempting to foreclose on the Property through the means of an invalid third-
7 position “Deed of Trust.”

8 Accordingly, the Court should not require a bond to give effect to the injunctive relief
9 requested in this motion. If the Court determines that a bond is appropriate, a *de minimus* bond of the
10 \$1,000 already posted with the Court under the previous Order, together with the previous
11 performance requirements of Plaintiff should be ordered.

12 **IV. CONCLUSION**

13 Based on the foregoing, Plaintiffs request that the Court enter a temporary restraining order,
14 and, after notice and a hearing, a preliminary injunction requiring defendants to rescind their improper
15 Notice of Breach and Notice of Default and further enjoining Defendants from (1) proceeding on the
16 current Notices of Default and Notice of Breach and Election to Sell Under Deed of Trust, which are
17 not only nonsensical but blatantly violate Nevada law; (2) engaging in any further foreclosure
18 activities against the subject Property; and (3) attempting to foreclose on the Property through an
19 extinguished and contested purported interest, until after the hearing on Plaintiffs’ motion for
20 preliminary injunction.

21 ///

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1 The Court should order that the current Notices must be rescinded, and the Court should
2 consider sanctions against Defendants for forcing Plaintiffs to initiate this motion. The requested
3 injunctive relief is necessary to cure the immediate and irreparable harm being incurred by Plaintiffs.

4 A proposed temporary restraining order is attached hereto as **Exhibit 21**.

5 DATED this 7th day of October, 2020.

6
7 **MAIER GUTIERREZ & ASSOCIATES**

8 /s/ Joseph A. Gutierrez

9 JOSEPH A. GUTIERREZ, ESQ.

10 Nevada Bar No. 9046

11 DANIELLE J. BARRAZA, ESQ.

12 Nevada Bar No. 13822

13 8816 Spanish Ridge Avenue

14 Las Vegas, Nevada 89148

15 *Attorneys for Plaintiffs*

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6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
*Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,
5148 Spanish Heights, LLC, and Dacia LLC*

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EXHIBIT 1

EXHIBIT 1

9 -1

20070416-0002478

Fee: \$16.00 RPTT: \$9,180.00
N/C Fee: \$0.00

04/16/2007 14:06:03
T20070065215

Requestor:
CHICAGO TITLE

Debbie Conway KAH
Clark County Recorder Pgs: 4

APN: 163-29-615-007
Affix R.P.T.T. \$9,180.00

**WHEN RECORDED MAIL TO and
MAIL TAX STATEMENT TO:**

KENNETH M. ANTOS AND SHELIA M.
NEUMANN-ANTOS
4968 Mountain Foliage Drive
Las Vegas, NV 89148

19

ESCROW NO: 07000087-018-SC

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

Rhodes Design and Development Corporation, a Nevada corporation

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to

KENNETH M. ANTOS AND SHELIA M. NEUMANN-ANTOS, HUSBAND AND WIFE AS
JOINT TENANTS

all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 5 day of April, 2007

**Rhodes Design and Development
Corporation, a Nevada corporation**


Saralyn Rosenlund, Authorized Agent

ESCROW NO: 07000087-018-SC

STATE OF NEVADA

COUNTY OF CLARK

On this 5th April 2007 appeared before me, a Notary Public,
Saralyn Rosenlund, authorized agent of Rhodes Design and Development Corporation, personally
known or proven to me to be the person whose name is subscribed to the above instrument, who
acknowledged that she executed the instrument for the purposes therein contained.



Notary Public

My commission expires: 3.16.09

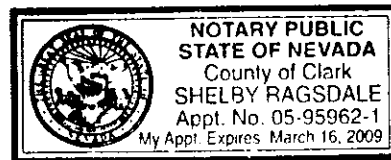


EXHIBIT A

Lot Seven (7) in Block Five (5) of SPANISH HILLS ESTATES UNIT 5A, as shown by map thereof on file in Book 107 of Plats, Page 58 in the Office of the County Recorder of Clark County, Nevada.

**State of Nevada
Declaration of Value**

1. Assessor's Parcel Number(s)

a) 163-29-615-007

b)

2. Type of Property:

- a) ☒ Vacant Land b) ☐ Single Fam. Resi
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Documentation/Instrument #: _____

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property: \$ 1,800,000.00

Deed in Lieu of Foreclosure Only (value of property): (-0-)

Transfer Tax Value: \$ 1,800,000.00

Real Property Transfer Tax Due: \$ 9,180.00

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: [Signature] Capacity: Grantor
Signature: [Signature] Capacity: Grantee

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Rhodes Design and Development Corporation

Address: 4730 S. Ft. Apache #300

City: Las Vegas

State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: SHEILA M. NEWMAN - ANTO'S

Address: 4965 MTN. FOLIAGE DR.

City: LAS VEGAS

State: NV Zip: 89148

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Chicago Title
Address: 9500 W. Flamingo Rd., Ste. 104
City/State/Zip: Las Vegas, NV 89147

Escrow #: 07000087-018

248178

EXHIBIT 2

EXHIBIT 2

A.P. N.: 163-29-615-007
R.P.T.T.: \$ EXEMPT #7

Escrow #10-05-0444-KMD

Mail tax bill to and when recorded mail to:
Kenneth M. Antos and Shelia Antos Living
Trust dated April 26, 2007
5148 Spanish Heights Drive
Las Vegas, NV 89148

Inst #: 201010140002674
Fees: \$16.00 N/C Fee: \$0.00
RPTT: \$0.00 Ex: #007
10/14/2010 11:14:33 AM
Receipt #: 540369
Requestor:
NEVADA TITLE LAS VEGAS
Recorded By: GILKS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH, That **Kenneth M. Antos and Shelia M. Neumann-Antos, husband and wife, as joint tenants**, for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to **Kenneth M. Antos and Shelia M. Neumann-Antos, Trustees of The Kenneth and Shelia Antos Living Trust dated April 26, 2007, and any amendments thereto**, all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

**SEE LEGAL DESCRIPTION ATTACHED HERETO
AND MADE A PART HEREOF AS EXHIBIT "A".**

SUBJECT TO:

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any:
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

TOGETHER WITH all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, this instrument has been executed this 7 day of October, 2010.

Kenneth M. Antos

Kenneth M. Antos

Sheila M. Neumann-Antos

State of NEVADA }
County of Clark } ss:

This instrument was acknowledged before me
on

10/7/10

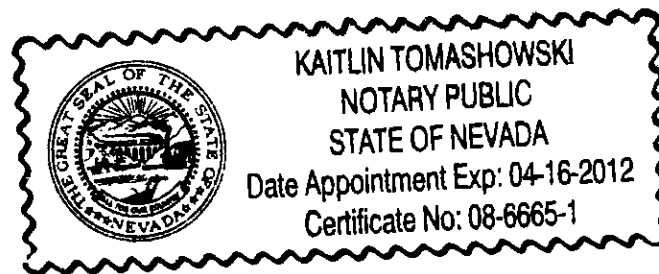
by Kenneth M. Antos and Sheila M. Neumann-Antos

Kaitlin Tomashowski
NOTARY PUBLIC

My Commission

Expires:

4/16/12



Kaitlin Tomashowski
Cert. 08-6665-1
Exp. 04-16-2012

EXHIBIT "A"

LOT SEVEN (7) IN BLOCK FIVE (5) OF SPANISH HILLS ESTATES UNIT 5A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 107, OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT 3

EXHIBIT 3

SECURED PROMISSORY NOTE

\$300,000.00

Bellevue, Washington
June 22, 2012

For value received, KCI Investments, LLC, a Nevada limited liability company ("Borrower") promises to pay to the order of CBC Partners I, LLC, a Washington limited liability company, or its assigns ("Lender") the sum of the aggregate unpaid principal amount of the amount advanced to Borrower under this Secured Promissory Note plus interest thereon accruing from and after the date of the advance. Lender will lend to Borrower up to the maximum amount of \$300,000.00, to be lent through a single advance (the "Advance") (such borrowing, in the aggregate, the "Loan"). The principal of, and interest on, the Loan shall be payable in lawful currency of the United States of America by wire transfer in immediately available funds to the account of Lender, as provided in writing to Borrower by Lender. All payments shall be applied first to fees, costs and charges relating to this Secured Promissory Note (including, without limitation, any costs of collection), then to accrued and unpaid interest, and thereafter to principal.

1. Certain Definitions.

1.1 As used in this Agreement:

"Advance" has the meaning specified in the first paragraph of this Secured Promissory Note.

"Ancillary Documents" means all instruments, agreements or other documents to be executed by Borrower or others including without limitation the Security Agreement and any other instruments, agreements, or documents in fact executed in connection with this Secured Promissory Note.

"Business Day" means a day which is not a Saturday, Sunday, or day on which banks in Seattle, Washington are generally closed for business.

"Default Rate" means an interest rate five percent (5%) per annum higher than the Note Rate.

"Event of Default" has the meaning set forth in Section 7 of this Secured Promissory Note.

"Liabilities" means all monetary and other obligations of Borrower hereunder, whether or not then due and payable, under the Note and under the Ancillary Documents.

"Loan" has the meaning specified in the first paragraph of this Secured Promissory Note.

"Maturity Date" means the date that is 1 month following the date first above written.

"Note Rate" has the meaning specified in Section 2.2.1 of this Secured Promissory Note.

"Prime Rate" means the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as quoted by the Wall Street Journal.

1.2 **Miscellaneous Terms.** All terms of an accounting character used in this Secured Promissory Note and not specifically defined have the meanings assigned to such terms by U.S. generally accepted accounting principles.

2. Term Loan

2.1 **Advance.** Lender must receive a written request for a specific amount and use signed by Borrower in the form attached hereto as Exhibit A (the "Advance Request") within five business days of the execution of this Note. The Advance will not be made for less than \$300,000 unless otherwise agreed to in writing by Lender in its sole discretion. The Advance shall not be made on or after the Maturity Date, or after the occurrence of an Event of Default which has not been cured. Borrower agrees that Lender may rely on the Advance Request given by any person Lender reasonably believes is authorized to make such request without the necessity of independent investigation.

2.2 **Interest.** Absent an Event of Default, the amount of the Advance shall accrue interest at the rate equal to thirteen and one-half percent (13.5%) ("Note Rate"). Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days. Notwithstanding the foregoing, it is intended that the rate of interest hereon shall never exceed the maximum rate, if any, which may be legally charged on the Loan (the "Maximum Rate"), and if the provisions for interest contained in this Secured Promissory Note would result in a rate higher than the Maximum Rate, interest shall be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal. Neither Borrower nor any guarantor or endorser of this Secured Promissory Note shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any such excess interest.

2.3 **Default Interest.** Upon the occurrence of an Event of Default, the unpaid principal amount of the Loan and accrued and unpaid interest thereon shall bear interest at a rate equal to the lesser of the (i) Maximum Amount or (ii) Default Rate. Such interest shall accrue, commencing upon the occurrence of an Event of Default and continue until such Event of Default is cured or waived.

2.4 **Payments.** Borrower shall make monthly payments of interest beginning on the first (1st) day of the month following the date of the Advance. Borrower may prepay all or any portion of the Loan, at any time prior to the Maturity Date, without premium or penalty.

2.5 Late Charges. If Lender has not received the full amount of any payment due hereunder by the date it is due, Borrower shall promptly pay a late charge to the Lender in the amount of ten percent (10%) of the overdue amount. Borrower agrees this late charge is to compensate the Lender for damages the Lender will suffer in servicing the Loan including expenses directly attributable to handling delinquent payments. Borrower further agrees that the actual damages suffered by Lender will be extremely difficult and impractical to ascertain and the sum of five percent (5%) of the overdue payment is fair and reasonable.

2.6 Origination Fee and Expenses. Borrower shall pay to Lender an origination fee in the amount of one thousand dollars (\$1,000.00) contemporaneously with Borrower's execution and delivery to Lender of this Secured Promissory Note. Notwithstanding the foregoing, the Parties have agreed that the origination fee will be paid by funds at the time of closing. Borrower's execution of this Secured Promissory Note shall constitute its agreement, regardless of whether the Loan closes and funds, to pay upon demand all reasonable expenses in connection with the Loan, including (without limitation) legal fees for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Secured Promissory Note and the Ancillary Documents, and all other fees and costs incidental to the closing and making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

3. **Conditions Precedent.** The execution and performance of this Secured Promissory Note by Lender, including the Advance, is subject to the following conditions precedent:

3.1 Documents. Execution by Borrower and delivery to Lender of this Secured Promissory Note and the Ancillary Documents, in each case, in form and substance satisfactory to Lender.

3.2 Authorization. Delivery to Lender of such consents or resolutions of or for Borrower as Lender deems necessary or desirable in order to evidence the due authorization of this Secured Promissory Note and the Ancillary Documents.

3.3 No Default. No Event of Default shall have occurred and remain uncured and no event which would constitute an Event of Default upon the giving of notice and/or the expiration of any cure period shall have occurred and remain uncured.

3.4 Representations and Warranties. The representations and warranties in Section 4 of this Secured Promissory Note shall be true and correct as of the date of this note and of the Advance.

3.5 Advance Request. The Advance shall have been requested by Borrower pursuant to the Advance Request and approved by Lender.

3.6 Guaranties. Lender shall have obtained all guaranties of the Loan it has requested from third parties.

3.7 Financial Condition. There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

4. Representations and Warranties. To induce Lender to enter into this Secured Promissory Note, Borrower hereby represents, warrants, and covenants from the date of this note and until final payment in full and performance of all obligations hereunder and except as specifically set forth in the disclosure schedule attached to this note ("Disclosure Schedule") as follows:

4.1 Organization, Good Standing and Qualification. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite corporate power and authority to carry on its business. Borrower is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business, properties, operations, prospects or condition (financial or otherwise).

4.2 Authorization of Agreement, Etc. The execution, delivery and performance by Borrower of this Secured Promissory Note and the Ancillary Documents have been duly authorized by all requisite corporate action by Borrower in accordance with applicable law. This Secured Promissory Note and the Ancillary Documents are valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other laws of general application effecting enforcements of creditors' rights or general principles of equity.

4.3 No Conflicts. The execution, performance, issuance, and delivery of this Secured Promissory Note and the Ancillary Documents, and compliance with the provisions hereof and thereof by Borrower, will not (a) to the knowledge of Borrower, violate any provision of any law, statute, rule or regulation applicable to Borrower or any ruling, writ, injunction, order, judgment or decree of any court, arbitrator, administrative agency or other governmental body applicable to Borrower or any of its properties or assets or (b) conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute (with notice or lapse of time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of, any encumbrance upon any of the material assets of Borrower under, the Articles of Incorporation or Bylaws of Borrower (as they may be amended to date) or any agreement, obligation, indenture or other or instrument to which Borrower is a party. As used herein, "encumbrance" shall mean any liens, charges, encumbrances, equities, claims, options, proxies, pledges, security interests, licenses or other similar rights of any nature.

4.4 Compliance with Other Instruments. Borrower is not in violation of any term of its Certificate of Formation, as amended, including any certificate of designation filed therewith, and/or the Borrower's Operating Agreement. The Borrower is not, in any material respect, in violation of any term of any mortgage, indenture, contract, agreement, instrument, judgment, obligation, decree, order, statute, rule or regulation to which it is subject. To the best of Borrower's knowledge, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a breach or violation, in any material respect, under any applicable judgments, orders, writs, decrees, federal, state and/or local laws, rules or regulations which would have a material adverse affect on the condition, financial or otherwise, or operations of Borrower (as it is currently conducted and as it is proposed to be conducted) or on any material assets owned, controlled, licensed, possessed, and/or used by Borrower. To the best of its knowledge, Borrower has avoided every condition, and has not performed any act, the occurrence of which would result in Borrower's loss of any right granted under any license, distribution agreement or other agreement.

4.5 Approvals. No permit, authorization, consent or approval of or by, or any notification of or filing with, any person (governmental or private) is required in connection with the execution, performance, issuance, sale and/or delivery of this Secured Promissory Note or any Ancillary Document, and consummation by Borrower of the transactions contemplated hereby and thereby.

4.6 Litigation. There is no action, suit, proceeding or investigation pending or, to the knowledge of Borrower, currently threatened against Borrower, its properties, assets or business. Borrower is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by Borrower currently pending or which Borrower intends to initiate.

4.7 No Liens. Except for liens created by this Secured Promissory Note or the Ancillary Documents and except as set forth in this Section 4.7 of the Disclosure Schedule, none of Borrower's material assets are subject to any existing lien, pledge, security interest or other encumbrance of any kind, direct or indirect, contingent or otherwise.

4.8 Full Disclosure. Neither this Secured Promissory Note nor any Ancillary Document, nor any written report, certificate, instrument or other information furnished to Lender in connection with the transactions contemplated under and/or in connection with this Agreement contains any material misstatement, or is misleading in any material respect.

4.9 No Other Security Interests or Other Encumbrances. Except as set forth in this Section 4.9 of the Disclosure Schedule, there are no existing security interests, pledges, liens or other encumbrances of any kind, direct or indirect, contingent or otherwise (including without limitation any licensing or partnering arrangements or agreements), in or relating to any of Borrower's assets.

4.10 Tax Returns. All tax returns and reports of Borrower required by law to be filed have been duly filed and all taxes, assessments, and other governmental charges upon Borrower and upon Borrower's assets or income, which are due and payable, have been fully paid and shall continue to be paid.

4.11 Financial Statements and Other Information. All financial statements delivered to Lender by Borrower are accurate, complete in all material respects, and prepared in accordance with U.S. generally accepted accounting principles consistently applied, and accurately represent the financial condition of Borrower and reflect accurately Borrower's assets and results of operation of Borrower's business as of the dates thereof. No material adverse change has occurred in Borrower's financial condition since the financial statement for the most recent period provided to Lender, and Borrower has incurred no additional liabilities since such date except for routine payables that occur in the normal course of Borrower's business. All other documents and information delivered to Lender by Borrower are accurate in all material respects.

5. Affirmative Covenants. Borrower promises and agrees to:

5.1 Office. Maintain its principal office in the State of Nevada. If Borrower moves its office location outside of the state of Nevada, or moves material activities outside the U.S., Borrower will provide written notice to Lender not less than thirty (30) days prior to such move.

5.2 Additional Documents. Execute promptly, upon Lender's request, all additional documents and instruments deemed by Lender necessary or desirable to perfect, continue or realize upon the security interests having been granted to Lender under the Security Agreement.

5.3 Compliance With Law. Comply with all statutes, laws and governmental rules, regulations, and orders applicable to Borrower's businesses and properties.

5.4 Notice of Material Change. Promptly (but in no event more than five (5) Business Days after the occurrence of each such event or matter) notify Lender of the violation by Borrower of any term, promise, covenant, or agreement of Borrower to or with Lender, including without limitation any Event of Default (as that term is defined herein) any material change in the property, business, or affairs of Borrower, any change in the location of Borrower's place of business, or change of Borrower's form, state of formation, or name, and any other event or matter that may have a material adverse effect on the debts, liabilities, or obligations of Borrower to Lender, or on the collateral covered by the Security Agreement.

5.5 Use of Proceeds. Use the proceeds from the Loan solely to pay for general corporate purposes and working capital requirements arising out of the ordinary course of business.

5.6 Information. Submit to Lender such financial statements, information, budgets, and reports regarding the financial status and business plans of Borrower as Lender may request from time to time. Without limiting the generality of the foregoing, Borrower will deliver (a) company-prepared monthly financial statements to Lender, within 30 days of the end of each month-end, (b) company-prepared quarterly financial statements to Lender, within 30 days of the end of each

calendar quarter, (c) yearly financial statements to Lender, within 90 days of the end of each fiscal year, all prepared in accordance with generally accepted accounting principles consistently applied, (d) copies of Borrower's tax returns when filed, (e) materials prepared for, and provided to, Borrower's Board of Directors, including without limitation budgets and forecasts, with such materials being provided to Lender in advance or contemporaneously with the Board of Directors, and (f) other notices, including without limitation, audit and litigation reports. Each financial statement required hereunder will include income statements, cash flow statements and a balance sheet. Contemporaneously with each monthly, quarterly and annual financial statement of Borrower required by this Section 5.5.6, Borrower shall deliver a certificate of the chief executive officer or chief financial officer of Borrower certifying that said financial statements are accurate and that there exists no Event of Default nor any condition, act or event which with the giving of notice or the passage of time or both would constitute an Event of Default.

5.7 Access/Accounting Records. So long as any principal and/or interest under this Secured Promissory Note shall remain outstanding, Borrower shall maintain adequate books and records in accordance with generally accepted accounting principles consistently applied, and permit Lender and its agents or representatives to visit and inspect Borrower's properties, to examine its books of account and records and to discuss Borrower's affairs, finances and accounts with its officers, all at such times during normal business hours as reasonably may be requested by Lender.

5.8 Punctual Payments. Punctually pay all principal, interest, fees or other liabilities due under this Secured Promissory Note or the Ancillary Documents at the times and place and in the manner specified therein.

6. **Negative Covenants**. Borrower will not, directly or indirectly, unless approved in writing by Lender in advance:

6.1 Business. Cease or otherwise materially change business operations, dissolve, or liquidate.

6.2 Organizational Changes. Consolidate or merge with any other entity, change organizational form or jurisdiction or sell, transfer, lease or otherwise dispose of all or substantially all of Borrower's assets to any other person or entity (or take or permit to be taken any other action that would have substantially the same effect as any of the foregoing), make any substantive change in the nature of Borrower's business as conducted as of the date hereof or acquire all or substantially all of the assets of any other entity.

6.3 Misrepresentations. Furnish any document to Lender that contains any untrue statement of material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

6.4 Limitation on Debt. Incur, create, assume or permit to exist any debt other than the Loan and trade debt incurred in the ordinary course of business, without the prior written consent of Lender and the execution of an inter-creditor agreement, in form provided by Lender, between Lender, Borrower, and the lender of such additional debt.

6.5 Liens. Grant to any person or entity, or permit to exist, a security interest, lien, license, or other encumbrance of any kind, direct or indirect, contingent or otherwise, in, to or upon any assets of Borrower.

6.6 Distributions and Redemptions. Declare or pay any dividends or make any distributions of cash, property or securities of Borrower with respect to any of its equity securities or, directly or indirectly, redeem, purchase, or otherwise acquire for any consideration any of its equity securities.

6.7 Use of Funds. Use any of the proceeds of any credit extended hereunder except for the purposes stated in Section 5.5 herein.

6.8 Guaranties. Guarantee or become liable in any way as a surety, endorser (other than as endorser of negotiable instruments for deposit or collection in the ordinary course of business) or otherwise for, nor pledge or hypothecate any assets of Borrower as security for, any liabilities or obligations of any person or entity, except any of the foregoing in favor of Lender.

6.9 Contracts. Enter into, or materially amend or terminate, any contract the termination of which may have a material adverse effect on the condition, financial or otherwise, or operations of Borrower, or Borrower's ability to comply with its obligations to Lender.

6.10 Employment/Severance. Enter into, or materially amend, any employment contract or agreement to pay severance.

6.11 Sale/Transfer of Assets. Sell, transfer or dispose of any assets of Borrower, other than in the ordinary course of Borrower's business.

7. Default and Remedies.

7.1 Default. Time being of the essence, any of the following events shall constitute an "Event of Default":

7.1.1 if a default occurs in the payment of any principal of, interest on, or other obligation with respect to, this Secured Promissory Note, whether at the due date thereof or upon acceleration thereof,

7.1.2 if any representation or warranty of Borrower made herein shall have been false or misleading in any material respect, or shall have contained any material omission, as of the date hereof;

7.1.3 if a default occurs in the due observance or performance of any covenant or agreement on the part of Borrower (other than payment) to be observed or performed pursuant to the terms of this Secured Promissory Note and such default remains uncured for three (3) Business Days after written notice thereof from Holder;

7.1.4 if Borrower or any guarantor of the obligations hereunder shall (i) discontinue its business, (ii) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Borrower or any of its property, (iii) make a general assignment for the benefit of creditors, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation laws or statutes, or file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;

7.1.5 if there shall be filed against Borrower or any guarantor of the obligations hereunder an involuntary petition seeking reorganization of Borrower or the appointment of a receiver, trustee, custodian or liquidator of Borrower or a substantial part of its assets, or an involuntary petition under any bankruptcy, reorganization or insolvency law of any jurisdiction, whether now or hereafter in effect (any of the foregoing petitions being hereinafter referred to as an "Involuntary Petition") and such Involuntary Petition shall not have been dismissed within ninety (90) days after it was filed;

7.1.6 if final judgment(s) for the payment of money in excess of an aggregate of \$100,000 (excluding any portion thereof that an insurance company of nationally recognized standing and creditworthiness has agreed to pay) shall be rendered against Borrower or any guarantor of the obligations hereunder and the same shall remain undischarged for a period of thirty (30) days;

7.1.7 if there occurs any event that may have a material adverse effect on the condition, financial or otherwise, or operations of Borrower (as they are currently conducted and as they are proposed to be conducted) or any guarantor of the obligations hereunder, or on any material assets developed, owned, controlled, licensed, possessed, or used by Borrower or any such guarantor.

7.1.8 the death or incapacity of Borrower or any guarantor of the obligations hereunder, if an individual. The dissolution or liquidation of Borrower or any such guarantor if a corporation, partnership, joint venture or other type of entity; or Borrower or any guarantor of the obligations hereunder, or any of Borrower or guarantor's directors, shareholders or members, shall take action seeking to effect the dissolution or liquidation of such Borrower or guarantor.

7.2 Acceleration. Upon each and every such Event of Default and at any time thereafter during the continuance of such Event of Default : (i) any and all indebtedness of Borrower to Lender under this Secured Promissory Note or otherwise shall at Lender's option

and without notice become immediately due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest and any Default Interest) without presentment, demand, protest, notice of dishonor, notice of acceleration or notice of intent to accelerate, all of which are hereby expressly waived by Borrower; and (ii) Lender may exercise all the rights of a creditor under applicable state and/or federal law, provided, however, that upon the occurrence of any Event of Default described in Sections 7.1.4 or 7.1.5, any and all indebtedness of Borrower to Lender under this Secured Promissory Note shall automatically and immediately become due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest and any Default Interest), without notice or demand of any kind.

7.3 Remedies on Default, Etc. In case any one or more Events of Default shall occur and be continuing, and acceleration of this Secured Promissory Note or any other indebtedness of Borrower to Lender shall have occurred, Lender may, *inter alia*, proceed to protect and enforce its rights by an action at law, suit in equity and/or other appropriate proceeding, whether for the specific performance of any agreement contained in this Secured Promissory Note, or for an injunction against a violation of any of the terms hereof or thereof or in furtherance of the exercise of any power granted hereby or thereby or by law. No right conferred upon Lender by this Secured Promissory Note shall be exclusive of any other right referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise, and may be exercised by Lender at any time by Lender and from time to time after the occurrence of an Event of Default.

8 Defenses.

8.1 No Offsets. The obligations of Borrower under this Secured Promissory Note shall not be subject to reduction, limitation, impairment, termination, defense, set-off, counterclaim or recoupment for any reason.

8.2 Usury Limitations. It is the intention of the parties hereto to comply with all applicable usury laws; accordingly, it is agreed that notwithstanding any provisions to the contrary in this Secured Promissory Note or any other agreements or instruments between them, in no event shall such agreements or instruments require the payment or permit the collection of interest (which term, for purposes hereof, shall include any amount which, under applicable law, is deemed to be interest, whether or not such amount is characterized by the parties as interest) in excess of the maximum amount permitted by such laws. If any excess of interest is unintentionally contracted for, charged or received under the Secured Promissory Note or under the terms of any other agreement or instrument between the parties, the effective rate of interest shall be automatically reduced to the maximum lawful rate of interest allowed under the applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof.

9. Attorneys' and Collection Fees. Should the indebtedness evidenced by this Secured Promissory Note or any part hereof be collected at law or in equity or in bankruptcy,

receivership or other court proceedings, Borrower agrees to pay, in addition to principal and interest due and payable hereon, all costs of collection, including, without limitation, reasonable attorneys' fees and expenses, incurred by Lender in collecting or enforcing this Secured Promissory Note.

10. Waivers; Confession of Judgment; Consent to Jurisdiction.

10.1 Waivers by Borrower. Borrower hereby waives presentment, demand for payment, notice of dishonor, notice of protest and all other notices or demands in connection with the delivery, acceptance, performance or default of this Secured Promissory Note.

10.2 Actions of Lender not a Waiver. No delay, failure or discontinuance by Lender in exercising any power or right hereunder shall operate as a waiver of any power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or right hereunder or otherwise; and no waiver, permit, consent, approval or modification of any kind of the terms hereof shall be valid unless set forth in writing by Lender and then only to the extent set forth therein.

10.3 Consent to Jurisdiction. Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Washington over any suit, action, or proceeding arising out of or relating to this Secured Promissory Note or any other agreements or instruments with respect to Lender. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that Lender may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon Borrower and may be enforced in any court in which Borrower is subject to jurisdiction by a suit upon such judgment, provided that service of process is effected upon Borrower as provided in this Secured Promissory Note or as otherwise permitted by applicable law.

10.4 Waiver of Jury Trial. BORROWER WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS SECURED PROMISSORY NOTE OR ANY DEALINGS BETWEEN BORROWER AND LENDER RELATING TO THE SUBJECT MATTER OF THIS SECURED PROMISSORY NOTE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS NOTE, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENT OR AGREEMENT RELATING TO THE LOAN.

10.5 Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Secured Promissory Note by delivery of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower, and/or by delivery of a copy thereof to a registered agent of Borrower. Refusal to accept delivery, and/or avoidance of delivery, shall be deemed to constitute delivery. Borrower irrevocably agrees that service in accordance with this Section 10.5 shall be deemed in every respect effective service of process upon Borrower in any such suit, action or proceeding, and shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon Borrower. Nothing in this Section 10.5 shall affect the right of Lender to serve process in any manner otherwise permitted by law or limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

11. **Security Interest.** To secure Borrower's obligations under this Secured Promissory Note:

11.1 Borrower has granted and pledged to Lender a first priority senior security interest in Borrower's right, title and interest in, to and under all of Borrower's tangible and intangible property pursuant to a security agreement ("KCI Security Agreement") of even date herewith; and

11.2 Guarantor Kenneth M. Antos ("Antos") has granted and pledged to Lender a first priority senior security interest in Antos's right, title and interest in, to and under all accounts, payment intangibles, general intangibles and rights to payment arising from that certain Strategic Alliance Agreement, as amended, modified or supplemented from time to time ("Alliance Agreement") by and among Twin Towers Trading Site Management, LLC, David L. Beacklean and Antos, dated as of August __, 2003, pursuant to a security agreement ("Antos Security Agreement") of even date herewith.

11.3 The KCI Security Agreement and Antos Security Agreement shall be referred to collectively herein as the "Security Agreement."

12. **Indemnification.**

12.1 Indemnification Agreement.

12.1.1 In addition to all rights and remedies available to Lender at law or in equity, Borrower shall indemnify Lender and each subsequent holder of this Secured Promissory Note, and their respective affiliates, equity holders, officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Persons") and save and hold each of them harmless against and pay on behalf of or reimburse such party as and when incurred for any loss, liability, demand, claim, action, cause of action, cost, damage, deficiency, tax, penalty, fine or expense (other than any demand, claim, action or cause of action instituted by Borrower), including interest, penalties, reasonable attorneys' fees and expenses, and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, "Losses") which any such party may suffer, sustain or become subject to, as a result of, in connection with, relating or incidental to or by virtue of:

(i) any material misrepresentation in, or material omission from, or breach of any of the representations, warranties, statements, schedules and/or exhibits hereto, certificates or other instruments or documents furnished to Lender by Borrower in connection with this Secured Promissory Note; or

(ii) any material nonfulfillment or material breach of any covenant or agreement on the part of Borrower under this Secured Promissory Note.

12.1.2 Notwithstanding the foregoing, Borrower shall not be liable for any portion of Losses resulting from the gross negligence or willful misconduct of Lender or a subsequent holder of this Secured Promissory Note.

12.1.3 Within twenty (20) days after receipt of notice of commencement of any action or the assertion of any claim by a third party, Lender shall give Borrower written notice thereof together with a copy of such claim, process or other legal pleading of such claim. Borrower shall have the right to assist in the defense thereof by representation of its own choosing.

12.2 Survival. All indemnification rights hereunder shall survive the execution and delivery of this Secured Promissory Note and the consummation of the transactions contemplated hereby (i) for a period of three years with respect to representations and warranties made by Borrower, and (ii) until fully performed with respect to covenants and agreements made by Maker, regardless of any investigation, inquiry or examination made for or on behalf of, or any knowledge of Lender and/or any of the Indemnified Persons or the acceptance by Lender of any certificate or opinion.

12.3 Payment. Any indemnification of Lender or any other Indemnified Person by Borrower pursuant to this Section 12 shall be effected by wire transfer of immediately available funds from Borrower to an account designated by Lender or such other Indemnified Person within fifteen (15) days after the determination thereof.

13. Miscellaneous.

13.1 Notices. All notices, demands and requests of any kind to be delivered to any party in connection with this Secured Promissory Note shall be in writing and shall be deemed to be effective upon delivery if (i) personally delivered, (ii) sent by confirmed facsimile with a copy sent by nationally recognized overnight courier, (iii) sent by nationally recognized overnight courier, or (iv) sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

if to Borrower: KCI Investments, LLC
4033 S. Dean Martin Drive
Las Vegas, NV
Fax: ()
Attn: Ken Antos

if to Lender: CBC Partners I, LLC
305 108th Ave NE, Suite 101
Bellevue, WA 98004
Fax: (425) 688-7003
Attention: Alan Hallberg

or to such other address as the party to whom notice is to be given may have furnished to the other parties hereto in writing in accordance with the provisions of this Section.

13.2 Parties in Interest. This Secured Promissory Note shall bind and inure to the benefit of Lender, Borrower and their respective successors and permitted assigns. Borrower shall not transfer or assign this Secured Promissory Note without the prior written consent of Lender. Lender may transfer and assign this Secured Promissory Note, including participation in all or any part of the Loan without the prior consent of Borrower.

13.3 Governing Law. This Secured Promissory Note has been executed and delivered to Lender in the State of Washington. Borrower agrees that the law of the State of Washington (exclusive of principles of conflicts of law) shall be applicable for the purpose of construing this Secured Promissory Note and the Security Agreement, determining the validity hereof and enforcing the same. The parties hereto consent to the jurisdiction and venue of the state and federal courts sitting in King County, Washington in any action or judicial proceeding brought to enforce, or construe or interpret this Secured Promissory Note or the Security Agreement.

13.4 Entire Agreement. This Secured Promissory Note contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the parties with respect thereto

13.5 Captions. Any captions applied to the sections of this Secured Promissory Note are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Secured Promissory Note.

13.6 Amendments. No provision of this Secured Promissory Note may be amended or waived without the express written consent of both Borrower and Lender, provided, however, that Lender may waive any provision hereof that inures to the benefit of Lender without the prior written consent of Borrower.

13.7 Nature of Obligation. This Secured Promissory Note is being made for business and investment purposes, and not for household or other purposes

13.8 Survival. All covenants, representations and warranties made by Borrower in this Secured Promissory Note shall survive the execution and delivery of this Agreement and the making of the Loan.

13.9 Invalidity. If any term, condition or provision of this Secured Promissory Note or the Security Agreement shall be held invalid for any reason, such offending term, condition or provision shall be stricken therefrom, and the remainder shall not be affected.

13.10 Derivative Rights. Any obligation of Lender to make disbursements under this Secured Promissory Note is imposed solely and exclusively for the benefit of Borrower and no other person, firm or entity shall, under any circumstances, be deemed to be a beneficiary of such condition, nor shall it have any derivative claim or action against Lender.

13.11 Time. Time is of the essence in each and every provision of this Secured Promissory Note or any Ancillary Document.


13.12 Counterparts; Facsimiles. This Secured Promissory Note may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures shall be deemed to be original signatures. In addition, if any of the parties sign facsimile copies of this Agreement, such copies shall be deemed originals.

13.13 Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, this Secured Promissory Note has been executed by the parties as of the date first written above.

BORROWER:

KCI INVESTMENTS, LLC, a Nevada limited liability company

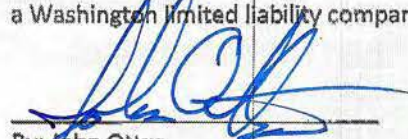


By: Ken Antos
Its: Managing Member

Address: 4033 S. Dean Martin Drive
Las Vegas, NV 89103

LENDER:

CBC PARTNERS, LLC,
a Washington limited liability company



By: John Otter
Its: Authorized Manager Representative

Address: 305 108th Ave NE
Suite 101
Bellevue, WA 98004

Facsimile: (425) 688-7003

EXHIBIT A
FORM OF REQUEST FOR ADVANCE

Date: _____

Borrower: _____

Lender: CBC Partners I, LLC

Secured Promissory Note Date: _____

Amount of this advance request: \$ _____

Effective Date: ____/____/____

Borrower represents and warrants to Lender as follows:

Borrower is not in default under the terms of the Loan Agreement of the Ancillary Documents, each of the representations and warranties contained in the Loan Agreement is true and correct in all material respects as of the date hereof, and Borrower is in compliance in all material respects with all affirmative and negative covenants contained in the Loan Agreement.

DATED this ____ day of _____, 201__.

By: _____
Its: _____

EXHIBIT B
DISCLOSURE SCHEDULE

SECURITY AGREEMENT

This SECURITY AGREEMENT is made as of the 22nd day of June, 2012, by KCI INVESTMENTS, LLC, a Nevada limited liability company ("Debtor"), in favor of CBC PARTNERS I, LLC, a Washington limited liability company ("Secured Party").

1. DEFINITIONS.

As used in this Agreement:

- (1) "*Agreement*" means this Security Agreement, as it may be amended, modified or supplemented from time to time.
- (2) "*Business Day*" means a day which is not a Saturday, Sunday, or day on which banks in Seattle, Washington are generally closed for business.
- (3) "*Default*" means the occurrence or existence of any of the events listed in Section 4 of this Agreement.
- (4) "*Lien*" means any mortgage, pledge, lien, hypothecation, security interest or other charge, encumbrance or preferential arrangement, including, without limitation, the retained security title of a conditional vendor or lessor.
- (5) "*Loan Documents*" means, collectively, this Agreement, the Note, each executed of even date herewith, and all other agreements, instruments and documents now or hereafter executed and/or delivered by Debtor to the Secured Party, in order to evidence or secure the Obligations, including without limitation any guaranties, as each may be amended, modified or supplemented from time to time.
- (6) "*Note*" means the Secured Promissory Note in the original principal amount of \$300,000.00, dated as of June 22, 2012, executed by Debtor in favor of Secured Party, as may be amended, modified or supplemented from time to time.
- (73) "*Obligations*" means all of Debtor's liabilities, obligations and indebtedness to the Secured Party of any and every kind and nature, whether heretofore, now or hereafter owing, arising, due or payable and howsoever evidenced, created, incurred, acquired, or owing, whether primary, secondary, direct, contingent, fixed or otherwise (including, without limitation, obligations of performance) and whether arising or existing under written agreement, oral agreement or by operation of law, including, without limitation, all Debtor's indebtedness and obligations to the Secured Party under the Note. The term includes, without limitation, all interest, charges, expenses, fees, reasonable attorneys' fees and disbursements and any other sum chargeable under this Agreement, the Note, and the other Loan Documents.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Terms used in this Agreement and not defined herein or in the Note shall have the meanings given such terms in the Code, as defined in Section 2.1 below.

2. SECURITY INTEREST.

2.1 Grant of Security Interest. For good and valuable consideration, Debtor, hereby grants and transfers to Secured Party a security interest in all of the following (collectively, the "Collateral"): (a) all intellectual property and intellectual property rights and licenses, (b) all goods, tools, machinery, furnishings, furniture and other equipment and fixtures, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Debtor, wherever located, whether in the possession of Debtor or any other person and whether located on Debtor's property or elsewhere, and all improvements, replacements, accessions and additions thereto and embedded software included therein, (c) all accounts, deposit accounts, chattel paper (whether electronic or tangible), instruments, promissory notes, documents, general intangibles, payment intangibles, software, letter of credit rights, health-care insurance receivables and other rights to payment (collectively called "Rights to Payment"), now existing or at any time hereafter, and prior to the termination hereof, arising (whether they arise from the sale, lease or other disposition of inventory or from performance of contracts for service, manufacture, construction, repair or otherwise or from any other source whatsoever), including all securities, guaranties, warranties, indemnity agreements, insurance policies, supporting obligations and other agreements pertaining to the same or the property described therein, and in all goods returned by or repossessed from Debtor's customers, together with a security interest in all inventory, goods held for sale or lease or to be furnished under contracts for service, goods so leased or furnished, raw materials, component parts and embedded software, work in process or materials used or consumed in Debtor's business and all warehouse receipts, bills of lading and other documents evidencing goods owned or acquired by Debtor, and all goods covered thereby, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Debtor, wherever located, and all products thereof (collectively, the "Inventory"), whether in the possession of Debtor, warehousemen, bailees or any other person, or in process of delivery, and whether located at Debtor's places of business or elsewhere and (d) whatever is receivable or received when any of the Collateral or proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all Rights to Payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and all Rights to Payment with respect to any claim or cause of action affecting or relating to any of the foregoing (hereinafter called "Proceeds"). Where Collateral is in the possession of a third party, Debtor will join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from third party that it is holding the Collateral for the benefit of Secured Party. For the purposes of this Section 2.1, "Debtor" shall include all existing and future subsidiaries of Debtor.

2.2 Obligations Secured. The obligations secured hereby are the payment and performance of: (a) all present and future Indebtedness of Debtor to Secured Party; and (b) all obligations of Debtor and rights of Secured Party under this Agreement and the other Loan Documents. The word

"Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Debtor, or any of them, heretofore, now or hereafter made incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, including under any swap, derivative, foreign exchange, hedge, deposit, treasury management or other similar transaction or arrangement, and whether Debtor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.

2.3 Preservation of Collateral and Perfection of Security Interests Therein. Until all of the Obligations of Debtor shall have been indefeasibly paid and satisfied in cash, the Secured Party shall be entitled to retain its security interests in and to all existing Collateral, and all proceeds and products thereof. Debtor hereby authorizes Secured Party to file, without Debtor's signature, one or more financing statements describing the Collateral, as well as any amendments and extensions, including without limitation to add collateral or one or more additional debtors and including a description of the Collateral as "all assets" of the Debtor. Debtor shall pay the cost of filing or recording the same in all public offices deemed necessary by the Secured Party to perfect and keep perfected the security interest in the Collateral or to otherwise protect and preserve the Collateral and Secured Party's security interest therein. In no event shall Debtor file a termination statement without Secured Party's signature, and Secured Party specifically does not authorize Debtor to do so.

2.4 Possession for Perfection. Secured Party may choose to perfect its security interest by possession in addition to filing a financing statement.

2.5 Loss of Value of Collateral. Debtor agrees to notify Secured Party promptly of any material loss or depreciation in the value of the Collateral, other than loss or depreciation occurring in the ordinary course of Debtor's business.

2.6 Termination. This Agreement will terminate upon the indefeasible payment in full in cash of all obligations of Debtor to Secured Party, including without limitation the payment of all Indebtedness of Debtor to Secured Party, and the termination of all commitments of Secured Party to extend credit to Debtor.

2.7 Obligations of Secured Party. Secured Party has no obligation to make any loans hereunder. Any money received by Secured Party in respect of the Collateral may be deposited, at Secured Party's option, into a non interest bearing account over which Debtor shall have no control, and the same shall, for all purposes, be deemed Collateral hereunder and may be applied to the Indebtedness owing under the Loan Documents in such order of application as Secured Party may elect in its sole discretion.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

3.1 Recordkeeping. Debtor covenants with Secured Party that Debtor shall at all times hereafter keep accurate and complete records of its finances, in accordance with sound accounting practices and generally accepted accounting principles, all of which records shall be available for

inspection during Debtor's usual business hours at the request of Secured Party.

3.2 Asset Warranties. Debtor represents and warrants to Secured Party that the Collateral is located at the premises of Debtor as provided for in the first paragraph hereof or, except as otherwise permitted in writing by Secured Party, at a third party location subject to a landlord's warehouseman's waiver and consent in form substance satisfactory to Secured Party in its sole discretion, and is not in transit. None of the Collateral will be removed from such locations without prior written notice to Secured Party, except for use or sale in the ordinary course of business. The Collateral is not subject to any lien, encumbrance, mortgage or security interest whatsoever except for the security interests granted to Secured Party. Debtor shall not permit any lien, encumbrance, mortgage or security interest whatsoever to attach to any of the Collateral, except in favor of Secured Party.

3.3 Verification of Accounts. After the occurrence of a Default hereunder, Secured Party shall have the right, at any time or times hereafter, in Secured Party's or in Debtor's name, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

3.4 Appointment of Secured Party as Debtor's Attorney-in-Fact. Debtor hereby irrevocably designates, makes, constitutes and appoints Secured Party (and all persons designated by Secured Party in writing to Debtor) as Debtor's true and lawful attorney-in-fact, and authorizes Secured Party, in Debtor's or Secured Party's name, to do the following: at any time after the occurrence of a Default, (i) demand payment of Accounts of Debtor; (ii) enforce payment of accounts of Debtor by legal proceedings or otherwise; (iii) exercise all of Debtor's rights and remedies with respect to proceedings brought to collect any Account; (iv) sell or assign any Account of Debtor upon such terms, for such amount and at such time or times as Secured Party deems advisable; (v) settle, adjust, compromise, extend or renew any Account of Debtor; (vi) discharge and release any Account of Debtor; (vii) prepare, file and sign Debtor's name on any proof of claim in bankruptcy or other similar document against any Account Debtor; (viii) have access to any postal box of Debtor and notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party; and (ix) do all other acts and things which are necessary, in Secured Party's discretion, to fulfill Debtor's Obligations under this Agreement. Secured Party shall not exercise its rights arising as a result hereof until after the occurrence of a Default hereunder.

3.5 Notice to Account Debtors. Following the occurrence of a Default under this Agreement, Secured Party may, in its sole discretion, at any time or times, without prior notice to Debtor, notify any or all Account Debtors that the Accounts of Debtor have been assigned to Secured Party, that Secured Party has a security interest therein, and that all payments upon such Accounts be made directly to Secured Party or as otherwise specified by Secured Party.

3.6 Safekeeping of Assets and Asset Covenants. Secured Party shall not be responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to all or any part of the Collateral; (c) any diminution in the value of all or any part of the Collateral; or (d) any act or default of any carrier, warehouseman processor, bailee, forwarding agency or any other person with respect to all or any part

of the Collateral. All risk of loss, damage, destruction or diminution in value of all or any part of the Collateral of Debtor shall be borne by Debtor.

3.7 Insurance. Debtor shall at all times maintain a liability policy of insurance and property policy of insurance (insuring the Collateral at all times against all hazards specified by Secured Party, including, without limitation, fire, theft and risks covered by extended coverage insurance), and such policies shall include endorsements reflecting Secured Party as additional insured and lender's loss payee. Such policies of insurance shall be satisfactory to Secured Party as to form, amount and insurer. Debtor shall furnish certificates, policies or endorsements to Secured Party as proof of such insurance, and if Debtor fails to do so, Secured Party is authorized but not required to obtain such insurance at Debtor's expense. All policies shall provide for at least thirty (30) days prior written notice to Secured Party of cancellation or non-renewal. Secured Party may act as attorney-in-fact for Debtor in making, adjusting and settling any claims under any such insurance policies. Debtor hereby assigns to Secured Party all of its right, title and interest to any insurance policies insuring the Collateral, including, without limitation, all rights to receive the proceeds of insurance, and directs all insurers to pay all such proceeds directly to Secured Party and authorizes Secured Party to endorse Debtor's name on any instrument for such payment.

3.8 Transfer of Collateral. Debtor shall not sell, lease, transfer, assign or otherwise dispose of any of the Collateral or any interest therein without the prior written consent of Secured Party in each instance, except Inventory sold to buyers in the ordinary course of business.

3.9 Damage to Collateral. Debtor shall immediately notify Secured Party in writing of any destruction of, or any substantial damage to, any of the Collateral.

3.10 Change of Place of Business. Debtor shall immediately notify Secured Party in writing of any change in any of its place of business or the opening of any new place of business.

3.11 Inspection. With reasonable prior notice, Debtor shall at all times during normal business hours allow Secured Party or its agents to examine and inspect the Collateral wherever located as well as Debtor's books and records, and to make extracts and copies of them, it being understood that Secured Party shall use reasonable efforts in the normal course of its operations to keep confidential all such information that (a) is not in the public domain, and (b) is not required to be disclosed by any court, agency or authority of competent jurisdiction, provided, however, that the requirement to keep such information confidential shall not apply to the extent necessary in order for Secured Party to foreclose on or otherwise deal with the Collateral in the Secured Party's best interests upon the occurrence of a Default.

3.12 Mergers, Etc. Debtor shall not become a party to any consolidation, merger, liquidation or dissolution or organize, purchase, assume or acquire any subsidiary or joint venture or partnership interest or interest in any other business entity, without the prior written consent of Secured Party.

3.13 Change of Name. Debtor's exact legal name is as set forth in the first paragraph of this Security Agreement. Debtor shall notify Secured Party 30 days in advance of any intended change of

Debtor's name or form of organization, and will notify Secured Party when such change becomes effective.

3.14 Organization. Debtor is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization. Debtor is duly qualified as a foreign organization in good standing in each state in which the failure to so qualify would have a material adverse effect on its business. Debtor warrants that the place of organization and other information set forth below the Debtor's signature is true and correct.

3.15 Authority. Debtor has full corporate right and power to enter into and perform its obligations under this Agreement and the other Loan Documents to which Debtor is a party, and is the owner and has possession or control of the Collateral and Proceeds. The execution, delivery and performance of this Agreement and the other Loan Documents to which Debtor is a party have been duly authorized by all necessary corporate action of Debtor, and this Agreement and the other Loan Documents to which Debtor is a party constitute valid and binding obligations of Debtor enforceable against Debtor in accordance with their respective terms, subject to applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditor's rights generally.

3.16 No Conflicts. The execution, delivery and performance by Debtor of this Agreement and each of the other Loan Documents do not and shall not: (a) contravene or constitute a default (or an event that, with due notice or the lapse of time, or both, would constitute a default) under or result in any breach of, or cause or permit the acceleration of the maturity of any debt or obligation pursuant to, Debtor's Certificate of Formation or Operating Agreement or any document, commitment or other agreement to which Debtor is a party or by which any of Debtor's property is bound; or (b) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Debtor.

3.17 Actions or Proceedings. There are no actions or proceedings which are pending or threatened against Debtor which might result in any material and adverse change in its financial condition or materially affect the Collateral pledged hereunder.

3.18 Violation of Law. Debtor is not in violation of any applicable federal, state, municipal or county statute, regulation or ordinance which may materially and adversely affect its business, property, assets, operations or conditions, financial or otherwise. Debtor agrees that, so long as any Obligations shall remain unpaid or outstanding, Debtor shall comply with all applicable laws, rules, regulations, and orders, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments, and governmental charges imposed upon Debtor or upon Debtor's property.

3.19 Consents. All authorizations, consents, approvals, registrations, exemptions and licenses required to be obtained by Debtor or which are necessary for the borrowing contemplated by the Note and the other Loan Documents and the execution and delivery by Debtor of the Note and the Loan Documents to which Debtor is a party, and the performance by Debtor of each of Debtor's obligations hereunder and thereunder, if any, have been obtained and are in full force and effect.

3.20 **Accuracy of Information.** All factual information heretofore or contemporaneously furnished by or on behalf of Debtor to Secured Party for purposes of or in connection with the Note or any transaction contemplated hereby is, and all other factual information hereafter furnished by or on behalf of Debtor to Secured Party will be, true and accurate in every material respect on the date as of which such information is dated or certified, and Debtor has not omitted and will not omit any material fact necessary to prevent such information from being false or misleading. Debtor has disclosed to Secured Party in writing all facts which might materially and adversely affect the credit, financial condition, affairs or prospects of Debtor, or Debtor's ability to perform Debtor's obligations under the Note.

3.21 **Liens.** Debtor has the exclusive right to grant a security interest in the Collateral and Proceeds, and all Collateral and Proceeds are genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except the lien created hereby or as otherwise agreed to by Secured Party, or as heretofore disclosed by Debtor to Secured Party, in writing. Debtor shall not, without the prior written consent of Secured Party, create, incur, assume or suffer to exist any lien, security interest, encumbrance or other claim of any nature whatsoever on any of its assets, including, without limitation, the Collateral.

4. **DEFAULTS, RIGHTS AND REMEDIES OF SECURED PARTY.**

4.1 **Defaults.** Each of the following occurrences shall constitute a "Default" under this Agreement:

4.1.1 if a default occurs in the payment of any principal of, interest on, or other obligation with respect to, the Note, whether at the due date thereof or upon acceleration thereof,

4.1.2 if any representation or warranty of Debtor made in the Note or in this Agreement shall have been false or misleading in any material respect, or shall have contained any material omission, as of the date hereof;

4.1.3 if a default occurs in the due observance or performance of any covenant or agreement on the part of Debtor (other than payment) to be observed or performed pursuant to the terms of this Agreement or the Note and such default remains uncured for three (3) Business Days after written notice thereof from Holder;

4.1.4 if Debtor shall (i) discontinue its business, (ii) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Debtor or any of its property, (iii) make a general assignment for the benefit of creditors, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation laws or statutes, or file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;

4.1.5 if there shall be filed against Debtor an involuntary petition seeking reorganization of Debtor or the appointment of a receiver, trustee, custodian or liquidator of Debtor or a substantial part of its assets, or an involuntary petition under any bankruptcy, reorganization or insolvency law of any jurisdiction, whether now or hereafter in effect (any of the foregoing petitions being hereinafter referred to as an "Involuntary Petition") and such Involuntary Petition shall not have been dismissed within ninety (90) days after it was filed;

4.1.6 if final judgment(s) for the payment of money in excess of an aggregate of \$100,000 (excluding any portion thereof that an insurance company of nationally recognized standing and creditworthiness has agreed to pay) shall be rendered against Debtor and the same shall remain undischarged for a period of thirty (30) days;

4.1.7 if there occurs any event that may have a material adverse effect on the condition, financial or otherwise, or operations of Debtor (as they are currently conducted and as they are proposed to be conducted), or on any material assets developed, owned, controlled, licensed, possessed, or used by Debtor.

4.1.8 if a notice of lien, levy, or assessment is filed or recorded with respect to all or a material part of the assets of Debtor or the Collateral by the United States, or any Department, agency or instrumentality thereof, or by any state, county, municipality or other governmental agency or any taxes or debts owing at any time or times hereafter to any one or more of them become a lien upon all or a material part of the Collateral the effect of which is reasonably likely to reduce the Company's ability to repay principal or interest under the Note when due.

4.1.9 if all or any material part of the Collateral is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

4.1.10 if the Secured Party shall receive at any time a UCC report indicating that Secured Party's security interest is not in the same priority position as when the security interest was perfected.

4.1.11 if any Loan Document ceases to be in full force and effect or any lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected and prior to all other liens or is terminated, revoked, declared void as a result of any act of the Borrower, any guarantor of the Indebtedness, or any third party; or

4.1.12 if the Secured Party deems itself insecure.

4.2 Rights and Remedies

(1) **Rights and Remedies Generally.** Upon the occurrence of a Default, Secured Party shall issue a Notice of Default to Debtor. Debtor shall have three (3) Business Days from receipt of such Notice of Default to cure the Default; provided however, if an event of default was caused by an

Act of God, Debtor shall have thirty (30) days from the date of receipt of the Notice of Default to cure the default (the "Cure Period"). Notwithstanding the foregoing, there shall be no Cure Period for Debtor's failure to timely pay any Obligation to Secured Party. If Debtor fails to completely cure the Default within the Cure Period, all of the Obligations of Debtor shall immediately and automatically, without any additional notice of any kind, be immediately due and payable in cash. In addition, upon the occurrence of a Default and expiration of the Cure Period without a complete cure, Secured Party shall have, in addition to any other rights and remedies contained in this Agreement, the Note or in any of the other Loan Documents, all of the rights and remedies of a secured party under the Uniform Commercial Code as then in effect in Nevada, or other applicable laws, all of which rights and remedies shall be cumulative, and non-exclusive, to the extent permitted by law. In addition to all such rights and remedies, the sale, lease or other disposition of the Collateral, or any part thereof, by Secured Party after Default and expiration of the Cure Period without a complete cure, may be for cash, credit or any combination thereof, and Secured Party may purchase all or any part of the Collateral at public or, if permitted by law, private sale, and in lieu of actual payment of such purchase price, may set-off the amount of such purchase price against the Obligations then owing. Any sales of such Collateral may be adjourned from time to time with or without notice. Secured Party may, in its sole discretion, cause the Collateral to remain on the premises of Debtor, at Debtor's expense, pending sale or other disposition of such Collateral. At such times, Secured Party shall have the right to repair, process, preserve, protect and maintain the Collateral and make such replacements thereof and additions thereto as Secured Party may deem advisable. Secured Party shall have the right to conduct such sales on the premises of Debtor, at Debtor's expense, or elsewhere, on such occasion or occasions as Secured Party may see fit.

(2) **Entry Upon Premises and Access to Information.** Upon the occurrence of a Default, Secured Party shall have the right to enter upon (to the exclusion of Debtor) the premises of Debtor where the Collateral is located (or is believed to be located) without any obligation to pay rent to Debtor, or any other place or places where such Collateral is believed to be located and kept, and remove such Collateral therefrom to the premises of Secured Party or any agent of Secured Party, for such time as Secured Party may desire, in order effectively to collect or liquidate such Collateral or to retain such Collateral in satisfaction of the Obligations, and/or Secured Party may require Debtor to assemble such Collateral and make it available to Secured Party at a place or places to be designated by Secured Party. Upon the occurrence of a Default, Secured Party shall have the right to obtain access to Debtor's data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Secured Party deems appropriate; and Secured Party shall have the right to notify post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party and to receive, open and process all mail addressed to Debtor.

(3) **Sale or Other Disposition of Collateral by Secured Party.** Any notice required to be given by Secured Party of a sale, lease or other disposition or other intended action by Secured Party, with respect to any of the Collateral, which is deposited in the United States mails, postage prepaid and duly addressed to Debtor at the address specified below, at least ten (10) days prior to such proposed action shall constitute fair and reasonable notice to Debtor of any such action. The net proceeds

realized by Secured Party upon any such sale or other disposition, after deduction for the expense of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' and paralegals' fees and legal expenses incurred by Secured Party in connection therewith, shall be applied as provided herein toward satisfaction of the Obligations. Secured Party shall account to Debtor for any surplus realized upon such sale or other disposition, and Debtor shall remain liable for any deficiency. The commencement of any action, legal or equitable, or the rendering of any judgment or decree for any deficiency shall not affect Secured Party's security interest in the Collateral until the Obligations are fully paid. Secured Party shall have the right to commence, continue or defend proceedings in any court of competent jurisdiction in the name of Secured Party, the "Receiver" (as hereinafter defined) or Debtor for the purpose of exercising any of the rights, powers and remedies set out in this Section 4.2, including, without limitation, the institution of proceedings for the appointment of a Receiver. Debtor agrees that Secured Party has no obligation to preserve rights to the Collateral against any other Person. Secured Party is hereby granted a license or other right to use, without charge, Debtor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, tradestyles, trademarks, service marks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale and selling any such Collateral, and Debtor's rights under all licenses and all franchise agreements shall inure to Secured Party's benefit until the Obligations are paid.

(4) **Third Person Waiver.** Debtor waives any right it may have to require Secured Party to pursue any third person for any of the indebtedness secured hereunder.

(5) **Sale on Credit.** If Secured Party sells any of the Collateral upon credit, Debtor will be credited only with payments actually made by the purchaser, received by Secured Party and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor shall be credited with the proceeds of the sale.

(6) **Application of Payments.** Notwithstanding any contrary provision contained in this Agreement or in any of the other Loan Documents, Debtor irrevocably waives the right to direct the application of any and all payments at any time or times hereafter received by Secured Party from Debtor or with respect to any of the Collateral, and Debtor does hereby irrevocably agree that Secured Party shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter, whether with respect to the Collateral or otherwise, against the Obligations in such manner as Secured Party may deem advisable, notwithstanding any entry by Secured Party upon any of its books and records.

(7) **Marshaling; Payments Set Aside.** Secured Party shall be under no obligation to marshal any assets in favor of Debtor or any other Person or against or in payment of any or all of the Obligations. To the extent that Debtor makes a payment or payments to Secured Party or Secured Party enforces its security interests or exercises its rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state, federal or foreign law, common law or equitable cause, then to

the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made, or such enforcement or setoff had not occurred.

(8) **Appointment of Receiver.** Upon the occurrence of a Default, Secured Party shall have the right to appoint any Person to be an agent or any Person to be a receiver, manager or receiver and manager (the "Receiver") of the Collateral and to remove any Receiver so appointed and to appoint another if Secured Party so desires; it being agreed that any Receiver appointed pursuant to the provisions of this Agreement will have all of the powers of Secured Party hereunder, and in addition, will have the power to carry on the business of Debtor. The Receiver will be deemed to be the agent of Debtor for the purpose of establishing liability for the acts or omissions of the Receiver and Secured Party will not be liable for such acts or omissions and, without restricting the generality of the foregoing, Debtor hereby irrevocably authorizes Secured Party to give instructions to the Receiver relating to the performance of its duties as set forth herein.

(9) **Advice of Counsel.** Debtor acknowledges that it has been advised by its counsel with respect to this transaction and this Agreement, including without limitation any waivers contained herein.

5. MISCELLANEOUS.

5.1 **Waiver.** Secured Party's failure, at any time or times hereafter, to require strict performance by Debtor of any provision of this Agreement shall not waive, affect or diminish any right of Secured Party thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Secured Party of a Default under this Agreement or a default under any of the other Loan Documents shall not suspend, waive or affect any other Default under this Agreement or any other default under any of the other Loan Documents, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants and representations of Debtor contained in this Agreement or any of the other Loan Documents, and no Default under this Agreement or default under any of the other Loan Documents, shall be deemed to have been suspended or waived by Secured Party unless such suspension or waiver is in writing signed by an officer of Secured Party, and directed to Debtor specifying such suspension or waiver. This Security Agreement shall not be qualified or supplemented by course of dealing.

5.2 **Costs and Attorneys' Fees.** If at any time or times hereafter Secured Party employs counsel in connection with protecting or perfecting Secured Party's security interest in the Collateral or in connection with any matters contemplated by or arising out of this Agreement, whether (a) to commence, defend, or intervene in any litigation or to file a petition, complaint, answer, motion or other pleading, (b) to take any other action in or with respect to any suit or proceeding (bankruptcy or otherwise), (c) to consult with officers of Secured Party to advise Secured Party with respect to this Agreement or the other Loan Documents or the Collateral, (d) to protect, collect, lease, sell, take possession of, or liquidate any of the Collateral, or (e) to attempt to enforce or to enforce any security

interest in any of the Collateral, to attempt to enforce or to enforce any rights of Secured Party to collect any of the Obligations, then in any of such events, all of the reasonable attorneys' fees arising from such services, and any expenses, costs and charges relating thereto, including without limitation all reasonable fees of the paralegals and other staff employed by such attorneys, together with interest at the rate prescribed in the Note and shall be part of the Obligations, payable on demand and secured by the Collateral. Such interest shall accrue at the times, and in the manner, provided for in the Note.

5.3 Expenditures by Secured Party. If Debtor shall fail to pay taxes, insurance, assessments, costs or expenses which Debtor is, under any of the terms hereof or of any of the other Loan Documents, required to pay, or fails to keep the Collateral free from other security interests, liens or encumbrances, except as permitted herein, Secured Party may, in its sole discretion, after notice to Debtor, make expenditures for any or all of such purposes, and the amount so expended, together with interest thereon at the rate prescribed in the Note and shall be part of the Obligations, payable on demand and secured by the Collateral.

5.4 Custody and Preservation of Collateral. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor shall request in writing, but failure by Secured Party to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure by Secured Party to preserve or protect any right with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by Debtor, shall of itself be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

5.5 Assignability; Parties. This Agreement may not be assigned by Debtor without the prior written consent of Secured Party. Secured Party may assign its rights and interests under this Security Agreement. If an assignment is made, Debtor shall render performance under this Security Agreement to the assignee. Debtor waives and will not assert against any assignee any claims, defenses or set-offs which Debtor could assert against Secured Party, except defenses which cannot be waived. Whenever in this Agreement there is reference made to any of the parties hereto, such reference shall be deemed to include, wherever applicable, a reference to the successors and permitted assigns of Debtor and the successors and assigns of Secured Party.

5.6 Applicable Law of Severability. This Agreement shall be construed in all respects in accordance with, and governed by, the internal laws (as opposed to conflict of laws principles) of the state of Washington. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement. The parties hereto consent to the jurisdiction and venue of the state and federal courts sitting in King County, Washington in any action or judicial proceeding brought to enforce, or construe or interpret this Security Agreement.

5.7 **Section Titles.** The section and subsection titles contained in this Agreement shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties.

5.8 **Continuing Effect.** This Agreement, Secured Party's security interests in the Collateral of Debtor, and all of the other Loan Documents shall continue in full force and effect so long as any Obligations of Debtor shall be owed to Secured Party.

5.9 **Notices.** Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered upon the earlier of (a) personal delivery to the address set forth below (b) delivery by facsimile or similar means of delivery and (c) in the case of mailed notice, three (3) days after deposit in the United States mails, with proper postage for certified mail, return receipt requested, prepaid, or in the case of notice by Federal Express or other reputable overnight courier service, one (1) Business Day after delivery to such courier service, addressed to the party to be notified at the address set forth below their signatures to this Agreement, or to such other address as each party designates to the other in writing.

5.10 **Equitable Relief.** Debtor recognizes that, in the event Debtor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy at law may prove to be inadequate relief to Secured Party; therefore, Debtor agrees that Secured Party, if Secured Party so requests, shall be entitled to temporary and permanent injunctive relief.

5.11 **Entire Agreement.** This Agreement, together with the Loan Documents executed in connection herewith, constitutes the entire Agreement among the parties with respect to the subject matter hereof, and supersedes all prior written or oral understandings with respect thereto. This Agreement may be amended only by mutual agreement of the parties evidenced in writing and signed by the party to be charged therewith.

5.12 **Indemnity.** Debtor agrees to defend, protect, indemnify and hold harmless Secured Party and each and all of its respective officers, directors, employees, attorneys and agents ("Indemnified Parties") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for the Indemnified Parties in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnified Parties shall be designated by a party thereto), which may be imposed on, incurred by, or asserted against any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state, local or foreign laws or other statutory regulations, including without limitation securities, environmental and commercial laws and regulations, under common law or at equitable cause, or on contract or otherwise) in any manner relating to or arising out of this Agreement or the other Loan Documents, or any act, event or transaction related or attendant thereto (including any liability under federal, state, local or foreign environmental laws or regulations); provided, that Debtor shall not have any obligation to any Indemnified Party hereunder with respect to matters caused by or resulting from