

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 01:37 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 XIX

DATE	DESCRIPTION	VOLUME	PAGES
10/19/2020	Appendix of Exhibits to Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction	III/IV/V/VI	AA0525-1282
12/24/2020	Appendix of Exhibits to Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for	X/XI/XII/XIII/XIV	AA2178-3213

	Preliminary Injunction on Order Shortening Time		
04/29/2021	Case Appeal Statement	XVIII	AA4238-4243
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
12/24/2020	Declaration of Kenneth M. Antos in Support of Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	X	AA2172-2177
04/27/2020	Defendant CBC Partners I, LLC's Answer to Complaint and	I	AA0022-0045

	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
09/03/2020	Defendants Sheila Antos and Kenneth Antos, as Trustees for the Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust Answer to First Amended Complaint and Counterclaim	I	AA0136-0160
10/19/2020	Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction	III	AA0513-0524
12/24/2020	Defendants/Counterclaimants' Opposition to Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	X	AA2145-2168
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
12/10/2020	Exhibits to Renewed Motion to Dismiss First Amended Complaint as to Dacia, LLC or in the Alternative Motion for Summary Judgment	VI/VII/VIII	AA1338-1804

04/06/2021	Findings of Fact and Conclusions of Law	XVIII	AA4165-4185
05/15/2020	First Amended Complaint	I	AA0046-0065
04/29/2021	Notice of Appeal	XVIII	AA4210-4237
04/10/2020	Notice of Entry of Order	I	AA0015-0021
05/29/2020	Notice of Entry of Order	I	AA0085-0090
10/02/2020	Notice of Entry of Order	I	AA0177-0184
11/03/2020	Notice of Entry of Order	VI	AA129-1299
04/20/2021	Notice of Entry of Order	XVIII	AA4186-4209
08/06/2021	Notice of the Bankruptcy Court Finding That Defendants Violated the Stay of Litigation Resulting in Void FFCL	XIX	AA4433-4442
05/18/2021	Opposition to Plaintiffs' Motion to Amend the Court's Findings of Fact, Conclusions of Law, and Order, or Alternatively for Reconsideration	XIX	AA4325-4402
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
09/29/2020	Order Granting in Part and Denying in Part Motion to Dismiss as to Dacia, LLC	I	AA0172-0176
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

12/24/2020	Plaintiffs' Opposition to Renewed Motion to Dismiss First Amended Complaint as to Dacia, LLC or in the Alternative Motion for Summary Judgment	XIV/XV/XVI	AA3214-3551
10/07/2020	Plaintiffs' Renewed Application for Temporary Restraining Order and Motion for Preliminary Injunction	I/II/III	AA0185-0512
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
02/01/2021	Preliminary Injunction Hearing and Trial – Day 1	XVI	AA3592-3701
02/01/2021	Preliminary Injunction Hearing and Trial – Day 2	XVI/XVII	AA3702-3967
02/01/2021	Preliminary Injunction Hearing and Trial – Day 3	XVII	AA3968-3981
03/15/2021	Preliminary Injunction Hearing and Trial – Day 4 (Volume I)	XVII/XVIII	AA3982-4054
03/15/2021	Preliminary Injunction Hearing and Trial – Day 4 (Volume II)	XVIII	AA4055-4152
12/10/2020	Renewed Motion to Dismiss First Amended Complaint as to Dacia,	VI	AA1328-1337

	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
01/12/2021	Stipulation Regarding Legal Issues to Be Decided by the Court at Bifurcated Trial Continuance	XVI	AA3590-3591
05/26/2020	Summons	I	AA0066-0069
05/26/2020	Summons	I	AA0070-0073
05/26/2020	Summons	I	AA0074-0077
05/26/2020	Summons	I	AA0078-0081
06/04/2020	Summons	I	AA0091-0094
06/04/2020	Summons	I	AA0095-0098
04/09/2020	Temporary Restraining Order	I	AA0011-0014
01/05/2021	Temporary Restraining Order	XVI	AA3581-3585
03/22/2021	Transcript of Oral Ruling Re: First Motion to Dismiss Case with Certificate of Service Filed By	XVIII	AA4153-4164

	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

1 amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered
2 on motion in the progress of the cause of proceeding”).

3 Pursuant to NRCP 52, regarding findings and conclusions by the Court, “On a party’s motion
4 filed no later than 28 days after service of written notice of entry of judgment, the court may amend
5 its findings — or make additional findings — and may amend the judgment accordingly.” Also, Rule
6 59(e) permits the altering or amending of a prior judgment if the motion seeking such relief is filed
7 “no later than 28 days after service of written notice of entry of the judgment.” Nev. R. Civ. P. 59(e);
8 Nev. R. Civ. P. 52(b). While Rule 59(e) does not itself provide standards for granting or denying a
9 motion to alter or amend, in general, the basic grounds for a motion brought under this Rule include:
10 (1) correcting manifest errors of law or fact; (2) newly discovered or previously unavailable evidence;
11 (3) the need to prevent manifest injustice; (4) or a change in controlling law. *AA Primo Builders, LLC*
12 *v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (internal brackets and quotations
13 omitted).

14 Additional reconsideration authority is expressly recognized in NRCP 54(b). Eighth Judicial
15 District Rule 2.24 governs the rehearings locally and recognizes this Court’s authority to reconsider
16 its own rulings. A motion for reconsideration under EDCR 2.24 must be made within fourteen (14)
17 days from the date of written notice of the order or judgment. EDCR 2.24 (a)-(c). If the Court grants
18 a motion for rehearing, it may either make a final disposition without re-argument or may set the
19 matter for re-argument. *Id.*

20 Further, Rule 60 of the Nevada Rules of Civil Procedure authorizes a court to grant relief from
21 an order based on mistake, newly discovered evidence, or fraud. Nev. R. Civ. P. 60(b)(1)-(3). Thus,
22 “[a] district court may reconsider a previously decided issue if substantially different evidence is
23 subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile Contractors Ass’n of*
24 *S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (emphasis
25 added); *see also Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999)¹
26

27 ¹ “Federal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive
28 authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal
counterparts.” *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002)

1 (The “mistake” component of Rule 60(b)(1) allows a court to correct its own mistake, inadvertence,
2 or error of law).

3 Notice of entry of the Court’s FFCL was filed on April 20, 2021. This motion for amendment
4 and in the alternative reconsideration is therefore timely and appropriate.

5 **B. DEFENDANTS’ CLAIMED INTEREST IN SHAC WAS DILUTED IN MARCH 2021 WHICH**
6 **AFFECTS THE DECLARATORY RELIEF CLAIMS AND THE COUNTERCLAIM’S NINTH**
7 **CLAIM FOR RELIEF**

8 The Court’s FFCL did not address the dilution event that occurred in March 2021 with respect
9 to SHAC’s ownership. On March 1, 2021, SJC, as manager of SHAC, circulated a notice of Capital
10 Call to Antos Trust, CBC, and 5148 Spanish Heights, LLC (so as to cover all parties claiming to have
11 a successor interest in SHAC). That Capital Call was noticed pursuant to Section 3.0(C) of the SHAC
12 Operating Agreement, and was admitted into the record at trial as Trial Exhibit 146, attached hereto
13 as **Exhibit 2**.

14 Specifically, the Capital Call notice indicated that “the Company is hereby making a
15 \$100,000.00 Additional Capital Call” as follows:

- 16 • SJC is being requested to contribute Additional Capital of \$51,000.00 to maintain its
17 51% Membership Interest.
- 18 • The Antos Trust successor, as “Unadmitted Transferee” is requested to contribute
19 Additional Capital of \$49,000.00 to maintain its 49% Membership Interest.

20 Ex. 2 at PLTFS00990. The Capital Call notice indicated that “Capital Contributions are to be wired
21 no later than . . . Wednesday, March 10, 2021, with proof of transfer provided to the Manager on or
22 before such deadline.” *Id.* at PLTFS00991. Further, and pursuant to Section 3.02(C) of the SHAC
23 Operating Agreement, the Capital Call notice indicated that:

24 A Member’s failure to provide (or the short funding of) such Additional Capital
25 Contribution will result in the pro rata adjustment of such Member’s Membership
26 Interests in the Company’s books and records by 5pm PST on March 10, 2021.

27 _____
28 (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 *Id.* at PLTFS00991.

2 On March 10, 2021, the date that the additional capital was due per the Capital Call notice,
3 Michael Mushkin, Esq. submitted correspondence on behalf of CBC which claimed in a conclusory
4 fashion (without citing to any legal authority whatsoever) that the “capital call is violative of the
5 Limited Liability Company Agreement of [SHAC].” That correspondence was admitted as part of
6 the record at trial as Trial Exhibit 147, attached hereto as **Exhibit 3**.

7 On March 11, 2021, after the time had expired for capital call contributions, SJC, as manager
8 of SHAC, circulated correspondence confirming and providing proof that SJC had made its \$51,000
9 capital contribution in a timely manner on March 2, 2021. SJC also confirmed that “CBC Partners,
10 being duly noticed of the capital call, elected not to participate by the March 10, 2021 deadline.”
11 Accordingly, as stated in the March 11, 2021 correspondence, “CBC Partners has been diluted to 0%
12 ownership of SHAC, and SJC Ventures has obtained 100% ownership of SHAC.” That
13 correspondence was admitted as part of the trial record as Trial Exhibit 148, attached as **Exhibit 4**.

14 Also attached for reference is the SHAC Operating Agreement, which was admitted into the
15 trial record as Trial Exhibit 5, attached hereto as **Exhibit 5**.

16 The Court erred in failing to make any findings regarding CBC Partners (or its claimed
17 successor in interest 5148 Spanish Heights, LLC) diluted claimed interest in SHAC, which left SJC
18 as the 100% owner of SHAC as of March 11, 2021. This error resulted in unjust rulings as it relates
19 to Counterclaim’s claim for declaratory relief and the Ninth cause of action that relates to the Pledge
20 Agreement.

21 Specifically, there is no longer any interest in SHAC that is “pledged” to any of the Defendants
22 in light of their failure to participate in the Capital Call as claimed membership interest holders. This
23 undisputedly resulted in SJC becoming the 100% owner of SHAC, and no testimony was set forth at
24 trial refuting the Defendants’ failure to abide by the SHAC Operating Agreement which allows for
25 Capital Calls to be made and for dilution of interests if additional requested capital is not made. *See*
26 Ex. 5 at Section 3.02(c), located on 5148SH000530. Accordingly, a pro rata adjustment in SHAC
27 membership took place in March of 2021, which precludes the “Pledge Agreement” from having any
28 effect on SHAC’s membership.

1 **III. CONCLUSION**

2 Based on the foregoing, Plaintiffs request that the Court reconsider or in the alternative amend
3 its FFCL regarding the March 2021 dilution event that occurred in SHAC's membership interest, as
4 a result of the Defendants failing to participate in the validly-noticed Capital Call. Such non-
5 participation resulted in SJC becoming the 100% owner of SHAC.

6 DATED this 4th day of May, 2021.

7 Respectfully submitted,

8 **MAIER GUTIERREZ & ASSOCIATES**

9 /s/ Danielle J. Barraza

10 JOSEPH A. GUTIERREZ, ESQ.

11 Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

12 Nevada Bar No. 13822

8816 Spanish Ridge Avenue

13 Las Vegas, Nevada 89148

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **PLAINTIFFS' MOTION TO AMEND**
3 **THE COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, OR**
4 **ALTERNATIVELY FOR RECONSIDERATION** was electronically filed on the 4th day of May,
5 2021, and served through the Notice of Electronic Filing automatically generated by the Court's
6 facilities to those parties listed on the Court's Master Service List as follows:

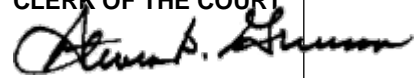
7 Michael R. Mushkin, Esq.
8 MUSHKIN & COPPEDGE
6070 South Eastern Avenue, Suite 270
Las Vegas, Nevada 89119
9 *Attorneys for Defendants CBC Partners I, LLC, CBC Partners, LLC,*
10 *5148 Spanish Heights, LLC, and Dacia LLC*

11 /s/ Natalie Vazquez

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

EXHIBIT 1

EXHIBIT 1



1 FFCL

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

Case No. A-20-813439-B

Dept. No.: XI

10 Plaintiffs,

11 v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 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

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The
Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief
from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates
any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights
are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not
intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15,
2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

1 Emergency Directive 008.

2 On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and
3 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

4 Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a
5 counterclaim against plaintiffs, and Jay Bloom.

6
7 On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against
8 SJCVC, which SJCVC answered on September 28, 2020.⁵

9 **II. Findings of Fact**

10 1. This action involves residential real property located at 5148 Spanish Heights
11 Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

12 2. The original owners of the Property were Kenneth and Sheila Antos as joint
13 tenants, with the original deed recorded in April 2007.

14 3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos
15 (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-
16 Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the
17 "Antos Trust", and together with "Antos", the "Antos Parties").

18 4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust
19 recorded on the Property.

20 5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of
21 Trust recorded on the Property.

22 6. The Property is currently owned by Spanish Heights⁶ which has entered into a
23
24

25
26
27 _____
28 ⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:
22

23 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
24 create, assume or permit to exist any debt secured by the real property
located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:
20

21 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
22 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
23 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
24 of a Deed of Trust on the real property located at 5148 Spanish Heights
Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guarantied
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
9 SJCVC acknowledged default and affirmed CBCI has fully performed.

10 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
11 agreements between the Antos and CBCI are valid.

12
13
14 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
15 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
16 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
17 accordance with their respective terms, and any instrument or agreement required
18 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
19 valid, binding and enforceable. This Forbearance Agreement does not conflict with any
20 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

21 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
22 Antos Trust conveyed the Property to Spanish Heights.

23 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
24 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

25 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
26 term is two years, with an option for SJCVC to exercise two additional consecutive lease

27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust..."

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

22
23
24
25
26
27
28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.

8 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
9 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
10 SJCVC appears on the Pledge Agreement.

11 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
12 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
13 Gutierrez & Associates.

14 61. As additional required security, SJCVC agreed to a Security Agreement to grant
15 CBCI a Security Interest in a Judgment described as:

16 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
17 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
18 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
19 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
20 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
21 SJCVC represents It holds a 24,912% Membership Interest in 1st One
22 Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

23
24
25 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
26 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

27 ***

28 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”) of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

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

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

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]hen a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16
17
18

19 Trustor and Guarantor each waive all benefits of the one-action
20 rule under NRS 40.430, which means, without limitation, Trustor
21 and Guarantor each waive the right to require Lender to (i) proceed
22 against Borrower, any other guarantor of the Loan, any pledgor of
23 collateral for any person’s obligations to Lender or any other
24 person related to the Note and Loan Documents, (ii) proceed
25 against or exhaust any other security or collateral Lender may
26 hold, or (iii) pursue any other right or remedy for Guarantors’
27 benefit.

28 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
remedies.

 The rights and remedies of CBCI under this Forbearance
Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.
20

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
22 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
23 obligation of SJCVC.
24

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
26 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
27 Spanish Heights does not merge the Defendants interests.
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA

EXHIBIT 2

EXHIBIT 2

Spanish Heights Acquisition Company, LLC
5148 Spanish Heights Dr
Las Vegas, NV 89148
p. 702.423.0500 f. 702.974.0284

The Kenneth and Sheila Antos Trust,
CBC Partners, LLC,
CBC Partners 1, LLC,
5148 Spanish Heights, LLC
c/o Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
6070 South Eastern Avenue, Suite 270
Las Vegas, NV 89119
Michael@mccnvlaw.com

By: USPS Certified 7018 0360 0002 2277 7473 and
Email to Michael@mccnvlaw.com

March 1, 2021

Re: Spanish Heights Acquisition Company, LLC
Additional Capital Call

Dear Member,

Pursuant to the Company's Operating Agreement, The Kenneth and Sheila Antos Trust (the "Antos Trust") is (or was) the owner of a 49% Membership Interest in Spanish Heights Acquisition Company, LLC (the "Company").

Upon information and belief, the Antos Trust purportedly attempted to transfer its 49% Membership Interest to CBC Partners, LLC and/or its nominee company, CBC Partners 1, LLC, potentially in violation of the Company's Operating Agreement, section 7.01 which sets forth restrictions on transfers.

The company is without sufficient information to know if a further successive transfer of the Antos Trust Membership Interest as transferred to some CBC Partners entity was then attempted to be reconveyed to 5148 Spanish Heights, LLC, in further violation of the Company's Operating Agreement, section 7.01 which sets forth restrictions on such transfers as follows:

Except as otherwise expressly permitted in this ARTICLE VII, no Member may Transfer all or any portion of its Membership Interest in the Company without the prior consent of the Manager, which consent may be granted or withheld in the sole and absolute discretion of the Manager. Members may not Transfer all or any portion of its Class A Units, except pursuant to a Transfer permitted by Sections 7.02, 7.09 or 7.10. Any

Transfer (whether voluntary or involuntary) or attempted Transfer by a Member in violation of the immediately preceding sentence shall result in the automatic voiding of any such unauthorized transfer.

Additionally, no documents or instruments of transfer have been conveyed to the Manager, as required by the Company's Operating Agreement, Section 7.03 which sets forth:

Notwithstanding any other provision of Section 7.01 or 7.02, no Transfer shall be permitted, except in the case of a Transfer on death or involuntarily by operation of law, unless the following additional conditions precedent are satisfied (or waived by the Manager in its sole and absolute discretion):

(a) The transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Agreement (including this ARTICLE VII);

and

(b) At the request of the Manager, the transferor shall provide an opinion of counsel satisfactory to the Company to the effect that such Transfer will not violate any applicable securities laws regulating the transfer of securities or any of the provisions of any agreement to which the Company is a party.

Accordingly, The Antos Trust is no longer recognized as a Member, pursuant to the Company's Operating Agreement, Section 7.05 which sets forth:

Following any Transfer of a Member's entire Membership Interest, the Member shall have no further rights as a Member of the Company. In addition, following any permitted Transfer of a portion of Member's Membership Interest, the Member shall have no further rights as a Member of the Company with respect to that portion Transferred.

Whomever the indeterminant recipient may be is nevertheless hereby deemed an "Unadmitted Transferee", pursuant to the Company's Operating Agreement, Section 7.06, which sets forth:

A transferee of a Membership Interest who is not admitted as a Member pursuant to Sections 7.03 and 7.04 shall be entitled to allocations and distributions attributable to the Membership Interest Transferred to the same extent as if the transferee were a Member, but shall have no right to vote or give a consent on any matter, if any, calling for the approval or consent of the Members (and notwithstanding anything in this Agreement to the contrary any requisite percentage or majority shall be computed as if the Transferred Membership Interest did not exist), shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the other rights of a Member

under the Act or this Agreement. For the avoidance of doubt, if a Member Transfers or attempts to Transfer any Class A Units in violation of Section 7.01 of this Agreement, then such transfer shall automatically be voided.

As you are aware, as a result of debts attributable to the Antos' individually, approximately 10 liens exist on the property at the time it was owned by the Antos Trust.

In order to expeditiously and judicially address, through mitigation or elimination, the pre-existing improper liens, the Company has elected to restructure under 11 U.S. Code § 101, those encumbrances it deems improper against the Company's real property single family residential asset.

Accordingly, the Company has retained the Law Firm of Greene Infuso to prepare and file the Plan of Reorganization.

The Company will require additional capital from its Members to effectuate such Plan of Reorganization.

Pursuant to the Company's Operating Agreement, Section 3.02(C), with respect to Additional Capital Contributions, sets forth as follows:

... if a new or existing Member shall make additional Capital Contributions to the Company hereafter, which may be done only as permitted by the Manager and subject to compliance with this Agreement (including Section 3.02(a)), then (y) the number and class of Units of Membership Interest credited in recognition of such Capital Contribution shall be based upon, as determined by the Manager, in its sole discretion, the fair market value of the new Capital Contribution relative to the fair market value of the Company in its entirety (including the new Capital Contribution), determined after giving effect to a revaluation of Company assets to reflect Gross Asset Value pursuant to Section 3.05 and (z) an appropriate adjustment shall be made to the percentages set forth in Sections 5.01 (b)(II) and (III) of this Agreement so that the percentages to be issued in respect of such new Capital Contributions shall dilute, pro rata, the percentages attributable to the outstanding Class A Units immediately prior to such additional Capital Contributions. The Company will update its records to reflect the issuance of any additional Units and the admission of any new Member in accordance with the terms of this Agreement.

Accordingly, the Company is hereby making a \$100,000.00 Additional Capital Call as follows:

- SJC Ventures is being requested to contribute Additional Capital of \$51,000.00 to maintain its 51% Membership Interest.
- The Antos Trust successor, as "Unadmitted Transferee" is requested to contribute Additional Capital of \$49,000.00 to maintain its 49% Membership Interest.

Additional Capital Contributions shall be made by wire transfer to:

Incoming Wiring Instructions

Beneficiary Account Name (required)	Spanish Heights Acquisition Company, LLC, Debtor in Possession, Case 21-10501-nmc, Operating Account
Beneficiary Account Number (required)	8900000048706
Beneficiary Address (optional)	
Banking Routing Number (domestic)	122287251
Intermediary Bank Routing / Swift Code (international)	121042484/PCBBUS66
Receiving Bank Name	Axos Bank
Receiving Bank Address 1	4350 La Jolla Village Drive
Receiving Bank Address 2	San Diego, CA 92122

It is determined by the Manager, in its sole discretion, pursuant to the Company's Operating Agreement, Section 3.02(C), that, given the stipulated \$6,200,000 value of the property, when compared to the debt asserted against the property, that the fair market value of the new Capital Contribution relative to the fair market value of the Company in its entirety (including the new Capital Contribution) is 100%.

Accordingly, a Member's failure to meet its Capital Call will result in the full dilution of a Members interest to 0%.

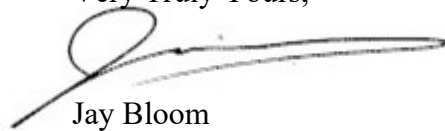
Further, it is anticipated that additional Capital Calls will be made in the future to fund the Company's ongoing expenses and the reorganization plan.

Capital Contributions are to be wired no later than by 2pm PST on Wednesday, March 10, 2021, with proof of transfer provided to the Manager on or before such deadline.

A Member's failure to provide (or the short funding of) such Additional Capital Contribution will result in the pro rata adjustment of such Member's Membership Interests in the Company's books and records by 5pm PST on March 10, 2021.

Thank you for your prompt attention to this matter.

Very Truly Yours,



Jay Bloom
As Manager of
SJC Ventures, LLC,
As Manager of
Spanish Heights Acquisition
Company, LLC

EXHIBIT 3

EXHIBIT 3

MUSHKIN & COPPEDGE

Michael R. Mushkin, Esq.
L. Joe Coppedge, Esq.
Mark C. Hafer, Esq.*

*of counsel

6070 South Eastern Avenue
Suite 270
Las Vegas, Nevada 89119

Telephone 702.454.3333
Facsimile 702.386.4979

March 10, 2021

Via Email: jbloom@lvem.com

Spanish Heights Acquisition Company, LLC
5148 Spanish Heights Drive
Las Vegas, NV 89148

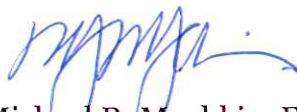
Re: Spanish Heights Acquisition Company, LLC
Additional Capital Call

Dear Manager:

Your capital call is violative of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC. As you are well aware the investor member is obligated to make all payments related to the subject property. Any attempt to dilute the interest of CBC Partners in Spanish Heights Acquisition Company will be deemed and intentional act of fraud.

Govern yourself accordingly.

Sincerely,



Michael R. Mushkin, Esq.

MRM:klf

cc: CBC Partners, LLC

EXHIBIT 4

EXHIBIT 4

Spanish Heights Acquisition Company, LLC
5148 Spanish Heights Dr
Las Vegas, NV 89148
p. 702.423.0500 f. 702.974.0284

March 11, 2021

The Kenneth and Sheila Antos Trust
CBC Partners, LLC
CBC Partners I, LLC,
5148 Spanish Heights, LLC
c/o Michael R. Mushkin, Esq.
Mushkin & Coppedge
6070 South Eastern Avenue, Suite 270
Las Vegas, NV 89119
Michael@mccnvlaw.com

By: USPS Certified 7018 0360 0002 2277 7480 and
Email to Michael@mccnvlaw.com

Re: Spanish Heights Acquisition Company, LLC
Capital Call Results

Dear Member:

As you are aware, on March 1, 2021, SJC Ventures, as Manager of Spanish Heights Acquisition Company, LLC ("SHAC") sent out a capital call to the Membership, pursuant to the SHAC Operating Agreement, Section 3.02(C), in the amount of \$100,000 as follows:

- SJC Ventures was required to contribute additional capital of \$51,000 to maintain its 51% Membership Interest in SHAC;
- The Antos Trust successor, as "Unadmitted Transferee", was required to contribute additional capital of \$49,000 to maintain its claimed 49% Membership Interest.

On March 2, 2021, SJC Ventures made its \$51,000 capital contribution as follows:

03/02/2021 WIRE TYPE:WIRE OUT DATE:210302 TIME:1507 -51,000.00
FT TRN:2021030200440005 SERVICE...

[Edit Description](#)

Type:	Withdrawal
Description:	WIRE TYPE:WIRE OUT DATE:210302 TIME:1507 ET TRN:2021030200440005 SERVICE REF:013319 BNF:SPANISH HEIGHTS ACQUISITIO ID:121042484 BNF BK:AXOS BANK ID:122287251 PMT DET:330105744
Merchant name:	SPANISH HEIGHTS ACQUISITIO Edit
Transaction category:	Uncategorized: Uncategorized Edit

[Print transaction details](#)

CBC Partners, being duly noticed of the capital call, elected not to participate by the March 10, 2021 deadline.

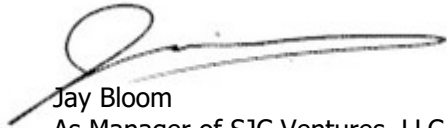
Accordingly, as of 5pm PST on March 10, 2021, SJC has arranged to advance the remaining \$49,000.00 called from CBC Partners (and so declined) and a pro rata adjustment in SHAC Membership records took place.

Pursuant to the Spanish Heights Operating Agreement, Section 3.02(C), CBC Partners has been diluted to 0% ownership of SHAC, and SJC Ventures has obtained 100% ownership of SHAC.

Any further representation of CBC Partners purporting to be Member of SHAC does not reflect the Membership Interests reflected in the books and records of SHAC and such act will constitute Fraud, and all appropriate actions will be taken as a result of the same.

Kindly guide yourself accordingly.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Jay Bloom", with a long horizontal flourish extending to the right.

Jay Bloom
As Manager of SJC Ventures, LLC
As Manager of Spanish Heights Acquisition Company, LLC

EXHIBIT 5

EXHIBIT 5

**LIMITED LIABILITY COMPANY AGREEMENT
OF
SPANISH HEIGHTS ACQUISITION COMPANY, LLC**

LIMITED LIABILITY COMPANY AGREEMENT

OF

Spanish Heights Acquisition Company, LLC

This Limited Liability Company Agreement (this "Agreement") of Spanish Heights Acquisition Company, LLC (the "Company"), a limited liability company organized pursuant to the Nevada Liability Company Act (the "Act"), is hereby entered into by and among SJC Ventures Holdings, LLC, LLC (hereinafter referred to as, the "Investor" or the "Investor Member"), and ANTOS, KENNETH & SHEILA LIV TR, KENNETH M ANTOS SHEILA M. NEUMANN-ANTOS TRUST, Kenneth Antos and Sheila Neumann-Antos as Trustees (hereinafter referred to as, the "Seller" or the "Seller Member").

INTRODUCTION

WHEREAS, the Company has been formed to, among other things, purchase that real property otherwise known as 5148 Spanish Heights Drive, Las Vegas, NV 89148 (the "Property"); and

WHEREAS, the Investor Member, Lender Member and Seller Member desire to enter into this Agreement to set forth their respective rights and obligations with respect to the Company and one another,

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Certain defined terms used in this Agreement are set forth in Exhibit A.

ARTICLE II

ORGANIZATION

2.01. Formation.

The Company has been organized as a Nevada (the "State of Formation") limited liability company by the filing of its Certificate of Formation with the Nevada Secretary of State on August 4, 2017.

2.02. Name.

The name of the Company is "Spanish Heights Acquisition Company, LLC" and all Company business shall be conducted under that name or such other names as comply with applicable law that the Manager (as defined in Section 6.01(a)) may select from time to time.

2.03. Registered Agent; Registered Office.

The registered agent of the Company shall be Maier Gutierrez and Associates PLLC, and the registered office of the Company in the State of Formation shall be 8816 Spanish Ridge Ave, Las Vegas, NV 89148 or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law.

2.04. Principal Office; Other Offices.

The principal office of the Company shall be at such place as the Manager may designate from time to time, which need not be in the State of Formation. The initial principal office of the Company shall be at 2485 Village View Dr., Suite 190, Henderson, NV 89074. The Company may change its principal office or have such other offices as the Manager may designate from time to time.

2.05. Purposes.

The purposes of the Company (the "Purposes") are to hold ownership of that certain real property otherwise known as 5148 Spanish Heights Drive, Las Vegas, NV 89148, (ii) perfect the Company's interest in such property, (iii) hold, monitor and maintain the Company's Property, and (iv) engage in any activity in furtherance of, related to or necessary to support the Company's investment in, or subsequent disposition of its investment in, the Property, in each case, as determined by the Manager.

2.06. Term.

The Company and this agreement shall continue in perpetuity, unless sooner terminated in accordance with the provisions of this Agreement.

2.07. Powers.

The Company shall possess and may exercise any and all the powers and privileges granted by the Act or by any other applicable law to limited liability companies or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the Company, in each case as determined by the Manager.

2.08. No State Law Partnership.

The Members intend that the Company shall not be a partnership or joint venture, and that no Member shall be a partner or joint venturer of any other Member, for any purpose other than federal, state, and local tax purposes, and the provisions of this Agreement shall not be construed otherwise.

2.09. Liability to Third Parties.

No Member shall be liable for the debts, obligations, or liabilities of the Company, except to the extent required under the Act with respect to amounts distributed to the Member at a time when the Company was insolvent or was rendered insolvent by virtue of the distribution.

ARTICLE III

MEMBERS; CAPITAL CONTRIBUTIONS AND COMMITMENTS; CAPITAL ACCOUNTS; REVALUATIONS; PRE-EMPTIVE RIGHTS

3.01. Classes of Units; Members.

(a) The authorized Units shall consist of Class A Units, which shall have the terms set forth in this Agreement. The Class A Units shall have voting rights, and shall be held by the Investor Member and the Selling Member.

(b) The name and address of the Investor Member is set forth on Exhibit B attached hereto, and the Investor Member (i) has made a Commitment (as defined in Section 3.02(b)) to make Capital Contributions in the amounts set forth opposite the name of the Investor Member on Exhibit B and (ii) holds the number of Class A Units set forth opposite the name of the Investor Member on Exhibit B. The Investor Member has been issued the number of Class A Units set forth opposite its name on Exhibit B in exchange for the Commitment set forth opposite the Investor Member's name on Exhibit B.

(c) The Seller Member holds the number of Class A Units set forth opposite the Seller Member's name on Exhibit B. The address of the Seller Member is set forth on Exhibit B.

(e) The number of Units held by the Members may be updated by the Company in good faith from time to time to reflect, among other things, additional Capital Contributions, the admission of new Members and redemptions of Membership Interests. The number of Units of a class may be split, combined or otherwise re-classified by the Manager, provided that a proportionate adjustment is made to all then outstanding Units of such class.

3.02. Additional Members; Capital Contributions in respect of the Commitments; Additional Capital Contributions.

(a) No Person shall be admitted to the Company as an additional Member without the approval of the Manager, which approval may be granted or withheld in the sole and absolute discretion of the Manager. The approval of the Manager shall be required to accept Capital Contributions to the Company from any non-member, in any amount.

(b) The Investor Member has made a commitment (each, a “Commitment”) to fund the amount of Capital Contributions in the amount set forth opposite its name on Exhibit B attached hereto. The Investor Member shall make Capital Contributions to the Company in an amount equal to its Commitment (the “Initial Capital Contributions”) at the execution of this Agreement, provided that the Required Funding Condition (as defined in Section 8.02(c)) has been satisfied.

Capital Contributions in respect of the Commitments from the Investor Member shall be used solely to fund (x) the payment by the Company of Lender Member’s debt held against the property, (y) the payment of utilities used at the Property and (z) expenses associated with Property; provided, however, in no event shall the Company be responsible for funding, or shall any Capital Contributions in respect of the Commitments be used to fund, the overhead of, or any costs and expenses incurred by, any of the Members in providing services pursuant to the this Agreement, in excess of those commitments contemplated by this transaction. The Investor Member shall not be required to make Capital Contributions in excess of its Commitment.

(c) No Member shall be obligated to make any Capital Contributions to the Company, except for the obligation of the Investor Member to make the Initial Capital Contributions as provided in Section 3.02(b) above. However, if a new or existing Member shall make additional Capital Contributions to the Company hereafter, which may be done only as permitted by the Manager and subject to compliance with this Agreement (including Section 3.02(a)), then (y) the number and class of Units of Membership Interest credited in recognition of such Capital Contribution shall be based upon, as determined by the Manager, in its sole discretion, the fair market value of the new Capital Contribution relative to the fair market value of the Company in its entirety (including the new Capital Contribution), determined after giving effect to a revaluation of Company assets to reflect Gross Asset Value pursuant to Section 3.05 and (z) an appropriate adjustment shall be made to the percentages set forth in Sections 5.01(b)(II) and (III) of this Agreement so that the percentages to be issued in respect of such new Capital Contributions shall dilute, pro rata, the percentages attributable to the outstanding Class A Units immediately prior to such additional Capital Contributions. The Company will update its records to reflect the issuance of any additional Units and the admission of any new Member in accordance with the terms of this Agreement.

3.03. Return of Capital Contributions; Special Rules.

Except as otherwise expressly provided herein, (i) no Member shall be entitled to the return of any part of its Capital Contribution or to be paid interest in respect of its Capital Account balance or its Capital Contribution, (ii) neither the Manager nor any Member, its agents,

affiliates, officers, directors, assigns, successors or heirs shall have any personal liability for the return of the Capital Contribution of any other Member and (iii) no Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

3.04. Capital Accounts.

A Capital Account shall be established and maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account, there shall be credited such Member's Capital Contributions, such Member's distributive share of Net Profits, any items in the nature of income or gain that are specially allocated pursuant to this Agreement, and the amount of any liabilities of the Company that are assumed by such Member, or that are secured by any assets of the Company distributed to such Member.

(b) From each Member's Capital Account, there shall be debited the amount of cash and the Gross Asset Value of any Company assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Net Losses, any items in the nature of expenses or losses that are specially allocated pursuant to this Agreement, and the amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) If ownership of any Membership Interest in the Company is assigned in accordance with the terms of this Agreement, the assignee shall succeed to the Capital Account of the assignor to the extent it relates to the assigned Membership Interest.

(d) In determining the amount of any liability for purposes of Sections 3.04(a) and (b) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(e) To each Member's Capital Account, there shall be debited or credited, as the case may be, adjustments which are necessary to reflect a revaluation of Company assets to reflect the Gross Asset Value of all Company assets, as required by Regulations Section 1.704-1(b)(2)(iv)(f) and Section 3.05.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Code Section 704 and Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. The Company shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet as computed for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(q).

3.05. Gross Asset Value.

The Gross Asset Value of any asset of the Company shall be equal to the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company.

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values in connection with (and to be effective immediately prior to) the following events: (i) the acquisition of an additional Membership Interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property (including cash) as consideration for an interest in the Company; or (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that an adjustment pursuant to clauses (i) or (ii) above shall be made only if the Manager reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution.

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted bases of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and ARTICLE IV; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this Section 3.05(d) to the extent they were adjusted pursuant to Section 3.05(b) above in connection with a transaction that otherwise would result in an adjustment pursuant to this section.

(e) If the Gross Asset Value of an asset has been determined or adjusted pursuant to this Section 3.05, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

3.06. Pre-Emptive Rights.

(a) The Company hereby grants to each Member the right to purchase, in accordance with the procedures set forth in this Section 3.06, the Member's Percentage Interest of any New Units which the Company (acting through its Manager) may, from time to time, propose to sell and issue (hereinafter referred to as the "Preemptive Right").

(b) In the event that the Company proposes to issue and sell New Units, the Company shall notify each Member in writing (the "New Units Notice"). Each New Units Notice shall set forth: (i) the number and class of New Units proposed to be issued by the Company and the per Unit purchase price; (ii) such Member's Percentage Interest of the New Units; and (iii) any other material terms including, if known, the expected date of consummation of the purchase and sale of the New Units.

(c) Each Member shall be entitled to exercise its right to purchase such New Units by delivering an irrevocable written notice to the Company within fifteen (15) days from the date of receipt of any such New Units Notice specifying the number of New Units to be subscribed at the price and on the terms and conditions specified in the New Units Notice.

(d) The Company and each Member shall work together, in good faith, to consummate the closing of the purchase and sale of any New Units that a Member has elected to subscribe for and purchase within fifteen (15) days following the expiration of the notice period set forth in Section 3.06(c) above.

(e) The Company may amend this Agreement in connection with the issuance of New Units in accordance with this Section 3.06 to the extent necessary to set forth the rights, preferences and privileges of the New Units, but only to the extent such amendment has been approved by the Investor Member.

ARTICLE IV

ALLOCATION OF PROFITS AND LOSSES

4.01. Allocation of Profits and Losses.

(a) Allocations of Net Profits and Net losses. Except as otherwise provided in Section 4.01(b) or Section 4.01(c), Net Profits and Net Losses for any Fiscal Year or other period shall be allocated among the Members in such a manner that, as of the end of such Fiscal Year or other period, the Capital Account of each Member shall equal (a) the amount that would be distributed to such Member determined *as if* the Company were to (i) liquidate the assets of the Company for an amount equal to their respective book values and (ii) distribute the proceeds of such liquidation pursuant to Section 10.02, minus (b) the amount of such Member's share of Company Minimum Gain (as determined according to Regulations Section 1.704-2(g)) and such Member's share of Member Nonrecourse Debt Minimum Gain (as determined according to Regulations Section 1.704-2(i)(5)).

(b) Regulatory Allocations. Notwithstanding any other provision of this Agreement, the following allocations shall be made prior to any other allocations under this Agreement:

(i) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Section 4.01, if there is a net decrease in Company Minimum Gain during any Fiscal Year or other period, each Member shall be specially allocated items of Company income and gain for such Fiscal Year or period (and, if necessary, subsequent Fiscal Years or periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.01(b)(i) is intended to comply with the minimum gain

chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Section 4.01, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year or other period, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year or other period (and, if necessary, subsequent Fiscal Years or other periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.01(b)(ii) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 4.01(b)(iii) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 4.01 have been tentatively made as if this Section 4.01(b)(iii) were not in this Agreement. This Section 4.01(b)(iii) is intended to comply with the qualified income offset requirement of Regulations Section 1.704-1(b)(2)(ii)(d).

(iv) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Members in any manner permitted under applicable Regulations, as reasonably determined by the Manager.

(v) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(l).

(vi) Net Losses. Notwithstanding Section 4.01(b), no Net Losses (or items of Net Loss or deduction) shall be allocated to a Member to the extent such allocation would increase or cause such Member to have an Adjusted Capital Account Deficit. Any such Net Losses (or items of Net Loss or deduction) shall be specially allocated to the other Members

to the extent that such allocation will not cause such other Members to have an Adjusted Capital Account Deficit.

(c) Curative Allocations.

(i) To the extent necessary to avoid any economic distortions that may result from application of Section 4.01(b) (the "Regulatory Allocations"), future items of income, gain, loss, and deduction shall be allocated as appropriate in the reasonable discretion of the Manager in order to remedy any economic distortions that the Regulatory Allocations might otherwise cause. In exercising its discretion under this Section 4.01(c)(i), the Manager shall take into account future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 4.01(b).

(ii) Modifications to Preserve Underlying Economic Objectives. If there is a change in the U.S. federal income tax laws, or the allocations provided for in this Agreement do not comply with the substantial economic effect and capital account rules set forth under Code Section 704 and the Regulations thereunder, or otherwise do not properly reflect the economic interests of the Member, then the Manager acting in its reasonable discretion after consultation with tax advisors to the Company, shall make such modifications to the allocation provisions of this Agreement as are necessary to preserve the underlying economic objectives of the Members and to comply with such provisions of the Code and the Regulations. In this regard, it is intended that prior to a distribution of the proceeds from a liquidation of the Company, the positive Capital Account balance of each Member shall be equal to the amount that such Member is entitled to receive pursuant to Section 10.02 hereof. Accordingly, notwithstanding anything to the contrary herein, to the extent permissible under Code Section 704(b) and the Regulations promulgated thereunder, Net Profits and Net Losses and, if necessary, items of gross income and gross deductions, of the Company for the year of liquidation of the Company shall be allocated among the Members so as to bring the positive Capital Account balance of each Member as close as possible to the amount that such Member would receive if the Company were liquidated and all the proceeds were distributed in accordance with the provisions of Section 10.02 hereof.

(d) Tax Allocations. For U.S. federal, state and local income tax purposes, items of income, gain, loss, deduction and credit shall be allocated to the Members in accordance with the allocations of the corresponding items for Capital Account purposes under this Section 4.01, except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with Code Section 704(c) and the Regulations thereunder (using the traditional method with curative allocations, but curative allocations will be limited to the allocation of gains or losses to overcome a ceiling limitation in a prior taxable year, consistent with Regulations Section 1.704-3(c)(3)(ii)).

(e) All elections, decisions and other matters concerning the allocation of income, gains, expenses and losses among the Members, and accounting procedures not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Manager in its sole discretion and shall be final and conclusive as to all Members.

ARTICLE V

DISTRIBUTIONS

5.01. Distributions.

(a) Distributions, if any, shall be made from the Company to the Members at such times as the Manager may determine.

(b) All distributions shall be made to the Members in the following manner and order of priority:

(I) One hundred percent (100%) to the Investor Member.

5.02. Distributions of Proceeds Upon Sale of Membership Interests.

Notwithstanding anything in this Agreement to the contrary, any sale of Units permitted under this Agreement, or a merger, in each case, in connection with a Sale Transaction, as a result of which the Members, rather than the Company, receive the proceeds of such sale or merger: (a) subject to any holdback or reserve described in clause (b) of this Section 5.02, the Members, as a group, hereby agree to apportion and, upon the closing of such sale or merger, pay over the proceeds among those Members participating in such Sale Transaction so that, as nearly as possible, the payments to each Member shall correspond to and be in accordance with the distribution provisions set forth in Section 5.01; and (b) the Company shall have the right to withhold, and each of the Members agrees to contribute and pay over from the proceeds received or receivable by such Member, a portion of the proceeds payable in any such transaction equal to an amount necessary, as reasonably determined by the Manager, to satisfy any post-transaction indemnification, purchase price adjustment or other similar escrow or holdback obligation; provided, however, that in no event shall a Member be obligated to make a contribution to the Company pursuant to the foregoing in excess of its pro rata portion of such proceeds. Any amount withheld pursuant to clause (b) of this Section 5.02 shall be held in a separate account for the ratable benefit of the Members participating in the transaction giving rise to such proceeds, and may be used, as determined by the Manager, to satisfy any such post-transaction obligation described in clause (b); provided, however, that none of the Company, the Managers nor any of their respective officers, directors, employees, partners, members, shareholders, agents or Affiliates, shall have any liability with respect to amounts so withheld or paid, except for fraud, gross negligence or willful misconduct.

ARTICLE VI

MANAGEMENT

6.01. Management.

(a) Management and control of the Company shall be vested exclusively and irrevocably with the Investor Member. Authority to sell the property rests exclusively in a Manager (the "Manager"), and while the business and affairs of the Company

shall be managed by the Investor Member, any sale is solely under the direction of the Manager. The Investor Member shall retain always the authority to make management decisions notwithstanding any delegation of duties by the Manager to (y) employees, officers or agents or (z) the Investor Member (if any duties are expressly delegated to the Investor Member). Notwithstanding the foregoing or anything contained herein to the contrary, the approval of the Manager shall be required to take any of the actions set forth in Section 6.01(h) of this Agreement. The officers of the Company serve at the sole discretion of the Manager, and such officers (or other agents) who are appointed by the Manager may be removed, at any time or from time to time, by the Manager, with or without cause upon unanimous consent of the Manager. No Member of the Company shall have any rights, powers or duties in respect of the management of the Company, except as otherwise expressly set forth in this Agreement.

The bank account of the Company shall be controlled by the Investor Member, and the Investor Member shall have sole authority to make withdrawals from the bank account and to write checks on behalf of the Company, except as otherwise provided in the last sentence of Section 6.01(i) of this Agreement. Notwithstanding, at the sole discretion of the Investor Member, a third party Lender, holding a receivable due from the Selling Member, who is secured by the property, may be a signer on the account as well, and is authorized to make payments to itself under the modified terms of its debt held against the property that may be due and payable, which have not been made from this account by the Investor Member.

(b) A Manager may resign at any time by giving written notice to the other Managers (the “Resignation Notice”). The resignation of such Manager shall take effect upon delivery of the Resignation Notice or at such later time as shall be specified in the Resignation Notice and, unless otherwise specified therein, the acceptance of such resignation by the Company or the other Managers shall not be necessary to make it effective. The resignation of a Manager shall not affect the resigning Manager’s rights, if any, as a Member and shall not constitute such resigning Manager’s resignation as a Member, if applicable. The Person or Persons having the right to appoint a Manager shall have the sole right to fill any vacancy as a result of such removal or resignation, except as otherwise provided in Section 6.01(c).

(c) Unless waived by the Managers, each Member shall be given at least forty-eight (48) hours notice of any meeting (which notice shall state the date, hour and location of the meeting and all actions to be considered at the meeting), and each Member shall be permitted to participate in any meeting by telephone or similar communications equipment. Any Manager may call a meeting of the Manager. Any action may be taken by the Manager without a meeting if authorized by the written consent of the Members necessary to authorize the action as specified in Section 6.01(f) below. Notice of a meeting need not be given to any Manager who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Manager. No action may be taken at any meeting of the Manager unless such action was specified in the notice of such meeting that was delivered to the Managers in accordance with this Section 6.01(e).

(d) A Person shall cease to serve as a Manager upon (i) his or her death, (ii) his or her resignation in accordance with Section 6.01(d) above or (iii) the removal of such Manager in accordance with Section 6.01(c) or Section 6.01(d).

(e) Managers shall not receive any fee or other compensation for services rendered on behalf of the Company as a Member of the Manager.

(f) The Manager may not take any of the following actions without the prior approval of the Seller Member's lender, CBC Partners:

(1) Create, incur, assume or make any payment in respect of any borrowed money indebtedness or guarantee the borrowed money indebtedness of any other person or entity, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(2) Directly permit to exist any lien or security interest on any of the asset of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(3) Dispose of its properties or assets, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(4) Declare or pay any dividend or distribution on any membership interest of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(5) Purchase or redeem any membership interests of, or rights, options or warrants to acquire membership interests of, the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(6) Issue any additional membership interests of, or rights, options or warrants to acquire, membership interests of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(7) Consummate, or enter into an agreement that results in, a sale of the Company (whether by merger, sale of assets, sale of Units or otherwise), unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(8) Enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its Managers, Members or any of their respective affiliates or family members, except for Capital Contributions from the Investor Member in respect of its Commitment as expressly provided in Section 3.02(b)

of this Agreement, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(9) Cause a material change in the strategic direction or the nature of the business of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property; or

(10) Enter into any agreement to do any of the foregoing, unless such agreement results in the satisfaction of the Lender CBC Partners receivable secured by the property.

6.02. Liability of Parties.

No Member, Manager nor any Representative of a Member or a Manager shall be liable to the Company or to any other Member or Manager for (a) the performance of, or the omission to perform, any act or duty on behalf of the Company if, in good faith, such Person determined that such conduct was in the best interests of the Company, and such conduct did not constitute fraud, gross negligence, reckless or intentional misconduct or a breach of this Agreement or a breach by the Lender Member; (b) the termination of the Company and this Agreement pursuant to the terms hereof; or (c) the performance of, or the omission to perform, any act on behalf of the Company in good-faith reliance on the advice of legal counsel, accountants, or other professional advisors to the Company.

6.03. Indemnification of Manager and Officers.

The Company, its receiver, or its trustee, as the case may be, shall indemnify, defend, and hold each Manager, Director or Officer (collectively, the "Indemnified Parties") harmless from and against any expense, loss, damage, or liability incurred or connected with any claim, suit, demand, loss, judgment, liability, cost, or expense (including reasonable attorneys' fees) arising from or related to the Company or any act or omission of the Indemnified Parties on behalf of the Company and amounts paid in settlement of any of the foregoing; provided that the same were not the result of (i) fraud, gross negligence, or reckless or intentional misconduct on the part of the Indemnified Party against whom a claim is asserted, (ii) a breach of this Agreement by the Indemnified Party or (iii) a breach of the Agreement by the Investing Member. The Company shall advance to any Indemnified Party the costs of defending any claim, suit, or action against such Indemnified Party (other than any claim, suit or action consisting of allegations covered by clauses (i), (ii) or (iii) of the immediately preceding sentence) if the Indemnified Party undertakes to repay the funds advanced, with interest, should it later be determined that the Indemnified Party is not entitled to indemnification under this Section 6.03.

6.04. Conflicts of Interest.

Subject to compliance by each Member's Related Parties with Section 8.02, each Member of the Company and any Manager at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently

or with others, including ones in competition with the Company, with no obligation to offer to the Company or to any other Member the right to participate therein.

6.05. Waiver of Duties.

The Members waive, to the maximum extent permitted by applicable law, any fiduciary duties or obligations that the Managers may owe to the Members.

ARTICLE VII

RESTRICTIONS ON TRANSFERS

7.01. Restrictions on Transfers.

Except as otherwise expressly permitted in this ARTICLE VII, no Member may Transfer all or any portion of its Membership Interest in the Company without the prior consent of the Manager, which consent may be granted or withheld in the sole and absolute discretion of the Manager. Members may not Transfer all or any portion of its Class A Units, except pursuant to a Transfer permitted by Sections 7.02, 7.09 or 7.10. Any Transfer (whether voluntary or involuntary) or attempted Transfer by a Member in violation of the immediately preceding sentence shall result in the automatic voiding of any such unauthorized transfer.

7.02. Permitted Transfers.

A Member shall be free at any time to Transfer all or any portion of its Membership Interest to: (a) in the case of a Member that is a natural person, any one or more of an existing Member's Family Members or a trust or estate for the benefit of such Family Members; (b) to any Affiliate of the Member or any Family Member of such Affiliate or to any limited partner or investor or Affiliate thereof in any investment vehicle managed by the Member or its Affiliates; or (c) to a wholly-owned subsidiary of the Member. Notwithstanding the foregoing sentence, without the prior written consent of the non transferring Member, a Member may not Transfer its Units pursuant to clause (b) of the immediately preceding sentence to a non-Affiliated Person that, at the time of the proposed Transfer, is actively engaged in litigation with, or has previously been engaged in litigation with, the Investor Members. A Member that is a natural person also may Transfer all or any portion of his or her Membership Interest upon his or her death or involuntarily by operation of law. For purposes of this ARTICLE, a Member's "Family Members" shall mean the Member's spouse, ancestors, issue (including adopted children and their issue) and trusts or custodianships for the primary benefit of the Member himself or such spouse, ancestors, or issue (including adopted children and their issue). Notwithstanding the foregoing, in the case of any Transfer permitted under this Section 7.02, it shall be a condition to such Transfer that such transferee agrees (y) to be bound by this Agreement by executing a joinder agreement in a form acceptable to the Manager and (z) that the Units acquired by such transferee may not be subsequently Transferred except in strict accordance with the terms of this Agreement.

7.03. Conditions to Transfer.

Notwithstanding any other provision of Section 7.01 or 7.02, no Transfer shall be permitted, except in the case of a Transfer on death or involuntarily by operation of law, unless the following additional conditions precedent are satisfied (or waived by the Manager in its sole and absolute discretion):

(a) The transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Agreement (including this ARTICLE VII); and

(b) At the request of the Manager, the transferor shall provide an opinion of counsel satisfactory to the Company to the effect that such Transfer will not violate any applicable securities laws regulating the transfer of securities or any of the provisions of any agreement to which the Company is a party.

7.04. Admission of Transferee as Member.

Subject to the other provisions of this ARTICLE VII, a transferee of a Membership Interest may be admitted to the Company as a Member only upon satisfaction of all of the following conditions:

(a) The Membership Interest with respect to which the transferee is admitted was acquired by means of a Transfer permitted under Sections 7.01 and 7.02;

(b) The transferee becomes a party to this Agreement as a Member and executes such documents and instruments as the Manager reasonably may request as necessary or appropriate to confirm such transferee as a Member in the Company and such transferee's agreement to be bound by the terms and conditions hereof; and

(c) The transferee furnishes copies of all instruments effecting the Transfer, opinions of counsel and such other certificates, instruments, and documents as the Manager may reasonably require.

7.05. Effect of Disposition.

Following any Transfer of a Member's entire Membership Interest, the Member shall have no further rights as a Member of the Company. In addition, following any permitted Transfer of a portion of a Member's Membership Interest, the Member shall have no further rights as a Member of the Company with respect to that portion Transferred.

7.06. Rights of Unadmitted Transferee.

A transferee of a Membership Interest who is not admitted as a Member pursuant to Sections 7.03 and 7.04 shall be entitled to allocations and distributions attributable to the

Membership Interest Transferred to the same extent as if the transferee were a Member, but shall have no right to vote or give a consent on any matter, if any, calling for the approval or consent of the Members (and notwithstanding anything in this Agreement to the contrary any requisite percentage or majority shall be computed as if the Transferred Membership Interest did not exist), shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the other rights of a Member under the Act or this Agreement. For the avoidance of doubt, if a Member Transfers or attempts to Transfer any Class A Units in violation of Section 7.01 of this Agreement, then such transfer shall automatically be voided.

7.07. Prohibited Transfers.

Any purported Transfer that is not permitted under this ARTICLE VII shall be null and void and of no effect whatsoever. In the case of a Transfer or attempted Transfer that is not such a permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified persons may incur (including incremental tax liability and attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

7.08. [reserved]

7.09. Tag-Along Rights.

(a) In the event that the Investor Member desires to Transfer (other than a Transfer pursuant to Section 7.02 or a Transfer in accordance with Section 7.10) all or any portion of its Class A Units (the Units to be Transferred are hereinafter referred to as the "Third Party Purchaser Units") to a bona fide, non-Affiliated third party (a "Third Party Purchaser"), then the Investor Member shall promptly notify the other Members (the "Other Members"), in writing (the "Tag-Along Sale Notice"), specifying the price per Unit to be Transferred and the other material terms and conditions of the proposed Transfer to the Third Party Purchaser (the "Third Party Terms"). The Other Members shall have the right (to be exercised as described in this Section 7.09), but not the obligation, to participate in the proposed Transfer to the Third Party Purchaser (hereinafter referred to as the "Tag-Along Right") on the Third Party Terms, as modified by the terms set forth in this Section 7.09 (including Section 7.09(g)).

(b) Each Other Member that desires to exercise its Tag-Along Right shall deliver to the Investor Member a written notice (the "Tag-Along Acceptance Notice") within fifteen (15) days of such Other Member's receipt of the Tag-Along Sale Notice (the "Tag-Along Acceptance Period"). The Tag-Along Acceptance Notice shall state the number of Units being sold by the Investor Member that such Other Member proposes to include in such Transfer to the proposed Third Party Purchaser. The Tag-Along Acceptance Notice given by the Other Member shall constitute the Other Member's binding agreement to sell the number of Units specified in the Tag-Along Acceptance Notice on the Third Party Terms, as modified by the terms set forth in this Section 7.09 (including Section 7.09(g)).

(c) If a Tag-Along Acceptance Notice from an Other Member is not received by the Investor Member within fifteen (15) days of delivery by the Investor Member of the Tag-Along Sale Notice, the Investor Member shall have the right to consummate the sale without the participation of such Other Member, but only if the per Unit purchase price is no more favorable to the Investor Member than as stated in the Tag-Along Sale Notice and only if such sale occurs on a date within the one hundred twenty (120) day period (the "Sale Period") following the expiration of the Tag-Along Acceptance Period. If such sale does not occur within the Sale Period, the Units that were to be subject to such sale thereafter shall continue to be subject to all of the restrictions contained in this Section 7.09.

(d) In connection with any Transfer of Units to the Third Party Purchaser pursuant to this Section 7.09, each of the Investor Member and the Other Members shall have the right to sell to the Third Party Purchaser a number of Units equal to its pro rata portion (based on the number of Units held by the Members, which shall only include the Class A Units to the extent provided in Section 7.09(h) below) of the Third Party Purchaser Units.

(e) At the closing of the Transfer to any Third Party Purchaser of any Third Party Purchaser Units pursuant to this Section 7.09, the Third Party Purchaser shall remit to the Investor Member and the Other Members participating in such sale the aggregate consideration payable to the Investor Member and the Other Members for the Units sold pursuant to Section 7.09 hereof (less any such Member's pro rata share of the consideration to be escrowed or held back, if any, as described below), against delivery by such Member of the Units being sold by it, free and clear of all liens, claims and encumbrances (other than encumbrances imposed by this Agreement), as evidenced by such documentation as the Third Party Purchaser reasonably requests, and the compliance by the Investor Member and the Other Members with any other conditions to closing requested by the Third Party Purchaser.

(f) The consummation of the proposed Transfer triggering the Tag-Along Right shall be subject to the sole discretion of the Investor Member, who shall have no liability or obligation whatsoever to the Other Members for not consummating such proposed Transfer other than its obligations as set forth in this Section 7.09. The Other Members shall receive the same form of consideration received by the Investor Member from the Third Party Purchaser, subject to Section 7.09(g) below. To the extent that the parties are to provide any indemnification or otherwise assume any other post-closing liabilities in favor of the Third Party Purchaser, the Investor Member shall seek to have such indemnification or post-closing liabilities be on a several but not joint basis (and on a pro rata basis in accordance with the proceeds received by such Member) to the extent permitted by the Third Party Purchaser; provided, however, in no event shall any Member's respective potential liability thereunder exceed the proceeds received by such Member. To the extent any such indemnification or post-closing liabilities are made on a joint and several basis and a Member bears more than its pro rata share (based on the proceeds to be received by such Member) of such indemnification or post-closing liabilities, then the other Member(s) shall contribute such Member such amount as is necessary to cause each Member to bear its pro rata share of such indemnification or post-closing liabilities.

(g) The aggregate net proceeds of any Transfer of Units pursuant to this Section 7.09 shall be allocated among the Members participating in such Transfer in accordance with the distribution provisions of Section 5.01(b) of this Agreement.

(h) The Seller Member shall only be entitled to include Class A Units in any Transfer pursuant to this Section 7.09 if, prior to such Transfer, the Investor Member has received the full distribution preference it is entitled to receive under Section 5.01(b)(I) of this Agreement.

7.10. Drag-Along.

If the Manager and the Investor Member approve a Sale Transaction to a non-Affiliated third party (a "Third Party Transferee"), then the Investor Member shall have the right, but not the obligation, to require the Seller Member to consent to and approve the Sale Transaction and, if the Sale Transaction is structured as a sale of Units by the Members, to require the Seller Member to Transfer to the same Third Party Transferee all of the Units held by the Seller Member on the same terms and conditions as the Investor Member, subject to the last sentence of this Section 7.10. In connection therewith, upon request of the Investor Member, the Seller Member shall (i) consent to and raise no objections against such Sale Transaction and (ii) execute and deliver a definitive purchase and sale agreement, in substantially the same form and substance as the definitive agreement executed and delivered by the Investor Member; provided, that, to the extent that the parties are to provide any indemnification or otherwise assume any other post-closing liabilities, the Investor Member shall seek to have such indemnification or post-closing liabilities be on a several but not joint basis (and on a pro rata basis in accordance with the proceeds received by such Members) to the extent permitted by the Third Party Transferee; provided, however, in no event shall any Member's respective potential liability thereunder exceed the proceeds received by such Member in connection with such Sale Transaction. Subject to compliance with the proviso set forth in the immediately preceding sentence, if the Seller Member shall fail to execute and deliver such definitive agreement, the Company and the Investor Member shall have a power of attorney (which may be relied upon by the purchaser(s) in any such sale) and for that purpose the Seller Member, without any further action or deed, shall be deemed to have appointed the Company and the Investor Member as the Seller Member's agent and attorney-in-fact, with full power of substitution, for the purpose of executing and delivering the definitive agreement in the name and on behalf of the Seller Member and performing all such action as may be necessary or appropriate to consummate the sale of the Seller Member's interest pursuant to that agreement. Each Member shall bear its pro rata share of the costs of any transaction pursuant to this Section 7.10 (based on the net proceeds to be received by each Member in connection with the Sale Transaction) to the extent such costs are incurred for the benefit of all Members and are not otherwise paid by the Company or the acquiring party. The aggregate net proceeds of any Sale Transaction pursuant to this Section 7.10 shall be allocated among the Members in accordance with Section 5.01(b) of this Agreement.

ARTICLE VIII

MEMBER COVENANTS

8.01. Confidentiality.

Each Member agrees that Confidential Information will be furnished to it or its Representatives in connection with (i) such Member's ownership of Units in the Company and/or (ii) such Member's designee(s) serving as a Manager or, in the case of the Investor Member, the provision of services by the Investor Member to the Company. Each Member agrees that it shall use, and that it shall cause its Representative to use, the Confidential Information only in connection with its investment in the Company and not for any other

purpose. Each Member further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(a) to such Member's Representatives in the normal course of the performance of their duties or to any financial institution providing credit to such Member;

(b) to the extent required by applicable law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Member is subject, provided that such Member agrees to give the Company prompt notice of such request(s), to the extent practicable, so that the Company may seek an appropriate protective order or similar relief (and such Person shall cooperate with such efforts by the Company, and shall in any event make only the minimum disclosure required by such law, rule or regulation));

(c) to any Person to whom such Member is contemplating a transfer of its Units, provided that such Transfer would not be in violation of the provisions of this Agreement and such potential transferee is advised of the confidential nature of such information and agrees to be bound by a confidentiality agreement consistent with the provisions of this Section 8.01;

(d) to any regulatory authority or rating agency to which the Member or any of its Affiliates is subject or with which it has regular dealings, as long as such authority or agency is advised of the confidential nature of such information;

(e) to any Representative to the extent related to the tax treatment of the Units held by such Member, or

(f) if the prior written consent of the Manager shall have been obtained.

Nothing contained herein shall prevent the use of Confidential Information in connection with the assertion or defense of any claim by or against any Member.

8.02. Investor Member Covenants.

The Investor Member hereby covenants, acknowledges and agrees with the Company and the Seller Member and Lender Member as follows:

(a) Investor Member shall:

(i) Provide for the funding of a annual expense reserve account in the amount of \$150,000.00 within ninety days of the execution of this Agreement, from which non member CBC Partners is authorized to issue payment against its obligations due from Seller Member should Investor Member fail to effect such payments in a timely fashion.

- (ii) Provide for a second funding of an annual expense reserve account one year later in the additional amount of \$150,000.00 within ninety days of the first anniversary of the execution of this Agreement, from which non Member CBC Partners is authorized to issue payment against its Note should Investor Member fail to effect such payments in a timely fashion.
- (iii) Cause the Company to service the non Member CBC Partners receivable against the subject property commencing 90 days after the closing of this Agreement, under the modified terms and conditions thereto, as agreed upon by the Investor Member.
- (iv) Cause the Company to effect repairs to the premises to bring it back to top quality standard and working repair
- (v) Cause the Company to maintain and provide for all costs related to the ongoing maintenance of the property
- (vi) Cause the Company to pay all utilities
- (vii) Cause the Company to pay for all real property insurance
- (viii) Cause the Company to pay all HOA assessments and fines
- (ix) Cause the Company to pay for all landscaping
- (x) Provide for its benefit from that portion of its judgment proceeds distributions from its interest in 1st One Hundred Holdings to serve as additional collateral to further securitize Lending Member's Note against any deficiency in the existing real property serving as collateral prior to this Agreement
- (xi) At the earlier of 2 years or upon collection of the judgment proceeds, pay off in full the CBC receivable as relates to the property
- (xii) At the earlier of 2 years or upon collection of the judgment proceeds, either assume service of or retire either or both of the 1st and 2nd position lenders
- (xiii) At the earlier of 2 years or upon collection of the judgment proceeds, pay off past due and accrued property tax assessments, if not already addressed by 1st or 2nd lender

(xiv) Utilize its lawyers to effectuate a Quiet Title action for the purposes of extinguishing any and all judgment creditor liens against the property.

(b) the Company shall comply, at all times, with the terms and conditions of the Agreement.

(c) the execution, delivery and performance of this Agreement by the Investor Member does not conflict with or constitute a breach of or a default under the Articles of Organization of the Investor Member, the Operating Agreement of the Investor Member or any contract, agreement, instrument or debenture to which the Investor Member is a party or to which any of its assets are subject.

8.03 Seller Member Covenants.

The Seller Member hereby covenants, acknowledges and agrees with the Company and the Seller Member and Investor Member as follows:

(a) Seller Member shall:

(i) Convey all rights of Possession to the Investor Member

(ii) Upon payment in full of the CBC Partners receivable secured against the premises, transfer its Membership Interest in the Company to Investor Member.

(iii) At execution of this Operating Agreement Execute a Deed of Sale conveying ownership of the premises to the Company

(iv) To execute those amendments to the Lender Member Note as necessary

(b) the Seller Member shall comply, at all times, with the terms and conditions of the Agreement.

(c) the execution, delivery and performance of this Agreement by the Seller Member does not conflict with or constitute a breach of or a default under any contract, agreement, instrument or debenture to which the Investor Member is a party or to which any of his assets are subject.

ARTICLE IX WITHDRAWAL

9.01. Restrictions on Withdrawal.

A Member does not have the right to withdraw from the Company as a Member or to terminate its Membership Interest, except to the extent expressly provided herein.

ARTICLE X

DISSOLUTION, LIQUIDATION, AND TERMINATION

10.01. Dissolution.

(a) The Company shall be dissolved automatically and its affairs shall be wound up upon the first to occur of the following:

(i) at any time upon the written consent of the Investor Member, so long as the Manager shall have also consented in writing thereto, or upon the written consent of the sole remaining Member; or

(ii) ninety (90) days after the date on which the Company no longer has at least one (1) Member, unless a new Member is admitted to the Company during such ninety (90) day period.

10.02. Liquidation.

(a) Upon a dissolution of the Company requiring the winding-up of its affairs, the Manager shall wind up its affairs. The assets of the Company shall be sold within a reasonable period of time to the extent necessary to pay or to provide for the payment of all debts and liabilities of the Company, and may be sold to the extent deemed practicable and prudent by the Manager.

(b) The net assets of the Company remaining after satisfaction of all such debts and liabilities and the creation of any reserves under Section 10.02(d), shall be distributed to the Members in accordance with Section 5.01(b) of this Agreement, after giving effect to all contributions, distributions and allocations for all periods, including the period during which such liquidation occurs. Any property distributed in kind in the liquidation shall be valued at fair market value.

(c) Distributions to Members pursuant to this ARTICLE X shall be made by the end of the taxable year of the liquidation, or, if later, ninety (90) days after the date of such liquidation in accordance with Regulations Section 1.704-1(b)(2)(ii)(g).

(d) The Manager may withhold from distribution under this Section 10.02 such reserves as are required by applicable law and such other reserves for subsequent computation adjustments and for contingencies, including contingent liabilities relating to pending or anticipated litigation or to Internal Revenue Service examinations. Any amount withheld as a reserve shall reduce the amount payable under this Section 10.02 and shall be held in a segregated interest-bearing account (which may be commingled with similar accounts). The unused portion of any reserve shall be distributed with interest thereon pursuant to this Section 10.02 after the Manager shall have determined that the need therefor shall have ceased.

(e) Deficit Capital Accounts. If a Member has a deficit balance in its Capital Account after giving effect to all contributions, distributions, and allocations for all taxable years, including the year in which the liquidation occurs, the Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed by such Member to the Company or to any other Person, for any purpose whatsoever. Notwithstanding, Lender Member's secured note against the Property shall not be compromised under this provision.

ARTICLE XI

BOOKS AND RECORDS, ACCOUNTING, AND TAX ELECTIONS

11.01. Maintenance of Records.

The Company shall maintain true and correct books and records, in which shall be entered all transactions of the Company, and shall maintain all other records necessary, convenient, or incidental to recording the Company's business and affairs, which shall be sufficient to record the allocation of Net Profits and Net Losses and distributions as provided for herein. All decisions as to accounting principles, accounting methods, and other accounting matters shall be made by the Manager. The Company shall keep a current list of all Members and their Capital Contributions, adjusted for any withdrawals, which shall be available for inspection by all Members. Each Member or its authorized representative may examine any of the books and records of the Company during normal business hours upon reasonable notice for a proper purpose reasonably related to the Member's interest in the Company.

11.02. Reports to Members.

As soon as practicable after the end of each Fiscal Year, the Company shall cause to be prepared and sent to each Member a report setting forth in sufficient detail all such information and data with respect to the Company for such Fiscal Year as shall enable each Member to prepare its income tax returns. Any financial statements, reports and tax returns required pursuant to this Section 11.02 shall be prepared at the expense of the Company.

11.03. Tax Elections; Determinations Not Provided for in Agreement.

The Manager shall be empowered to make or revoke any elections now or hereafter required or permitted to be made by the Code or any state or local tax law, and to decide in a fair and equitable manner any accounting procedures and other matters arising with respect to the Company or under this Agreement that are not expressly provided for in this Agreement. In this regard, the Members agree that the Company shall make a valid election under Code Section 754. Notwithstanding the foregoing, absent the unanimous consent of the Manager to the contrary, the Company and all Members shall take any steps that may be necessary to elect partnership status for purposes of the Code and any applicable state or local tax law.

11.04. Tax Matters Partner.

The Investor is hereby designated the “Tax Matters Partner” of the Company for purposes of the Code.

ARTICLE XII

GENERAL PROVISIONS

12.01. Notices.

Except as expressly provided in this Agreement, all notices, consents, waivers, requests, or other instruments or communications given pursuant to this Agreement shall be in writing, shall be signed by the party giving the same, and shall be delivered by hand; sent by registered or certified United States mail, return receipt requested, postage prepaid; or sent by a recognized overnight delivery service. Such notices, instruments, or communications shall be addressed, in the case of the Company, to the Company at its principal place of business and, in the case of any of the Members, to the address set forth in the Company’s books and records; except that any Member may, by notice to the Company and each other Member, specify any other address for the receipt of such notices, instruments, or communications. Except as expressly provided in this Agreement, any notice, instrument, or other communication shall be deemed properly given when sent in the manner prescribed in this Section 12.01. In computing the period of time for the giving of any notice, the day on which the notice is given shall be excluded and the day on which the matter noticed is to occur shall be included. If notice is given by personal delivery, then it shall be deemed given on the date personally delivered to such Person. If notice is given by mail in the manner permitted above, it shall be deemed given three (3) days after being deposited in the mail addressed to the Person to whom it is directed at the last address of the Person as it appears on the records of the Company, with prepaid postage thereon. If notice is given by nationally recognized overnight courier delivery service, then it shall be deemed given on the date actually delivered to the address of the recipient by such nationally recognized overnight courier delivery service. If notice is given in any other manner authorized herein or by law, it shall be deemed given when actually delivered, unless otherwise specified herein or by law.

12.02. Interpretation.

(a) ARTICLE, Section, and Subsection headings are not to be considered part of this Agreement, are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents thereof.

(b) Use of the terms “herein,” “hereunder,” “hereof,” and like terms shall be deemed to refer to this entire Agreement and not merely to the particular provision in which the term is contained, unless the context clearly indicates otherwise.

(c) Use of the word “including” or a like term shall be construed to mean “including, but not limited to.”

(d) Exhibits and schedules to this Agreement are an integral part of this Agreement.

(e) Words importing a particular gender shall include every other gender, and words importing the singular shall include the plural and vice-versa, unless the context clearly indicates otherwise.

(f) Any reference to a provision of the Code, Regulations, or the Act shall be construed to be a reference to any successor provision thereof.

12.03. Governing Law; Jurisdiction; Venue.

This Agreement and all matters arising herefrom or with respect hereto, including, without limitation, tort claims (the “Covered Matters”) shall be governed by, and construed in accordance with, the internal laws of State of Nevada, without reference to the choice of law principles thereof. The Members agree that any dispute between them or between any of them and the Company arising out of, or in connection with, the execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of these arbitration provisions) shall be settled by arbitration conducted in Clark County Nevada, in the English language, in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”), by a single arbitrator, designated by the AAA in accordance with the rules of the AAA. The decision of the AAA shall be final and binding on the Members and the Company, and not subject to further review, and judgment on the awards of the AAA may be entered in and enforced by any court having jurisdiction over the parties or their assets subject to the procedural requirements in such jurisdiction. The arbitration hearing shall be held solely in the State of Formation. Notwithstanding the foregoing agreement to arbitrate, the parties expressly reserve the right to seek (i) provisional relief from any court of competent jurisdiction to preserve their respective rights pending arbitration and (ii) equitable relief in any court of competent jurisdiction in the State of Formation. All costs of the arbitrator shall be split equally by the claimant, on the one hand, and the respondents, on the other hand; provided, however, the arbitrator shall have the right to apportion such costs in accordance with what the arbitrator deems just and equitable under the circumstances. The arbitrator shall have the authority to award reimbursement of attorneys’ fees to the prevailing party in the arbitration.

12.04. Binding Agreement.

This Agreement shall be binding upon and inure to the benefit of the Members and the Managers and their respective heirs, executors, administrators, personal representatives, and successors.

12.05. Dispute Resolution.

In the event of a failure to reasonably resolve any issues among any of the Parties (or their owners, assigns, or successors), the disputes of those parties will be referred to binding arbitration for resolution thereof, and each party waives any right to litigation in favor of such resolution through binding arbitration. Arbitration shall be conducted under Nevada’s Arbitration Rules). Judgment on the arbitrator’s award may be entered in any court having

jurisdiction thereof. The arbitration shall be held in the City of Las Vegas and State of Nevada, and shall be conducted before a single arbitrator agreeable to the parties. The arbitrator shall make findings of fact and law in writing in support of his decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate. The provisions hereof shall not preclude any party from seeking preliminary injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making preliminary findings of fact in connection with granting or denying such preliminary injunctive relief after and in accordance with the decision of the arbitrator. No decision of the arbitrator shall be subject to judicial review or appeal; the parties waive any and all rights of judicial appeal or review of any decision of the arbitrator. Should any party initiate a civil proceeding against any other, notwithstanding the binding arbitration provision above, such party initiating civil litigation shall recognize that it has caused material damage and harm to the other by way of their breach of this agreement, and hereby agrees to an award, to each named defendant party, liquidated damages in the amount of any costs of defense incurred by the aggrieved party plus ten thousand dollars (\$10,000.00).

12.06. Severability.

Each item and provision of this Agreement is intended to be severable. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason whatsoever, that term or provision shall be modified only to the extent necessary to be enforced, such term or provision shall be enforced to the maximum extent permitted by law, and the validity of the remainder of this Agreement shall not be adversely affected thereby.

12.07. Entire Agreement.

This Agreement (including the exhibits hereto and the Services Agreement) supersedes any and all other understandings and agreements, either oral or in writing, between the Members with respect to the Membership Interests and constitutes the sole agreement between the Members with respect to the Membership Interests.

12.08. Further Action.

Each Member shall, upon the request of the Manager, execute and deliver all papers, documents, and instruments and perform all acts that are necessary or appropriate to implement the terms of this Agreement and the intent of the Members.

12.09. Amendment or Modification.

This Agreement (including the exhibits hereto) may be amended or modified from time to time only upon the written approval of the Company (acting through the Manager) and the Investor Member; provided, however, for so long as the Seller Member owns any Class A Units, the approval of the Seller Member shall be required to amend Section 5.01 of this Agreement (other than in connection with the issuance of New Units) or Section 6.01(b)(ii) of this Agreement. Notwithstanding the foregoing, no amendment shall create any personal

liability or personal obligation of any Member for the debts, obligations, or liabilities of the Company not otherwise provided under the Act without such Member's written consent.

12.10. Counterparts.

This Agreement may be executed in original or by facsimile in several counterparts and, as so executed, shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or to the same counterpart.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the Members have executed and adopted this Limited Liability Company Agreement effective as of September 30, 2017.

MEMBERS:

Kenneth Antos (Seller Member)

Ken Antos Rest

By: 

Name: *Ken Antos*

Title: *Member*

SJC Ventures Holdings, LLC (Investor Member)

By: 

Name: *Jay Bloom*

Title: *Manager*

MANAGER:


Jay Bloom, as Manager SJC Ventures Holdings, LLC

EXHIBIT A

DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

“Adjusted Capital Account Deficit” means, with respect to any Person, the deficit balance, if any, in such Person’s Capital Account as of the end of the relevant Fiscal Year or other period, after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Person is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentence of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) after taking into account any changes during such year in Company Minimum Gain and Member Minimum Gain; and

(a) debit to such Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to any Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the first mentioned Person. A Person shall be deemed to control another Person if such first Person possesses directly or indirectly the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, by contract or otherwise.

“Business Day” means a day, other than a Saturday or Sunday, on which commercial banks in New York, NY are open for the general transaction of business.

“Capital Account” means, with respect to any Member, the Member’s Capital Contributions, increased or decreased as provided in this Agreement.

“Capital Contribution” means, with respect to the Investor Member, the amount of money contributed to the Company by the Investor Member.

“Class A Units” means a class of Units that are denominated as “Class A Units”.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Company Minimum Gain” has the meaning ascribed to the term “partnership minimum gain” in the Regulations Section 1.704-2(d).

“Confidential Information” means any information concerning the Company or the financial condition, business, operations, prospects or assets of the Company (including the terms of this Agreement), provided that the term “Confidential Information” does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by a Member or any of a Member’s Representatives in violation of this Agreement, (ii) is or was available to such Member on a non-confidential basis prior to its disclosure by the Company to such Member or the Representatives of such Member or (iii) was or becomes available to such Member on a non-confidential basis from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not, to such Member’s knowledge, bound by a confidentiality agreement with (or other confidentiality obligation to) the Company or another Person.

“Depreciation” means an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted tax basis at the beginning of the Fiscal Year or other period, Depreciation will be an amount which bears the same ratio to the beginning Gross Asset Value as the Federal income tax depreciation, amortization or other cost recovery deduction for the Fiscal Year or other period bears to the beginning adjusted tax basis; provided, however, that if the Federal income tax depreciation, amortization or other cost recovery deduction for the Fiscal Year or other period is zero, Depreciation will be determined by reference to the beginning Gross Asset Value using any reasonable method selected by the Manager.

“Fiscal Year” means the calendar year; but, upon the organization of the Company, “Fiscal Year” means the period from the first day of the term of the Company to the next following December 31, and upon dissolution of the Company, shall mean the period from the end of the last preceding Fiscal Year to the date of such dissolution.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, adjusted as provided in this Agreement.

“Liquidation” has the meaning as set forth in Regulations Section 1.704-1(b)(2)(ii)(g).

“Manager” means each Person comprising the Manager in accordance with Section 6.01(b) of this Agreement. A Manager may be a natural person or an entity; a Member or a non-member.

“Member” means each Person executing this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of interpreting this Agreement, references to the term “Member” in ARTICLE IV and ARTICLE V shall be deemed to refer to a transferee of an interest in the Company who is not admitted as a Member under Section 7.04 unless such interpretation is inconsistent with the provisions of Section 7.06.

“Member Nonrecourse Debt Minimum Gain” has the meaning ascribed to the term “partner nonrecourse debt minimum gain” in Regulations Section 1.704-2(i)(2).

“Member Nonrecourse Debt” has the meaning ascribed to the term “partner nonrecourse debt” in Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Deduction” has the meaning ascribed to the term “partner nonrecourse deduction” in Regulations Section 1.704-2(i)(2).

“Membership Interest” means the entire interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted by this Agreement or the Act.

“Net Proceeds”, with respect to a Sale Transaction, means the gross proceeds from the Sale Transaction less (i) the payment of any indebtedness for borrowed money of the Company, together with all interest, premiums and fees due and owing thereon, (ii) the payment of any transaction fees and expenses incurred by the Company that are directly related to the Sale Transaction and (iii) any holdback, reserve or escrow established by the Manager in connection with the Sale Transaction to satisfy any post-transaction indemnification, purchase price adjustment or similar obligation (and, once the Manager determines that the need for such holdback, reserve or escrow shall have ceased, any remaining proceeds shall be distributed to the Members in accordance with Section 5.01).

“Net Profits” and “Net Losses” means, for any Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profits or Net Losses shall be subtracted from Net Profits or Net Losses;

(c) Gains or losses resulting from any disposition of Company asset with respect to which gains or losses are recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the Company asset disposed of, notwithstanding the fact that the adjusted tax basis of such Company asset differs from its Gross Asset Value;

(d) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the taxable income or loss, there will be taken into account Depreciation; and

(e) If the Gross Asset Value of any Company asset is adjusted pursuant to the definition of “Gross Asset Value,” the amount of the adjustment will be taken into account as gain or loss from the disposition of the asset for purposes of computing Net Profits or Net Losses.

Notwithstanding any other provision of this subsection, any items of income, gain, loss or deduction that are specially allocated under Section 4.01(b) or any other Section of this Agreement shall not be taken into account in computing Net Profits or Net Losses.

“New Units” mean any Units issued by the Company after the date hereof or any Units issuable by the Company upon exercise, exchange or conversion of any exercisable, exchangeable or convertible securities issued after the date hereof.

“Nonrecourse Deductions” has the meaning set forth in Regulations Sections 1.704-2(b) and (c).

“Other SPV” means a special purpose entity formed by the Company and an Investor to pursue the Purposes and which special purpose entity is funded solely by such Investor.

“Percentage Interest” means, as of any date of determination, with respect to the Investor Member, the percentage interest determined by dividing (x) the number of Class A Units owned by the Investor Member by (y) the aggregate number of Class A Units owned by all of the Members. The sum of the outstanding Percentage Interests of the Members shall at all times equal one hundred percent (100%).

“Permitted States” means States with an HOA “Super Priority” or “Safe Harbor” provision codified in its statutes, and any other such other states as may be approved by the Manager.

“Person” means an individual, corporation, association, partnership, joint venture, limited liability company, estate, trust, or any other legal entity.

“Regulations” means the Treasury Regulations promulgated under the Code, as such Regulations may be amended from time to time.

“Regulatory Allocations” has the meaning set forth in Section 4.01(c)(i).

“Representative” of a Person means that Person’s directors, officers, general partners, members, managers, employees, and agents.

“Sale Transaction” (i) a sale of all or substantially all of the issued and outstanding Units of the Company or (ii) the sale of all or substantially all of the assets of the Company (including by means of merger, consolidation, other business combination, exclusive license, equity exchange or other reorganization) to a third party.

“Services Agreement” means that certain Services Agreement, dated as of January 20, 2015, between the Company and the Seller Member.

“Transfer” means, as a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation, gift, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, hypothecate, give, or otherwise dispose of.

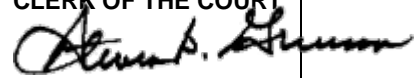
“Unit” means a denomination of a Membership Interest.

“Members Related Party” means each of the Members, their respective Representatives (including Jay Bloom) and any of its or their respective Affiliates.

EXHIBIT B

Name and Address of Member	Commitment	% Membership Interest	
Seller Member Kenneth Antos Fax: Attn: with a copy to: Fax: Attention:	\$100	49%	

Name and Address of Member	Commitment	% Membership Interest	
Investor Member SJC Ventures Holdings, LLC Fax: 702-974-0284 Attn: Jay Bloom with a copy to: Fax: 702-629-7925 Attention: Joseph Gutierrez, Esq.	\$150,000.00	51%	



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/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
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

Hearing Date: June 4, 2021

Hearing Time: Chambers

**OPPOSITION TO PLAINTIFFS'
MOTION TO AMEND THE COURT'S
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER, OR ALTERNATIVELY FOR
RECONSIDERATION**

CAPTION CONTINUES BELOW

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.

**OPPOSITION TO PLAINTIFFS' MOTION TO AMEND THE COURT'S
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER,
OR ALTERNATIVELY FOR RECONSIDERATION**

Defendants/Counterclaimants, ("Defendants"), by and through their attorney Michael R. Mushkin, of the law firm of Mushkin & Coppedge, hereby submit their Opposition to Plaintiffs' Motion to Amend the Court's Findings of Fact, Conclusions of Law, and Order, or Alternatively for Reconsideration. This Opposition is made and based upon the following Memorandum of Points and Authorities, the papers, pleadings, and records on file herein, and any and all arguments that may be allowed at the time of hearing of this motion.

POINTS AND AUTHORITIES

I. Introduction

Once again, Plaintiffs are asserting arguments to the Court with gross misinterpretations of the underlying documents. Plaintiffs seek reconsideration of this Court's Findings of Fact and Conclusions of Law, and in so doing, attempt to manipulate the facts for their own benefit and omit certain facts relevant for this Court's consideration -- namely the "Pledge Agreement being a valid existing obligation of SJC Ventures, LLC ("SJCVCV")". See Findings of Fact and

1 Conclusions of Law (“FF&CL”) filed April 6, 2021 at 20:22-24, attached hereto as Exhibit A. As
2 the Pledge Agreement is a valid existing obligation of SJCVC and CBC Partners I, LLC (“CBCI”)
3 exercised its rights under the Pledge Agreement in April of 2020, (transferring the pledged
4 collateral to CBCI’s nominee CBC Partners, LLC) SJCVC is no longer a member of Spanish
5 Heights Acquisition Company, LLC (“SHAC”) and therefore, a membership dilution event could
6 not have occurred.

7 **II. ARGUMENT**

8 EDCR 2.24 provides in part:

9 (a) No motions once heard and disposed of may be renewed in the same
10 cause, nor may the same matters therein embraced be reheard, unless by
11 leave of the court granted upon motion therefor, after notice of such motion
to the adverse parties.

12 (b) A party seeking reconsideration of a ruling of the court, other than
13 any order that may be addressed by motion pursuant to NRCP 50(b), 52(b),
14 59 or 60, must file a motion for such relief within 14 days after service of
written notice of the order or judgment unless the time is shortened or
enlarged by order...

15 Plaintiffs are correct that a motion for reconsideration may only be granted “if
16 substantially different evidence is subsequently introduced or the decision is clearly erroneous.”
17 *Masonry and Tile Contractors Ass’n of Southern Nevada v. Jolly, Urga & Wirth, Ltd.*, 113 Nev.
18 737, 741, 941 P.2d 486, 489 (1997). What Plaintiffs fail to do is demonstrate that the FF&CL was
19 clearly erroneous or introduce additional evidence that was unavailable at the Consolidated Non-
20 Jury Trial. Plaintiffs’ Motion for Reconsideration fails as a matter of law and must be denied.

21 As the Court Ordered, the Pledge Agreement is a valid existing obligation of SJCVC. The
22 Court also found that Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC
23 and Antos) appointed the Secured Party (CBCI) as Pledgors’ attorney-in-fact to execute any
24 instrument which Secured Party may deem necessary or advisable to accomplish the purposes of
25 the Pledge Agreement, and upon an event of default, Secured Party shall have the right to transfer
26 the Pledge Collateral to any of Secured Party’s nominees. See Paragraph 9 of the Pledge
27 Agreement, Trial Exhibit 8 at 5148SH 000091, attached hereto as Exhibit B. See also, FF&CL
28 Page 12, Paragraphs 57 and 58 and Page 13 footnote 10.

1 On April 1, 2020, CBCI exercised its rights under the Pledge Agreement by transferring
2 the pledged collateral to CBCI's nominee, CBC Partners, LLC. See Trial Exhibit 74 at 5148SH
3 000887 attached hereto as Exhibit C and FF&CL Page 15 paragraph 71. Therefore, SJCV is no
4 longer a member of SHAC and has no right to initiate a capital call. In addition, Plaintiffs grossly
5 misstate the Limited Liability Company Agreement of SHAC. Paragraph 3.02(c) clearly states
6 "No Member shall be obligated to make any Capital Contributions to the Company, except for
7 the obligation of the Investor Member to make the Initial Capital Contributions as provided in
8 Section 3.02(b)..." See Trial Exhibit 5 at 5148SH 000530, attached hereto as Exhibit D.

9 **III. Conclusion**

10 In a reoccurring theme, Plaintiffs follow the same roadmap by asserting arguments to the
11 Court with appalling misrepresentations of the underlying documents. Plaintiffs have provided
12 no new evidence in support of its Motion, nor have Plaintiffs provided any argument that this
13 Court's Findings of Fact and Conclusions of Law was clearly erroneous. Accordingly, Plaintiffs'
14 Motion should be denied.

15 DATED this 18th day of May, 2021

16 MUSHKIN & COPPEDGE

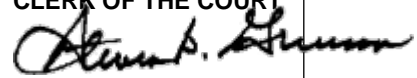
17
18 /s/Michael R. Mushkin
19 MICHAEL R. MUSHKIN, ESQ.
20 Nevada Bar No. 2421
21 L. JOE COPPEDGE, ESQ.
22 Nevada Bar No. 4954
23 6070 South Eastern Ave Ste 270
24 Las Vegas, NV 89119
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **Opposition to Plaintiffs' Motion to Amend the**
3 **Court's Findings of Fact, Conclusions of Law, and Order, or Alternatively for**
4 **Reconsideration** was submitted electronically for filing and/or service with the Eighth Judicial
5 District Court on this 18th day of May, 2021, Electronic service of the foregoing document shall
6 be upon all parties listed on the Odyssey eFileNV service contact list:

7
8 /s/Karen L. Foley
9 An Employee of
10 MUSHKIN & COPPEDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “A”



1 FFCL

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

Case No. A-20-813439-B

Dept. No.: XI

10 Plaintiffs,

11 v.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 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

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15, 2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCP 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

1 Emergency Directive 008.

2 On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and
3 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

4 Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a
5 counterclaim against plaintiffs, and Jay Bloom.

6
7 On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against
8 SJCVC, which SJCVC answered on September 28, 2020.⁵

9 **II. Findings of Fact**

10 1. This action involves residential real property located at 5148 Spanish Heights
11 Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

12 2. The original owners of the Property were Kenneth and Sheila Antos as joint
13 tenants, with the original deed recorded in April 2007.

14 3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos
15 (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-
16 Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the
17 "Antos Trust", and together with "Antos", the "Antos Parties").

18 4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust
19 recorded on the Property.

20 5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of
21 Trust recorded on the Property.

22 6. The Property is currently owned by Spanish Heights⁶ which has entered into a
23
24

25
26
27 _____
28 ⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:
22

23 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
24 create, assume or permit to exist any debt secured by the real property
located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:

20 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
21 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
22 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
23 of a Deed of Trust on the real property located at 5148 Spanish Heights
24 Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guaranteed
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
9 SJCVC acknowledged default and affirmed CBCI has fully performed.

10 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
11 agreements between the Antos and CBCI are valid.

12
13
14 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
15 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
16 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
17 accordance with their respective terms, and any instrument or agreement required
18 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
19 valid, binding and enforceable. This Forbearance Agreement does not conflict with any
20 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

21 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
22 Antos Trust conveyed the Property to Spanish Heights.

23 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
24 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

25 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
26 term is two years, with an option for SJCVC to exercise two additional consecutive lease

27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, “CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust...”

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner’s insurance policy and all Homeowner’s Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

22
23
24
25
26
27
28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this “Agreement”) is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.

8 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
9 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
10 SJCVC appears on the Pledge Agreement.

11 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
12 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
13 Gutierrez & Associates.

14 61. As additional required security, SJCVC agreed to a Security Agreement to grant
15 CBCI a Security Interest in a Judgment described as:

16 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
17 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
18 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
19 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
20 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
21 SJCVC represents It holds a 24,912% Membership Interest in 1st One
22 Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

23
24
25 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
26 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

27 ***

28 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”) of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

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

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

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]henver a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16
17
18

19 Trustor and Guarantor each waive all benefits of the one-action
20 rule under NRS 40.430, which means, without limitation, Trustor
21 and Guarantor each waive the right to require Lender to (i) proceed
22 against Borrower, any other guarantor of the Loan, any pledgor of
23 collateral for any person’s obligations to Lender or any other
24 person related to the Note and Loan Documents, (ii) proceed
25 against or exhaust any other security or collateral Lender may
26 hold, or (iii) pursue any other right or remedy for Guarantors’
27 benefit.

28 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
remedies.

 The rights and remedies of CBCI under this Forbearance
Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.
20

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
22 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
23 obligation of SJCVC.
24

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
26 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
27 Spanish Heights does not merge the Defendants interests.
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA

EXHIBIT “B”

PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT dated 27th (this "Agreement") is made by Kenneth & Sheila Antos Living Trust (the "Antos Trust"), SJC Ventures, LLC ("SJCVC") (collectively the "Pledgors" to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

WITNESSETH:

WHEREAS, Pledgors and Secured Party are parties to a certain Forbearance Agreement (the "Forbearance Agreement") dated as of the 27th day of September 2017 by and among CBC Partners I, LLC ("CBCI"), Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust, and as Personal Guarantors of the Secured Promissory Note described below, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJCVC").

WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests") of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights Acquisition Company, LLC.

WHEREAS, the Forbearance Agreement provides that several conditions must be satisfied before CBCI agrees to forbear from exercising its rights and remedies under the Forbearance Agreement. In particular, one of the conditions requires the Antos Trust and SJCVC have agreed to pledge all right, title and interest in and to 100% of its membership interests in Spanish Heights Acquisition Company to Secured Party pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, Pledgors hereby agrees as follows:

1. Pledge. Pledgors hereby pledges to Secured Party, and grants to Secured Party security interests in and to the following (collectively, the "Pledged Collateral"):

- (a) the Membership Interests and the certificates representing the Membership Interests, if any, and all dividends, profits, income, cash, receipts, instruments, distributions (whether in cash or in-kind property) and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Membership Interests;
- (b) any and all additional membership interests in SHAC acquired by Pledgors in any manner, and all securities convertible into and warrants, options, and other rights to purchase or otherwise acquire interest in SHAC and the certificates representing such additional shares, and all dividends, profits, income, cash, receipts, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares, additional securities, warrants, options or other rights;

- (c) to the extent not covered by clauses (a) and (b) above, all proceeds of any or all of the foregoing Pledged Collateral.

For purposes of this Agreement, the term "proceeds" shall include whatever is receivable or received when Pledged Collateral or proceeds thereof are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary, and shall include, without limitation, proceeds of any indemnity or guaranty payable to Pledgors from time to time with respect to any of the Pledged Collateral.

2. Security for Obligations. This Agreement partially secures all the obligations of Pledgors under the Forbearance Agreement and this Pledge (all such obligations being collectively referred to herein as the "Obligations").

3. Delivery of Pledged Collateral. All certificates or instruments representing or evidencing the Pledged Collateral shall be delivered to and held by or on behalf of Secured Party pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Secured Party shall have the right, at any time in Secured Party's discretion after a Non-Monetary Event of Default (as defined below) after notice and a 30 day cure period having been provided to Pledgors, to transfer to or to register in the name of Secured Party or any of Secured Party's nominees any or all of the Pledged Collateral, subject only to the revocable rights specified in Section 6(a). In addition, Secured Party shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

4. Representations and Warranties. Pledgors, covenant, represent, warrant and agree as follows:

- (a) The Membership Interests have been duly authorized and are validly issued.
- (b) Pledgors are the legal and beneficial owner of the Pledged Collateral free and clear of any liens, security interests, options or other charges or encumbrances, except for the security interest created by this Agreement.
- (c) Upon the filing of the Uniform Commercial Code Financing Statement with respect to the Pledged Collateral, the pledge of the Membership Interests pursuant to this Agreement creates a valid and perfected first priority security interest in the Pledged Collateral, securing the payment of the Obligations.
- (d) Subject to such other consents or approvals which have been obtained, no consent of any other person or entity and no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required (i) for the pledge by Pledgors of the Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Pledgors, (ii) for the perfection or maintenance of the security interests created hereby (including the first priority nature of such security interest), or (iii) for the exercise by Secured Party of the voting or other rights provided for in this Agreement or the remedies in respect of the Pledged Collateral pursuant to this Agreement (except as may be required in connection with any disposition of any portion of the Pledged Collateral by laws affecting the offering and sale of securities generally).

- (e) The Membership Interests constitute 100% of the membership interests of the Pledgors.
- (f) There are no conditions precedent to the effectiveness of this Agreement that have not been either satisfied or waived.
- (g) Pledgors have, independently and without reliance upon Secured Party, and based upon such documents and information as Pledgors have deemed appropriate, made their own credit analysis and decision to enter into this Agreement.

5. Inconsistent Provision of the Operating Agreement. If the Operating Agreement contains any provision that is contrary to the terms of this Agreement, this Agreement shall control. Such provisions include Sections 2.6 and 6.01 of the Operating Agreement. Regarding Section 2.6, the Members shall be liable to CBCI under this Agreement and the Forbearance Agreement. Regarding Section 6.01, SJCV agrees that it may not resign as Manager of SHAC and that SJCV will appoint Jay Bloom to perform the duties of the Manager throughout the term of this Agreement and the Forbearance Agreement.

6. Further Assurances. Pledgors agree that at any time and from time to time, at the sole cost and expense of Pledgors, Pledgors will promptly execute and deliver all further reasonable instruments and documents, and take all further reasonable action, that may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce Secured Party's rights and remedies hereunder with respect to any Pledged Collateral.

7. Voting Rights. Pledgors shall refrain from exercising any and all voting and other consensual rights pertaining to the Pledged Collateral or any part thereof. Pledgors shall, as members, not undertake any action that would have a material adverse effect on the value of the Pledged Collateral or any part thereof.

8. Transfers and Other Liens; Additional Shares. Pledgors agrees that he will not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral, or (ii) create or permit to exist any lien, security interest, option or other charge or encumbrance upon or with respect to any of the Pledged Collateral, except for the security interest under this Agreement.

Pledgors agree that Pledgors will (i) not consent or otherwise facilitate SHAC to issue any stock, membership interests, or other securities in addition to or in substitution for the Membership Interests, except to Pledgors, and (ii) pledge hereunder, immediately upon Pledgors' acquisition (directly or indirectly) thereof, any and all additional shares of stock, membership interests, or other securities of SHAC.

9. Secured Party Appointed Attorney-in-Fact. Upon an Event of Default, and after the requisite cure period expires, should such Event of Default continue to exist, Pledgors hereby appoint Secured Party as Pledgors' attorney-in-fact, with full authority in the place and stead of Pledgors and in the name of Pledgors or otherwise, from time to time in Secured Party's sole discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to receive, indorse and collect all instruments made payable to Pledgors representing any dividend or other distribution in respect of the Pledged Collateral or any part thereof and to give full discharge for the same.

10. Secured Party May Perform. If Pledgors fail to perform any agreement contained herein following the expiration of any applicable grace period, Secured Party may perform, or cause performance of, any such agreement, and the reasonable expenses of Secured Party incurred in connection therewith (including attorneys' fees and expenses) shall be payable by Pledgors to Secured Party, or alternatively, Secured Party shall have the right to add such reasonable expenses incurred to the secured balance due, pursuant to the provisions of Section 13 hereof.

11. Secured Party's Duties. The powers conferred on Secured Party hereunder are solely to protect Secured Party's interest in the Pledged Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Except for the safe custody of any Pledged Collateral in Secured Party's possession and the accounting for moneys actually received by Secured Party hereunder, Secured Party shall have no duty as to any Pledged Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Pledged Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Pledged Collateral.

12. Remedies upon Default. If any Event of Default shall have occurred and be continuing:

(a) Secured Party may exercise, in respect of the Pledged Collateral, in addition to other rights and remedies provided for herein or otherwise available to Secured Party at law or in equity, all of the rights and remedies of a secured party on default under the Uniform Commercial Code in effect in the State of Nevada at that time (the "Code") (whether or not the Code applies to the affected Pledged Collateral), and may also, without notice except as specified below, sell the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable. Pledgors agree that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Pledgors of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) Any cash held by Secured Party as Pledged Collateral and all cash proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Pledged Collateral may, in the sole discretion of Secured Party, be held by Secured Party as collateral for, and/or then or at any time thereafter be applied (after payment of any amounts payable to Secured Party pursuant to Section 13) in whole or in part by Secured Party against, all or any part of the Obligations in such order as Secured Party shall elect. Any surplus of such cash or cash proceeds held by Secured Party and remaining after payment in full of all the Obligations shall be paid over to Pledgors or to whomsoever may be lawfully entitled to receive such surplus.

13. Event of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) Monetary Default. If there shall occur any breach, failure or violation by Pledgors in the payment or performance of any of Pledgors' obligations, covenants or warranties under this Agreement, the Note, the Other Pledges and such breach, failure or violation continues uncorrected for a period of fifteen (15) days after written notice thereof from Secured Party to Pledgors;

(b) Non-Monetary Default. A non-monetary Event of Default shall occur:

1. If there shall occur any Event of Default by Pledgors of the Obligations, that is not a Monetary Default.

2. If either of the Pledgors resigns or is removed from the position of manager of SHAC.

14. Expenses. Pledgors will, upon demand, pay to Secured Party, or in the alternative, the Secured Party may add to the amount due and receivable, the amount of any and all reasonable expenses, including the reasonable fees and expenses of Secured Party's counsel and of any experts and agents, which Secured Party may incur in connection with (i) the administration of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Pledged Collateral, (iii) the exercise or enforcement of any of the rights of Secured Party hereunder, or (iv) the failure by Pledgors to perform or observe any of the provisions hereof.

15. Security Interest Absolute. All rights of Secured Party and security interests hereunder, and all obligations of Pledgors hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of the Other Pledges;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Other Pledges, including, without limitation, any increase in the Obligations resulting from the extension of additional credit to Pledgors or otherwise;

(c) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any collateral for all or any of the Obligations or any other assets of Pledgors; or

(e) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgors or a third party pledgor.

16. Amendments, Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by Pledgors therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

17. Notices. Any notice, election, demand, request or other document or communication required or permitted under this Agreement shall be in writing and shall be deemed sufficiently given only if delivered in person or sent by certified or registered mail, postage prepaid, return receipt requested, addressed to Secured Party or Pledgors, as the case may be, as follows:

If to Pledgors:

c/o Maier Gutierrez & Associates 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

If to Secured Party:

777 108th Ave NE Suite 1895
Bellevue, WA 98004

With a copy to:

The Law Office of Vernon Nelson
9480 S. Eastern Ave., Suite 252
Las Vegas, NV 89052

18. Continuing Security Interest; Assignments under Credit Agreement. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) remain in full force and effect until the Pledgors' payment in full of, or their express written release by Secured Party from, the Obligations and all other amounts payable under this Agreement, (ii) be binding upon and inure to the benefit of Pledgors, and Pledgors' respective heirs, legal representatives, successors and assigns, and (iii) inure to the benefit of, and be enforceable by, and be binding upon Secured Party and Secured Party's heirs, legal representatives, successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), Secured Party may assign or otherwise transfer all or any portion of Secured Party's rights under the Loan Documents to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to Secured Party herein or otherwise and charged with the obligations and responsibilities of Pledgors thereunder. Upon the payment in full of all amounts due and payable under this Agreement and the release of Pledgors from the Obligations, the security interest granted hereby shall terminate and all rights to the Pledged Collateral shall revert to Pledgors. Upon any such termination, Secured Party will, at Pledgors' expense, promptly return to Pledgors such of the Pledged Collateral as shall not have been sold or otherwise applied pursuant to the terms hereof and execute and deliver to Pledgors such documents as Pledgors shall reasonably request to evidence such termination.

19. Governing Law; Terms. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada. Pledgors, on behalf of themselves and their respective heirs, legal representatives, successors and assigns, irrevocably consents that any legal action or proceeding against them under, arising out of, or in any manner relating to, this Agreement, may be brought in any court presiding in the State of Nevada, County of Clark. Pledgors, by execution and delivery of this Agreement and on behalf of themselves and their respective heirs, legal representatives, successors and assigns, expressly and irrevocably consents and submits to the personal jurisdiction of any of such courts in any such action or proceeding. Pledgors, on behalf of themselves and their respective heirs, legal representatives, successors and assigns, further irrevocably consents to the service of any complaint, summons, notice or other process relating to any such action or proceeding by delivery thereof to any of them by hand or by certified mail, delivered or addressed to Pledgors' address set forth herein.

Pledgors, on behalf of themselves and their respective heirs, legal representatives, successors and assigns, hereby expressly and irrevocably waives any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue or forum non conveniens or any similar basis. Nothing in this paragraph shall affect or impair in any manner or to any extent the right of Secured Party or Secured Party's heirs, legal representatives, successors or assigns, to commence legal proceedings or otherwise proceed against Pledgors in any jurisdiction or to serve process in any manner permitted by law.

Pledgors hereby waive all right to require a marshalling of assets by Secured Party.

Pledgors shall not, without Secured Party's prior written consent, create, incur or assume any Indebtedness in connection with the Pledged Collateral. "Indebtedness" means any and all liabilities and obligations owing by Pledgors to any person, including principal, interest, charges, fees, reimbursements and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, original, renewed or extended, (i) in respect of any borrowed money (whether by loans, the issuance and sale of debt securities or the sale of any property to another person subject to an understanding, agreement, contract or otherwise to repurchase such property) or for the deferred purchase price of any property or services, (ii) under direct or indirect guarantees and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise assure any creditor against loss in respect of the obligations of others, (iii) in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such indebted person, (v) in respect of unfunded vested benefits under plans covered by ERISA or any similar liabilities to, for the benefit of, or on behalf of, any employees of such indebted person, (vi) all obligations secured by any Lien on property owned by such person, whether or not the obligations have been assumed, (vii) all obligations under any agreement providing for a swap, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to interest payable on any of the items described above in this definition, or (viii) actual obligations imposed under the operating agreement for the LLC.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, Pledgors has caused this Agreement to be duly executed and delivered as of the date first above written.

PLEDGORS:

Kenneth & Sheila Antos Living Trust

By: [Signature]
Kenneth Antos, Trustee

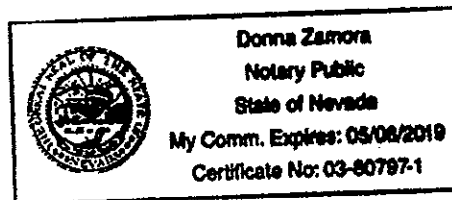
By: [Signature]
Sheila Antos, Trustee

ACKNOWLEDGMENTS:

STATE OF NEVADA :
: ss.:
COUNTY OF CLARK :

On the 27 day of September, 2017 before me, the undersigned, personally appeared Kenneth Antos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

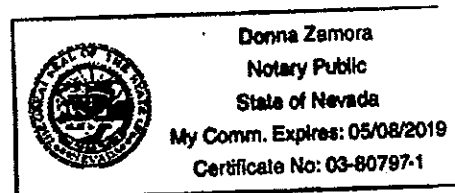
[Signature]
Notary Public



STATE OF NEVADA :
: ss.:
COUNTY OF CLARK :

On the 27 day of September, 2017 before me, the undersigned, personally appeared Sheila Antos, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.

[Signature]
Notary Public

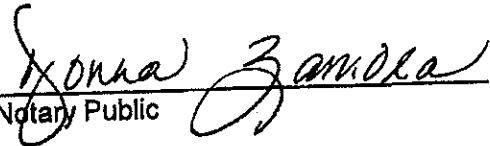


SPANISH HEIGHTS ACQUISITION COMPANY, LLC

BY: 
Jay Bloom, Manager

STATE OF NEVADA :
: ss.:
COUNTY OF CLARK :

On the 27 day of September, 2012 before me, the undersigned, personally appeared Jay Bloom, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted executed the instrument.


Notary Public

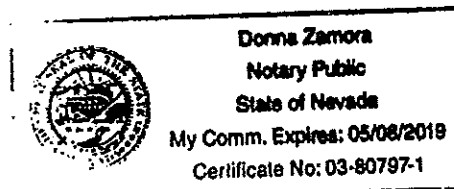


EXHIBIT “C”

MUSHKIN & COPPEDGE

Michael R. Mushkin, Esq.
L. Joe Coppedge, Esq.
Mark C. Hafer, Esq.*

*of counsel

6070 South Eastern Avenue
Suite 270
Las Vegas, Nevada 89119

Telephone 702.454.3333
Facsimile 702.386.4979

April 1, 2020

Jay Bloom, Manager
Spanish Heights Acquisition Company, LLC
c/o Maier Gutierrez & Associates
8816 Spanish Ridge Avenue
Las Vegas, NV 89148

Jay Bloom, Manager
SJC Ventures, LLC
c/o Maier Gutierrez & Associates
8816 Spanish Ridge Avenue
Las Vegas, NV 89148

Kenneth & Sheila Antos Living Trust
4968 Mountain Foliage Drive
Las Vegas, NV 89148-1429

Re: 5148 Spanish Heights Drive, Las Vegas, NV
Forbearance Agreement dated September 27, 2017
Amendment to Forbearance Agreement and Related Agreements

Dear Mr. Bloom and Mr. & Mrs. Antos:

As you are aware, the above law firm has been retained to represent the interests of CBC Partners I, LLC (CBCI) as it relates to the Secured Promissory Note dated June 22, 2012, Amended Secured Promissory Note, Modified Deed of trust, the Forbearance Agreement with additional collateral/security described therein, and the Amendment to Forbearance Agreement and Related Agreements (collectively the "Agreements").

A Notice of non-monetary default was delivered on March 16, 2020. This letter shall serve as notice that on April 15, 2020, CBCI will exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

Enclosed herein, please find an Assignment of Membership Interest for your review and signature. Once you have signed, please forward to my attention. Should you have any questions, or need further assistance from our office, please do not hesitate to contact the undersigned.

Sincerely,



Michael R. Mushkin, Esq.

MRM:klf
cc: CBC Partners I, LLC

**ASSIGNMENT OF COMPANY AND
MEMBERSHIP INTERESTS
OF**

**SPANISH HEIGHTS ACQUISITION COMPANY, LLC
A NEVADA LIMITED LIABILITY COMPANY**

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Kenneth Antos and Sheila Neumann-Antos, Trustees of the Kenneth & Shelia Antos Living Trust and Kenneth M. Antos Sheila M. Neumann-Antos Trust ("Assignor") and CBC Partners, LLC, a Washington limited liability company ("Assignee") agree as follows:

1. Assignment. Assignor hereby absolutely and unconditionally assigns and transfers unto Assignee all the right, title, interest, and membership interest of Assignor in Spanish Heights Acquisition Company, LLC (hereinafter "Company") to Assignee.

2. Binding Effect. All agreements herein shall inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Assignor and Assignee.

3. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Nevada.

4. Attorneys' Fees. In the event either party hereto institutes legal action against the other party with respect to this Assignment, the prevailing party in such action shall be entitled to an award of reasonable attorney's fees from the non-prevailing party. The prevailing party shall also be entitled to collect all reasonable attorneys' fees and costs.

ASSIGNOR:

ASSIGNEE:

By: _____
KENNETH M. ANTOS, Trustee

By: _____
JOHN OTTER, President
CBC Partners, LLC,

By: _____
SHEILA NEUMANN-ANTOS, Trustee

**ASSIGNMENT OF COMPANY AND
MEMBERSHIP INTERESTS
OF**

**SPANISH HEIGHTS ACQUISITION COMPANY, LLC
A NEVADA LIMITED LIABILITY COMPANY**

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, SJC Ventures Holdings, LLC, a Nevada limited liability company ("Assignee") agree as follows:

1. Assignment. Assignor hereby absolutely and unconditionally assigns and transfers unto Assignee all the right, title, interest, and membership interest of Assignor in Spanish Heights Acquisition Company, LLC (hereinafter "Company") to Assignee.

2. Binding Effect. All agreements herein shall inure to the benefit of, and bind the respective heirs, executors, administrators, successors, and assigns of Assignor and Assignee.

3. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Nevada.

4. Attorneys' Fees. In the event either party hereto institutes legal action against the other party with respect to this Assignment, the prevailing party in such action shall be entitled to an award of reasonable attorney's fees from the non-prevailing party. The prevailing party shall also be entitled to collect all reasonable attorneys' fees and costs.

ASSIGNOR:

ASSIGNEE:

By: _____
JAY BLOOM, Manager

By: _____
JOHN OTTER, President
CBC Partners, LLC,

EXHIBIT “D”

**LIMITED LIABILITY COMPANY AGREEMENT
OF
SPANISH HEIGHTS ACQUISITION COMPANY, LLC**

LIMITED LIABILITY COMPANY AGREEMENT

OF

Spanish Heights Acquisition Company, LLC

This Limited Liability Company Agreement (this "Agreement") of Spanish Heights Acquisition Company, LLC (the "Company"), a limited liability company organized pursuant to the Nevada Liability Company Act (the "Act"), is hereby entered into by and among SJC Ventures Holdings, LLC, LLC (hereinafter referred to as, the "Investor" or the "Investor Member"), and ANTOS, KENNETH & SHEILA LIV TR, KENNETH M ANTOS SHEILA M. NEUMANN-ANTOS TRUST, Kenneth Antos and Sheila Neumann-Antos as Trustees (hereinafter referred to as, the "Seller" or the "Seller Member").

INTRODUCTION

WHEREAS, the Company has been formed to, among other things, purchase that real property otherwise known as 5148 Spanish Heights Drive, Las Vegas, NV 89148 (the "Property"); and

WHEREAS, the Investor Member, Lender Member and Seller Member desire to enter into this Agreement to set forth their respective rights and obligations with respect to the Company and one another,

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Certain defined terms used in this Agreement are set forth in Exhibit A.

ARTICLE II

ORGANIZATION

2.01. Formation.

The Company has been organized as a Nevada (the "State of Formation") limited liability company by the filing of its Certificate of Formation with the Nevada Secretary of State on August 4, 2017.

2.02. Name.

The name of the Company is "Spanish Heights Acquisition Company, LLC" and all Company business shall be conducted under that name or such other names as comply with applicable law that the Manager (as defined in Section 6.01(a)) may select from time to time.

2.03. Registered Agent; Registered Office.

The registered agent of the Company shall be Maier Gutierrez and Associates PLLC, and the registered office of the Company in the State of Formation shall be 8816 Spanish Ridge Ave, Las Vegas, NV 89148 or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by law.

2.04. Principal Office; Other Offices.

The principal office of the Company shall be at such place as the Manager may designate from time to time, which need not be in the State of Formation. The initial principal office of the Company shall be at 2485 Village View Dr., Suite 190, Henderson, NV 89074. The Company may change its principal office or have such other offices as the Manager may designate from time to time.

2.05. Purposes.

The purposes of the Company (the "Purposes") are to hold ownership of that certain real property otherwise known as 5148 Spanish Heights Drive, Las Vegas, NV 89148, (ii) perfect the Company's interest in such property, (iii) hold, monitor and maintain the Company's Property, and (iv) engage in any activity in furtherance of, related to or necessary to support the Company's investment in, or subsequent disposition of its investment in, the Property, in each case, as determined by the Manager.

2.06. Term.

The Company and this agreement shall continue in perpetuity, unless sooner terminated in accordance with the provisions of this Agreement.

2.07. Powers.

The Company shall possess and may exercise any and all the powers and privileges granted by the Act or by any other applicable law to limited liability companies or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purposes of the Company, in each case as determined by the Manager.

2.08. No State Law Partnership.

The Members intend that the Company shall not be a partnership or joint venture, and that no Member shall be a partner or joint venturer of any other Member, for any purpose other than federal, state, and local tax purposes, and the provisions of this Agreement shall not be construed otherwise.

2.09. Liability to Third Parties.

No Member shall be liable for the debts, obligations, or liabilities of the Company, except to the extent required under the Act with respect to amounts distributed to the Member at a time when the Company was insolvent or was rendered insolvent by virtue of the distribution.

ARTICLE III

MEMBERS; CAPITAL CONTRIBUTIONS AND COMMITMENTS; CAPITAL ACCOUNTS; REVALUATIONS; PRE-EMPTIVE RIGHTS

3.01. Classes of Units; Members.

(a) The authorized Units shall consist of Class A Units, which shall have the terms set forth in this Agreement. The Class A Units shall have voting rights, and shall be held by the Investor Member and the Selling Member.

(b) The name and address of the Investor Member is set forth on Exhibit B attached hereto, and the Investor Member (i) has made a Commitment (as defined in Section 3.02(b)) to make Capital Contributions in the amounts set forth opposite the name of the Investor Member on Exhibit B and (ii) holds the number of Class A Units set forth opposite the name of the Investor Member on Exhibit B. The Investor Member has been issued the number of Class A Units set forth opposite its name on Exhibit B in exchange for the Commitment set forth opposite the Investor Member's name on Exhibit B.

(c) The Seller Member holds the number of Class A Units set forth opposite the Seller Member's name on Exhibit B. The address of the Seller Member is set forth on Exhibit B.

(e) The number of Units held by the Members may be updated by the Company in good faith from time to time to reflect, among other things, additional Capital Contributions, the admission of new Members and redemptions of Membership Interests. The number of Units of a class may be split, combined or otherwise re-classified by the Manager, provided that a proportionate adjustment is made to all then outstanding Units of such class.

3.02. Additional Members; Capital Contributions in respect of the Commitments; Additional Capital Contributions.

(a) No Person shall be admitted to the Company as an additional Member without the approval of the Manager, which approval may be granted or withheld in the sole and absolute discretion of the Manager. The approval of the Manager shall be required to accept Capital Contributions to the Company from any non-member, in any amount.

(b) The Investor Member has made a commitment (each, a “Commitment”) to fund the amount of Capital Contributions in the amount set forth opposite its name on Exhibit B attached hereto. The Investor Member shall make Capital Contributions to the Company in an amount equal to its Commitment (the “Initial Capital Contributions”) at the execution of this Agreement, provided that the Required Funding Condition (as defined in Section 8.02(c)) has been satisfied.

Capital Contributions in respect of the Commitments from the Investor Member shall be used solely to fund (x) the payment by the Company of Lender Member’s debt held against the property, (y) the payment of utilities used at the Property and (z) expenses associated with Property; provided, however, in no event shall the Company be responsible for funding, or shall any Capital Contributions in respect of the Commitments be used to fund, the overhead of, or any costs and expenses incurred by, any of the Members in providing services pursuant to the this Agreement, in excess of those commitments contemplated by this transaction. The Investor Member shall not be required to make Capital Contributions in excess of its Commitment.

(c) No Member shall be obligated to make any Capital Contributions to the Company, except for the obligation of the Investor Member to make the Initial Capital Contributions as provided in Section 3.02(b) above. However, if a new or existing Member shall make additional Capital Contributions to the Company hereafter, which may be done only as permitted by the Manager and subject to compliance with this Agreement (including Section 3.02(a)), then (y) the number and class of Units of Membership Interest credited in recognition of such Capital Contribution shall be based upon, as determined by the Manager, in its sole discretion, the fair market value of the new Capital Contribution relative to the fair market value of the Company in its entirety (including the new Capital Contribution), determined after giving effect to a revaluation of Company assets to reflect Gross Asset Value pursuant to Section 3.05 and (z) an appropriate adjustment shall be made to the percentages set forth in Sections 5.01(b)(II) and (III) of this Agreement so that the percentages to be issued in respect of such new Capital Contributions shall dilute, pro rata, the percentages attributable to the outstanding Class A Units immediately prior to such additional Capital Contributions. The Company will update its records to reflect the issuance of any additional Units and the admission of any new Member in accordance with the terms of this Agreement.

3.03. Return of Capital Contributions; Special Rules.

Except as otherwise expressly provided herein, (i) no Member shall be entitled to the return of any part of its Capital Contribution or to be paid interest in respect of its Capital Account balance or its Capital Contribution, (ii) neither the Manager nor any Member, its agents,

affiliates, officers, directors, assigns, successors or heirs shall have any personal liability for the return of the Capital Contribution of any other Member and (iii) no Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

3.04. Capital Accounts.

A Capital Account shall be established and maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account, there shall be credited such Member's Capital Contributions, such Member's distributive share of Net Profits, any items in the nature of income or gain that are specially allocated pursuant to this Agreement, and the amount of any liabilities of the Company that are assumed by such Member, or that are secured by any assets of the Company distributed to such Member.

(b) From each Member's Capital Account, there shall be debited the amount of cash and the Gross Asset Value of any Company assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Net Losses, any items in the nature of expenses or losses that are specially allocated pursuant to this Agreement, and the amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) If ownership of any Membership Interest in the Company is assigned in accordance with the terms of this Agreement, the assignee shall succeed to the Capital Account of the assignor to the extent it relates to the assigned Membership Interest.

(d) In determining the amount of any liability for purposes of Sections 3.04(a) and (b) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(e) To each Member's Capital Account, there shall be debited or credited, as the case may be, adjustments which are necessary to reflect a revaluation of Company assets to reflect the Gross Asset Value of all Company assets, as required by Regulations Section 1.704-1(b)(2)(iv)(f) and Section 3.05.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Code Section 704 and Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. The Company shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet as computed for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(q).

3.05. Gross Asset Value.

The Gross Asset Value of any asset of the Company shall be equal to the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company.

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values in connection with (and to be effective immediately prior to) the following events: (i) the acquisition of an additional Membership Interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of property (including cash) as consideration for an interest in the Company; or (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that an adjustment pursuant to clauses (i) or (ii) above shall be made only if the Manager reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution.

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted bases of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and ARTICLE IV; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this Section 3.05(d) to the extent they were adjusted pursuant to Section 3.05(b) above in connection with a transaction that otherwise would result in an adjustment pursuant to this section.

(e) If the Gross Asset Value of an asset has been determined or adjusted pursuant to this Section 3.05, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

3.06. Pre-Emptive Rights.

(a) The Company hereby grants to each Member the right to purchase, in accordance with the procedures set forth in this Section 3.06, the Member's Percentage Interest of any New Units which the Company (acting through its Manager) may, from time to time, propose to sell and issue (hereinafter referred to as the "Preemptive Right").

(b) In the event that the Company proposes to issue and sell New Units, the Company shall notify each Member in writing (the "New Units Notice"). Each New Units Notice shall set forth: (i) the number and class of New Units proposed to be issued by the Company and the per Unit purchase price; (ii) such Member's Percentage Interest of the New Units; and (iii) any other material terms including, if known, the expected date of consummation of the purchase and sale of the New Units.

(c) Each Member shall be entitled to exercise its right to purchase such New Units by delivering an irrevocable written notice to the Company within fifteen (15) days from the date of receipt of any such New Units Notice specifying the number of New Units to be subscribed at the price and on the terms and conditions specified in the New Units Notice.

(d) The Company and each Member shall work together, in good faith, to consummate the closing of the purchase and sale of any New Units that a Member has elected to subscribe for and purchase within fifteen (15) days following the expiration of the notice period set forth in Section 3.06(c) above.

(e) The Company may amend this Agreement in connection with the issuance of New Units in accordance with this Section 3.06 to the extent necessary to set forth the rights, preferences and privileges of the New Units, but only to the extent such amendment has been approved by the Investor Member.

ARTICLE IV

ALLOCATION OF PROFITS AND LOSSES

4.01. Allocation of Profits and Losses.

(a) Allocations of Net Profits and Net losses. Except as otherwise provided in Section 4.01(b) or Section 4.01(c), Net Profits and Net Losses for any Fiscal Year or other period shall be allocated among the Members in such a manner that, as of the end of such Fiscal Year or other period, the Capital Account of each Member shall equal (a) the amount that would be distributed to such Member determined *as if* the Company were to (i) liquidate the assets of the Company for an amount equal to their respective book values and (ii) distribute the proceeds of such liquidation pursuant to Section 10.02, minus (b) the amount of such Member's share of Company Minimum Gain (as determined according to Regulations Section 1.704-2(g)) and such Member's share of Member Nonrecourse Debt Minimum Gain (as determined according to Regulations Section 1.704-2(i)(5)).

(b) Regulatory Allocations. Notwithstanding any other provision of this Agreement, the following allocations shall be made prior to any other allocations under this Agreement:

(i) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Section 4.01, if there is a net decrease in Company Minimum Gain during any Fiscal Year or other period, each Member shall be specially allocated items of Company income and gain for such Fiscal Year or period (and, if necessary, subsequent Fiscal Years or periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.01(b)(i) is intended to comply with the minimum gain

chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Section 4.01, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year or other period, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year or other period (and, if necessary, subsequent Fiscal Years or other periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.01(b)(ii) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 4.01(b)(iii) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 4.01 have been tentatively made as if this Section 4.01(b)(iii) were not in this Agreement. This Section 4.01(b)(iii) is intended to comply with the qualified income offset requirement of Regulations Section 1.704-1(b)(2)(ii)(d).

(iv) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Members in any manner permitted under applicable Regulations, as reasonably determined by the Manager.

(v) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(l).

(vi) Net Losses. Notwithstanding Section 4.01(b), no Net Losses (or items of Net Loss or deduction) shall be allocated to a Member to the extent such allocation would increase or cause such Member to have an Adjusted Capital Account Deficit. Any such Net Losses (or items of Net Loss or deduction) shall be specially allocated to the other Members

to the extent that such allocation will not cause such other Members to have an Adjusted Capital Account Deficit.

(c) Curative Allocations.

(i) To the extent necessary to avoid any economic distortions that may result from application of Section 4.01(b) (the "Regulatory Allocations"), future items of income, gain, loss, and deduction shall be allocated as appropriate in the reasonable discretion of the Manager in order to remedy any economic distortions that the Regulatory Allocations might otherwise cause. In exercising its discretion under this Section 4.01(c)(i), the Manager shall take into account future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 4.01(b).

(ii) Modifications to Preserve Underlying Economic Objectives. If there is a change in the U.S. federal income tax laws, or the allocations provided for in this Agreement do not comply with the substantial economic effect and capital account rules set forth under Code Section 704 and the Regulations thereunder, or otherwise do not properly reflect the economic interests of the Member, then the Manager acting in its reasonable discretion after consultation with tax advisors to the Company, shall make such modifications to the allocation provisions of this Agreement as are necessary to preserve the underlying economic objectives of the Members and to comply with such provisions of the Code and the Regulations. In this regard, it is intended that prior to a distribution of the proceeds from a liquidation of the Company, the positive Capital Account balance of each Member shall be equal to the amount that such Member is entitled to receive pursuant to Section 10.02 hereof. Accordingly, notwithstanding anything to the contrary herein, to the extent permissible under Code Section 704(b) and the Regulations promulgated thereunder, Net Profits and Net Losses and, if necessary, items of gross income and gross deductions, of the Company for the year of liquidation of the Company shall be allocated among the Members so as to bring the positive Capital Account balance of each Member as close as possible to the amount that such Member would receive if the Company were liquidated and all the proceeds were distributed in accordance with the provisions of Section 10.02 hereof.

(d) Tax Allocations. For U.S. federal, state and local income tax purposes, items of income, gain, loss, deduction and credit shall be allocated to the Members in accordance with the allocations of the corresponding items for Capital Account purposes under this Section 4.01, except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with Code Section 704(c) and the Regulations thereunder (using the traditional method with curative allocations, but curative allocations will be limited to the allocation of gains or losses to overcome a ceiling limitation in a prior taxable year, consistent with Regulations Section 1.704-3(c)(3)(ii)).

(e) All elections, decisions and other matters concerning the allocation of income, gains, expenses and losses among the Members, and accounting procedures not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Manager in its sole discretion and shall be final and conclusive as to all Members.

ARTICLE V

DISTRIBUTIONS

5.01. Distributions.

(a) Distributions, if any, shall be made from the Company to the Members at such times as the Manager may determine.

(b) All distributions shall be made to the Members in the following manner and order of priority:

(I) One hundred percent (100%) to the Investor Member.

5.02. Distributions of Proceeds Upon Sale of Membership Interests.

Notwithstanding anything in this Agreement to the contrary, any sale of Units permitted under this Agreement, or a merger, in each case, in connection with a Sale Transaction, as a result of which the Members, rather than the Company, receive the proceeds of such sale or merger: (a) subject to any holdback or reserve described in clause (b) of this Section 5.02, the Members, as a group, hereby agree to apportion and, upon the closing of such sale or merger, pay over the proceeds among those Members participating in such Sale Transaction so that, as nearly as possible, the payments to each Member shall correspond to and be in accordance with the distribution provisions set forth in Section 5.01; and (b) the Company shall have the right to withhold, and each of the Members agrees to contribute and pay over from the proceeds received or receivable by such Member, a portion of the proceeds payable in any such transaction equal to an amount necessary, as reasonably determined by the Manager, to satisfy any post-transaction indemnification, purchase price adjustment or other similar escrow or holdback obligation; provided, however, that in no event shall a Member be obligated to make a contribution to the Company pursuant to the foregoing in excess of its pro rata portion of such proceeds. Any amount withheld pursuant to clause (b) of this Section 5.02 shall be held in a separate account for the ratable benefit of the Members participating in the transaction giving rise to such proceeds, and may be used, as determined by the Manager, to satisfy any such post-transaction obligation described in clause (b); provided, however, that none of the Company, the Managers nor any of their respective officers, directors, employees, partners, members, shareholders, agents or Affiliates, shall have any liability with respect to amounts so withheld or paid, except for fraud, gross negligence or willful misconduct.

ARTICLE VI

MANAGEMENT

6.01. Management.

(a) Management and control of the Company shall be vested exclusively and irrevocably with the Investor Member. Authority to sell the property rests exclusively in a Manager (the "Manager"), and while the business and affairs of the Company

shall be managed by the Investor Member, any sale is solely under the direction of the Manager. The Investor Member shall retain always the authority to make management decisions notwithstanding any delegation of duties by the Manager to (y) employees, officers or agents or (z) the Investor Member (if any duties are expressly delegated to the Investor Member). Notwithstanding the foregoing or anything contained herein to the contrary, the approval of the Manager shall be required to take any of the actions set forth in Section 6.01(h) of this Agreement. The officers of the Company serve at the sole discretion of the Manager, and such officers (or other agents) who are appointed by the Manager may be removed, at any time or from time to time, by the Manager, with or without cause upon unanimous consent of the Manager. No Member of the Company shall have any rights, powers or duties in respect of the management of the Company, except as otherwise expressly set forth in this Agreement.

The bank account of the Company shall be controlled by the Investor Member, and the Investor Member shall have sole authority to make withdrawals from the bank account and to write checks on behalf of the Company, except as otherwise provided in the last sentence of Section 6.01(i) of this Agreement. Notwithstanding, at the sole discretion of the Investor Member, a third party Lender, holding a receivable due from the Selling Member, who is secured by the property, may be a signer on the account as well, and is authorized to make payments to itself under the modified terms of its debt held against the property that may be due and payable, which have not been made from this account by the Investor Member.

(b) A Manager may resign at any time by giving written notice to the other Managers (the “Resignation Notice”). The resignation of such Manager shall take effect upon delivery of the Resignation Notice or at such later time as shall be specified in the Resignation Notice and, unless otherwise specified therein, the acceptance of such resignation by the Company or the other Managers shall not be necessary to make it effective. The resignation of a Manager shall not affect the resigning Manager’s rights, if any, as a Member and shall not constitute such resigning Manager’s resignation as a Member, if applicable. The Person or Persons having the right to appoint a Manager shall have the sole right to fill any vacancy as a result of such removal or resignation, except as otherwise provided in Section 6.01(c).

(c) Unless waived by the Managers, each Member shall be given at least forty-eight (48) hours notice of any meeting (which notice shall state the date, hour and location of the meeting and all actions to be considered at the meeting), and each Member shall be permitted to participate in any meeting by telephone or similar communications equipment. Any Manager may call a meeting of the Manager. Any action may be taken by the Manager without a meeting if authorized by the written consent of the Members necessary to authorize the action as specified in Section 6.01(f) below. Notice of a meeting need not be given to any Manager who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Manager. No action may be taken at any meeting of the Manager unless such action was specified in the notice of such meeting that was delivered to the Managers in accordance with this Section 6.01(e).

(d) A Person shall cease to serve as a Manager upon (i) his or her death, (ii) his or her resignation in accordance with Section 6.01(d) above or (iii) the removal of such Manager in accordance with Section 6.01(c) or Section 6.01(d).

(e) Managers shall not receive any fee or other compensation for services rendered on behalf of the Company as a Member of the Manager.

(f) The Manager may not take any of the following actions without the prior approval of the Seller Member's lender, CBC Partners:

(1) Create, incur, assume or make any payment in respect of any borrowed money indebtedness or guarantee the borrowed money indebtedness of any other person or entity, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(2) Directly permit to exist any lien or security interest on any of the asset of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(3) Dispose of its properties or assets, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(4) Declare or pay any dividend or distribution on any membership interest of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(5) Purchase or redeem any membership interests of, or rights, options or warrants to acquire membership interests of, the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(6) Issue any additional membership interests of, or rights, options or warrants to acquire, membership interests of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(7) Consummate, or enter into an agreement that results in, a sale of the Company (whether by merger, sale of assets, sale of Units or otherwise), unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(8) Enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its Managers, Members or any of their respective affiliates or family members, except for Capital Contributions from the Investor Member in respect of its Commitment as expressly provided in Section 3.02(b)

of this Agreement, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property;

(9) Cause a material change in the strategic direction or the nature of the business of the Company, unless such action results in the satisfaction of the Lender CBC Partners receivable secured by the property; or

(10) Enter into any agreement to do any of the foregoing, unless such agreement results in the satisfaction of the Lender CBC Partners receivable secured by the property.

6.02. Liability of Parties.

No Member, Manager nor any Representative of a Member or a Manager shall be liable to the Company or to any other Member or Manager for (a) the performance of, or the omission to perform, any act or duty on behalf of the Company if, in good faith, such Person determined that such conduct was in the best interests of the Company, and such conduct did not constitute fraud, gross negligence, reckless or intentional misconduct or a breach of this Agreement or a breach by the Lender Member; (b) the termination of the Company and this Agreement pursuant to the terms hereof; or (c) the performance of, or the omission to perform, any act on behalf of the Company in good-faith reliance on the advice of legal counsel, accountants, or other professional advisors to the Company.

6.03. Indemnification of Manager and Officers.

The Company, its receiver, or its trustee, as the case may be, shall indemnify, defend, and hold each Manager, Director or Officer (collectively, the "Indemnified Parties") harmless from and against any expense, loss, damage, or liability incurred or connected with any claim, suit, demand, loss, judgment, liability, cost, or expense (including reasonable attorneys' fees) arising from or related to the Company or any act or omission of the Indemnified Parties on behalf of the Company and amounts paid in settlement of any of the foregoing; provided that the same were not the result of (i) fraud, gross negligence, or reckless or intentional misconduct on the part of the Indemnified Party against whom a claim is asserted, (ii) a breach of this Agreement by the Indemnified Party or (iii) a breach of the Agreement by the Investing Member. The Company shall advance to any Indemnified Party the costs of defending any claim, suit, or action against such Indemnified Party (other than any claim, suit or action consisting of allegations covered by clauses (i), (ii) or (iii) of the immediately preceding sentence) if the Indemnified Party undertakes to repay the funds advanced, with interest, should it later be determined that the Indemnified Party is not entitled to indemnification under this Section 6.03.

6.04. Conflicts of Interest.

Subject to compliance by each Member's Related Parties with Section 8.02, each Member of the Company and any Manager at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently

or with others, including ones in competition with the Company, with no obligation to offer to the Company or to any other Member the right to participate therein.

6.05. Waiver of Duties.

The Members waive, to the maximum extent permitted by applicable law, any fiduciary duties or obligations that the Managers may owe to the Members.

ARTICLE VII

RESTRICTIONS ON TRANSFERS

7.01. Restrictions on Transfers.

Except as otherwise expressly permitted in this ARTICLE VII, no Member may Transfer all or any portion of its Membership Interest in the Company without the prior consent of the Manager, which consent may be granted or withheld in the sole and absolute discretion of the Manager. Members may not Transfer all or any portion of its Class A Units, except pursuant to a Transfer permitted by Sections 7.02, 7.09 or 7.10. Any Transfer (whether voluntary or involuntary) or attempted Transfer by a Member in violation of the immediately preceding sentence shall result in the automatic voiding of any such unauthorized transfer.

7.02. Permitted Transfers.

A Member shall be free at any time to Transfer all or any portion of its Membership Interest to: (a) in the case of a Member that is a natural person, any one or more of an existing Member's Family Members or a trust or estate for the benefit of such Family Members; (b) to any Affiliate of the Member or any Family Member of such Affiliate or to any limited partner or investor or Affiliate thereof in any investment vehicle managed by the Member or its Affiliates; or (c) to a wholly-owned subsidiary of the Member. Notwithstanding the foregoing sentence, without the prior written consent of the non transferring Member, a Member may not Transfer its Units pursuant to clause (b) of the immediately preceding sentence to a non-Affiliated Person that, at the time of the proposed Transfer, is actively engaged in litigation with, or has previously been engaged in litigation with, the Investor Members. A Member that is a natural person also may Transfer all or any portion of his or her Membership Interest upon his or her death or involuntarily by operation of law. For purposes of this ARTICLE, a Member's "Family Members" shall mean the Member's spouse, ancestors, issue (including adopted children and their issue) and trusts or custodianships for the primary benefit of the Member himself or such spouse, ancestors, or issue (including adopted children and their issue). Notwithstanding the foregoing, in the case of any Transfer permitted under this Section 7.02, it shall be a condition to such Transfer that such transferee agrees (y) to be bound by this Agreement by executing a joinder agreement in a form acceptable to the Manager and (z) that the Units acquired by such transferee may not be subsequently Transferred except in strict accordance with the terms of this Agreement.

7.03. Conditions to Transfer.

Notwithstanding any other provision of Section 7.01 or 7.02, no Transfer shall be permitted, except in the case of a Transfer on death or involuntarily by operation of law, unless the following additional conditions precedent are satisfied (or waived by the Manager in its sole and absolute discretion):

(a) The transferor and transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this Agreement (including this ARTICLE VII); and

(b) At the request of the Manager, the transferor shall provide an opinion of counsel satisfactory to the Company to the effect that such Transfer will not violate any applicable securities laws regulating the transfer of securities or any of the provisions of any agreement to which the Company is a party.

7.04. Admission of Transferee as Member.

Subject to the other provisions of this ARTICLE VII, a transferee of a Membership Interest may be admitted to the Company as a Member only upon satisfaction of all of the following conditions:

(a) The Membership Interest with respect to which the transferee is admitted was acquired by means of a Transfer permitted under Sections 7.01 and 7.02;

(b) The transferee becomes a party to this Agreement as a Member and executes such documents and instruments as the Manager reasonably may request as necessary or appropriate to confirm such transferee as a Member in the Company and such transferee's agreement to be bound by the terms and conditions hereof; and

(c) The transferee furnishes copies of all instruments effecting the Transfer, opinions of counsel and such other certificates, instruments, and documents as the Manager may reasonably require.

7.05. Effect of Disposition.

Following any Transfer of a Member's entire Membership Interest, the Member shall have no further rights as a Member of the Company. In addition, following any permitted Transfer of a portion of a Member's Membership Interest, the Member shall have no further rights as a Member of the Company with respect to that portion Transferred.

7.06. Rights of Unadmitted Transferee.

A transferee of a Membership Interest who is not admitted as a Member pursuant to Sections 7.03 and 7.04 shall be entitled to allocations and distributions attributable to the

Membership Interest Transferred to the same extent as if the transferee were a Member, but shall have no right to vote or give a consent on any matter, if any, calling for the approval or consent of the Members (and notwithstanding anything in this Agreement to the contrary any requisite percentage or majority shall be computed as if the Transferred Membership Interest did not exist), shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the other rights of a Member under the Act or this Agreement. For the avoidance of doubt, if a Member Transfers or attempts to Transfer any Class A Units in violation of Section 7.01 of this Agreement, then such transfer shall automatically be voided.

7.07. Prohibited Transfers.

Any purported Transfer that is not permitted under this ARTICLE VII shall be null and void and of no effect whatsoever. In the case of a Transfer or attempted Transfer that is not such a permitted Transfer, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of such indemnified persons may incur (including incremental tax liability and attorneys' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

7.08. [reserved]

7.09. Tag-Along Rights.

(a) In the event that the Investor Member desires to Transfer (other than a Transfer pursuant to Section 7.02 or a Transfer in accordance with Section 7.10) all or any portion of its Class A Units (the Units to be Transferred are hereinafter referred to as the "Third Party Purchaser Units") to a bona fide, non-Affiliated third party (a "Third Party Purchaser"), then the Investor Member shall promptly notify the other Members (the "Other Members"), in writing (the "Tag-Along Sale Notice"), specifying the price per Unit to be Transferred and the other material terms and conditions of the proposed Transfer to the Third Party Purchaser (the "Third Party Terms"). The Other Members shall have the right (to be exercised as described in this Section 7.09), but not the obligation, to participate in the proposed Transfer to the Third Party Purchaser (hereinafter referred to as the "Tag-Along Right") on the Third Party Terms, as modified by the terms set forth in this Section 7.09 (including Section 7.09(g)).

(b) Each Other Member that desires to exercise its Tag-Along Right shall deliver to the Investor Member a written notice (the "Tag-Along Acceptance Notice") within fifteen (15) days of such Other Member's receipt of the Tag-Along Sale Notice (the "Tag-Along Acceptance Period"). The Tag-Along Acceptance Notice shall state the number of Units being sold by the Investor Member that such Other Member proposes to include in such Transfer to the proposed Third Party Purchaser. The Tag-Along Acceptance Notice given by the Other Member shall constitute the Other Member's binding agreement to sell the number of Units specified in the Tag-Along Acceptance Notice on the Third Party Terms, as modified by the terms set forth in this Section 7.09 (including Section 7.09(g)).

(c) If a Tag-Along Acceptance Notice from an Other Member is not received by the Investor Member within fifteen (15) days of delivery by the Investor Member of the Tag-Along Sale Notice, the Investor Member shall have the right to consummate the sale without the participation of such Other Member, but only if the per Unit purchase price is no more favorable to the Investor Member than as stated in the Tag-Along Sale Notice and only if such sale occurs on a date within the one hundred twenty (120) day period (the "Sale Period") following the expiration of the Tag-Along Acceptance Period. If such sale does not occur within the Sale Period, the Units that were to be subject to such sale thereafter shall continue to be subject to all of the restrictions contained in this Section 7.09.

(d) In connection with any Transfer of Units to the Third Party Purchaser pursuant to this Section 7.09, each of the Investor Member and the Other Members shall have the right to sell to the Third Party Purchaser a number of Units equal to its pro rata portion (based on the number of Units held by the Members, which shall only include the Class A Units to the extent provided in Section 7.09(h) below) of the Third Party Purchaser Units.

(e) At the closing of the Transfer to any Third Party Purchaser of any Third Party Purchaser Units pursuant to this Section 7.09, the Third Party Purchaser shall remit to the Investor Member and the Other Members participating in such sale the aggregate consideration payable to the Investor Member and the Other Members for the Units sold pursuant to Section 7.09 hereof (less any such Member's pro rata share of the consideration to be escrowed or held back, if any, as described below), against delivery by such Member of the Units being sold by it, free and clear of all liens, claims and encumbrances (other than encumbrances imposed by this Agreement), as evidenced by such documentation as the Third Party Purchaser reasonably requests, and the compliance by the Investor Member and the Other Members with any other conditions to closing requested by the Third Party Purchaser.

(f) The consummation of the proposed Transfer triggering the Tag-Along Right shall be subject to the sole discretion of the Investor Member, who shall have no liability or obligation whatsoever to the Other Members for not consummating such proposed Transfer other than its obligations as set forth in this Section 7.09. The Other Members shall receive the same form of consideration received by the Investor Member from the Third Party Purchaser, subject to Section 7.09(g) below. To the extent that the parties are to provide any indemnification or otherwise assume any other post-closing liabilities in favor of the Third Party Purchaser, the Investor Member shall seek to have such indemnification or post-closing liabilities be on a several but not joint basis (and on a pro rata basis in accordance with the proceeds received by such Member) to the extent permitted by the Third Party Purchaser; provided, however, in no event shall any Member's respective potential liability thereunder exceed the proceeds received by such Member. To the extent any such indemnification or post-closing liabilities are made on a joint and several basis and a Member bears more than its pro rata share (based on the proceeds to be received by such Member) of such indemnification or post-closing liabilities, then the other Member(s) shall contribute such Member such amount as is necessary to cause each Member to bear its pro rata share of such indemnification or post-closing liabilities.

(g) The aggregate net proceeds of any Transfer of Units pursuant to this Section 7.09 shall be allocated among the Members participating in such Transfer in accordance with the distribution provisions of Section 5.01(b) of this Agreement.

(h) The Seller Member shall only be entitled to include Class A Units in any Transfer pursuant to this Section 7.09 if, prior to such Transfer, the Investor Member has received the full distribution preference it is entitled to receive under Section 5.01(b)(I) of this Agreement.

7.10. Drag-Along.

If the Manager and the Investor Member approve a Sale Transaction to a non-Affiliated third party (a "Third Party Transferee"), then the Investor Member shall have the right, but not the obligation, to require the Seller Member to consent to and approve the Sale Transaction and, if the Sale Transaction is structured as a sale of Units by the Members, to require the Seller Member to Transfer to the same Third Party Transferee all of the Units held by the Seller Member on the same terms and conditions as the Investor Member, subject to the last sentence of this Section 7.10. In connection therewith, upon request of the Investor Member, the Seller Member shall (i) consent to and raise no objections against such Sale Transaction and (ii) execute and deliver a definitive purchase and sale agreement, in substantially the same form and substance as the definitive agreement executed and delivered by the Investor Member; provided, that, to the extent that the parties are to provide any indemnification or otherwise assume any other post-closing liabilities, the Investor Member shall seek to have such indemnification or post-closing liabilities be on a several but not joint basis (and on a pro rata basis in accordance with the proceeds received by such Members) to the extent permitted by the Third Party Transferee; provided, however, in no event shall any Member's respective potential liability thereunder exceed the proceeds received by such Member in connection with such Sale Transaction. Subject to compliance with the proviso set forth in the immediately preceding sentence, if the Seller Member shall fail to execute and deliver such definitive agreement, the Company and the Investor Member shall have a power of attorney (which may be relied upon by the purchaser(s) in any such sale) and for that purpose the Seller Member, without any further action or deed, shall be deemed to have appointed the Company and the Investor Member as the Seller Member's agent and attorney-in-fact, with full power of substitution, for the purpose of executing and delivering the definitive agreement in the name and on behalf of the Seller Member and performing all such action as may be necessary or appropriate to consummate the sale of the Seller Member's interest pursuant to that agreement. Each Member shall bear its pro rata share of the costs of any transaction pursuant to this Section 7.10 (based on the net proceeds to be received by each Member in connection with the Sale Transaction) to the extent such costs are incurred for the benefit of all Members and are not otherwise paid by the Company or the acquiring party. The aggregate net proceeds of any Sale Transaction pursuant to this Section 7.10 shall be allocated among the Members in accordance with Section 5.01(b) of this Agreement.

ARTICLE VIII

MEMBER COVENANTS

8.01. Confidentiality.

Each Member agrees that Confidential Information will be furnished to it or its Representatives in connection with (i) such Member's ownership of Units in the Company and/or (ii) such Member's designee(s) serving as a Manager or, in the case of the Investor Member, the provision of services by the Investor Member to the Company. Each Member agrees that it shall use, and that it shall cause its Representative to use, the Confidential Information only in connection with its investment in the Company and not for any other

purpose. Each Member further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(a) to such Member's Representatives in the normal course of the performance of their duties or to any financial institution providing credit to such Member;

(b) to the extent required by applicable law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Member is subject, provided that such Member agrees to give the Company prompt notice of such request(s), to the extent practicable, so that the Company may seek an appropriate protective order or similar relief (and such Person shall cooperate with such efforts by the Company, and shall in any event make only the minimum disclosure required by such law, rule or regulation));

(c) to any Person to whom such Member is contemplating a transfer of its Units, provided that such Transfer would not be in violation of the provisions of this Agreement and such potential transferee is advised of the confidential nature of such information and agrees to be bound by a confidentiality agreement consistent with the provisions of this Section 8.01;

(d) to any regulatory authority or rating agency to which the Member or any of its Affiliates is subject or with which it has regular dealings, as long as such authority or agency is advised of the confidential nature of such information;

(e) to any Representative to the extent related to the tax treatment of the Units held by such Member, or

(f) if the prior written consent of the Manager shall have been obtained.

Nothing contained herein shall prevent the use of Confidential Information in connection with the assertion or defense of any claim by or against any Member.

8.02. Investor Member Covenants.

The Investor Member hereby covenants, acknowledges and agrees with the Company and the Seller Member and Lender Member as follows:

(a) Investor Member shall:

(i) Provide for the funding of a annual expense reserve account in the amount of \$150,000.00 within ninety days of the execution of this Agreement, from which non member CBC Partners is authorized to issue payment against its obligations due from Seller Member should Investor Member fail to effect such payments in a timely fashion.

- (ii) Provide for a second funding of an annual expense reserve account one year later in the additional amount of \$150,000.00 within ninety days of the first anniversary of the execution of this Agreement, from which non Member CBC Partners is authorized to issue payment against its Note should Investor Member fail to effect such payments in a timely fashion.
- (iii) Cause the Company to service the non Member CBC Partners receivable against the subject property commencing 90 days after the closing of this Agreement, under the modified terms and conditions thereto, as agreed upon by the Investor Member.
- (iv) Cause the Company to effect repairs to the premises to bring it back to top quality standard and working repair
- (v) Cause the Company to maintain and provide for all costs related to the ongoing maintenance of the property
- (vi) Cause the Company to pay all utilities
- (vii) Cause the Company to pay for all real property insurance
- (viii) Cause the Company to pay all HOA assessments and fines
- (ix) Cause the Company to pay for all landscaping
- (x) Provide for its benefit from that portion of its judgment proceeds distributions from its interest in 1st One Hundred Holdings to serve as additional collateral to further securitize Lending Member's Note against any deficiency in the existing real property serving as collateral prior to this Agreement
- (xi) At the earlier of 2 years or upon collection of the judgment proceeds, pay off in full the CBC receivable as relates to the property
- (xii) At the earlier of 2 years or upon collection of the judgment proceeds, either assume service of or retire either or both of the 1st and 2nd position lenders
- (xiii) At the earlier of 2 years or upon collection of the judgment proceeds, pay off past due and accrued property tax assessments, if not already addressed by 1st or 2nd lender

(xiv) Utilize its lawyers to effectuate a Quiet Title action for the purposes of extinguishing any and all judgment creditor liens against the property.

(b) the Company shall comply, at all times, with the terms and conditions of the Agreement.

(c) the execution, delivery and performance of this Agreement by the Investor Member does not conflict with or constitute a breach of or a default under the Articles of Organization of the Investor Member, the Operating Agreement of the Investor Member or any contract, agreement, instrument or debenture to which the Investor Member is a party or to which any of its assets are subject.

8.03 Seller Member Covenants.

The Seller Member hereby covenants, acknowledges and agrees with the Company and the Seller Member and Investor Member as follows:

(a) Seller Member shall:

(i) Convey all rights of Possession to the Investor Member

(ii) Upon payment in full of the CBC Partners receivable secured against the premises, transfer its Membership Interest in the Company to Investor Member.

(iii) At execution of this Operating Agreement Execute a Deed of Sale conveying ownership of the premises to the Company

(iv) To execute those amendments to the Lender Member Note as necessary

(b) the Seller Member shall comply, at all times, with the terms and conditions of the Agreement.

(c) the execution, delivery and performance of this Agreement by the Seller Member does not conflict with or constitute a breach of or a default under any contract, agreement, instrument or debenture to which the Investor Member is a party or to which any of his assets are subject.

ARTICLE IX WITHDRAWAL

9.01. Restrictions on Withdrawal.

A Member does not have the right to withdraw from the Company as a Member or to terminate its Membership Interest, except to the extent expressly provided herein.

ARTICLE X

DISSOLUTION, LIQUIDATION, AND TERMINATION

10.01. Dissolution.

(a) The Company shall be dissolved automatically and its affairs shall be wound up upon the first to occur of the following:

(i) at any time upon the written consent of the Investor Member, so long as the Manager shall have also consented in writing thereto, or upon the written consent of the sole remaining Member; or

(ii) ninety (90) days after the date on which the Company no longer has at least one (1) Member, unless a new Member is admitted to the Company during such ninety (90) day period.

10.02. Liquidation.

(a) Upon a dissolution of the Company requiring the winding-up of its affairs, the Manager shall wind up its affairs. The assets of the Company shall be sold within a reasonable period of time to the extent necessary to pay or to provide for the payment of all debts and liabilities of the Company, and may be sold to the extent deemed practicable and prudent by the Manager.

(b) The net assets of the Company remaining after satisfaction of all such debts and liabilities and the creation of any reserves under Section 10.02(d), shall be distributed to the Members in accordance with Section 5.01(b) of this Agreement, after giving effect to all contributions, distributions and allocations for all periods, including the period during which such liquidation occurs. Any property distributed in kind in the liquidation shall be valued at fair market value.

(c) Distributions to Members pursuant to this ARTICLE X shall be made by the end of the taxable year of the liquidation, or, if later, ninety (90) days after the date of such liquidation in accordance with Regulations Section 1.704-1(b)(2)(ii)(g).

(d) The Manager may withhold from distribution under this Section 10.02 such reserves as are required by applicable law and such other reserves for subsequent computation adjustments and for contingencies, including contingent liabilities relating to pending or anticipated litigation or to Internal Revenue Service examinations. Any amount withheld as a reserve shall reduce the amount payable under this Section 10.02 and shall be held in a segregated interest-bearing account (which may be commingled with similar accounts). The unused portion of any reserve shall be distributed with interest thereon pursuant to this Section 10.02 after the Manager shall have determined that the need therefor shall have ceased.

(e) Deficit Capital Accounts. If a Member has a deficit balance in its Capital Account after giving effect to all contributions, distributions, and allocations for all taxable years, including the year in which the liquidation occurs, the Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed by such Member to the Company or to any other Person, for any purpose whatsoever. Notwithstanding, Lender Member's secured note against the Property shall not be compromised under this provision.

ARTICLE XI

BOOKS AND RECORDS, ACCOUNTING, AND TAX ELECTIONS

11.01. Maintenance of Records.

The Company shall maintain true and correct books and records, in which shall be entered all transactions of the Company, and shall maintain all other records necessary, convenient, or incidental to recording the Company's business and affairs, which shall be sufficient to record the allocation of Net Profits and Net Losses and distributions as provided for herein. All decisions as to accounting principles, accounting methods, and other accounting matters shall be made by the Manager. The Company shall keep a current list of all Members and their Capital Contributions, adjusted for any withdrawals, which shall be available for inspection by all Members. Each Member or its authorized representative may examine any of the books and records of the Company during normal business hours upon reasonable notice for a proper purpose reasonably related to the Member's interest in the Company.

11.02. Reports to Members.

As soon as practicable after the end of each Fiscal Year, the Company shall cause to be prepared and sent to each Member a report setting forth in sufficient detail all such information and data with respect to the Company for such Fiscal Year as shall enable each Member to prepare its income tax returns. Any financial statements, reports and tax returns required pursuant to this Section 11.02 shall be prepared at the expense of the Company.

11.03. Tax Elections; Determinations Not Provided for in Agreement.

The Manager shall be empowered to make or revoke any elections now or hereafter required or permitted to be made by the Code or any state or local tax law, and to decide in a fair and equitable manner any accounting procedures and other matters arising with respect to the Company or under this Agreement that are not expressly provided for in this Agreement. In this regard, the Members agree that the Company shall make a valid election under Code Section 754. Notwithstanding the foregoing, absent the unanimous consent of the Manager to the contrary, the Company and all Members shall take any steps that may be necessary to elect partnership status for purposes of the Code and any applicable state or local tax law.

11.04. Tax Matters Partner.

The Investor is hereby designated the “Tax Matters Partner” of the Company for purposes of the Code.

ARTICLE XII

GENERAL PROVISIONS

12.01. Notices.

Except as expressly provided in this Agreement, all notices, consents, waivers, requests, or other instruments or communications given pursuant to this Agreement shall be in writing, shall be signed by the party giving the same, and shall be delivered by hand; sent by registered or certified United States mail, return receipt requested, postage prepaid; or sent by a recognized overnight delivery service. Such notices, instruments, or communications shall be addressed, in the case of the Company, to the Company at its principal place of business and, in the case of any of the Members, to the address set forth in the Company’s books and records; except that any Member may, by notice to the Company and each other Member, specify any other address for the receipt of such notices, instruments, or communications. Except as expressly provided in this Agreement, any notice, instrument, or other communication shall be deemed properly given when sent in the manner prescribed in this Section 12.01. In computing the period of time for the giving of any notice, the day on which the notice is given shall be excluded and the day on which the matter noticed is to occur shall be included. If notice is given by personal delivery, then it shall be deemed given on the date personally delivered to such Person. If notice is given by mail in the manner permitted above, it shall be deemed given three (3) days after being deposited in the mail addressed to the Person to whom it is directed at the last address of the Person as it appears on the records of the Company, with prepaid postage thereon. If notice is given by nationally recognized overnight courier delivery service, then it shall be deemed given on the date actually delivered to the address of the recipient by such nationally recognized overnight courier delivery service. If notice is given in any other manner authorized herein or by law, it shall be deemed given when actually delivered, unless otherwise specified herein or by law.

12.02. Interpretation.

(a) ARTICLE, Section, and Subsection headings are not to be considered part of this Agreement, are included solely for convenience of reference and are not intended to be full or accurate descriptions of the contents thereof.

(b) Use of the terms “herein,” “hereunder,” “hereof,” and like terms shall be deemed to refer to this entire Agreement and not merely to the particular provision in which the term is contained, unless the context clearly indicates otherwise.

(c) Use of the word “including” or a like term shall be construed to mean “including, but not limited to.”

(d) Exhibits and schedules to this Agreement are an integral part of this Agreement.

(e) Words importing a particular gender shall include every other gender, and words importing the singular shall include the plural and vice-versa, unless the context clearly indicates otherwise.

(f) Any reference to a provision of the Code, Regulations, or the Act shall be construed to be a reference to any successor provision thereof.

12.03. Governing Law; Jurisdiction; Venue.

This Agreement and all matters arising herefrom or with respect hereto, including, without limitation, tort claims (the “Covered Matters”) shall be governed by, and construed in accordance with, the internal laws of State of Nevada, without reference to the choice of law principles thereof. The Members agree that any dispute between them or between any of them and the Company arising out of, or in connection with, the execution, interpretation, performance or non-performance of this Agreement (including the validity, scope and enforceability of these arbitration provisions) shall be settled by arbitration conducted in Clark County Nevada, in the English language, in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”), by a single arbitrator, designated by the AAA in accordance with the rules of the AAA. The decision of the AAA shall be final and binding on the Members and the Company, and not subject to further review, and judgment on the awards of the AAA may be entered in and enforced by any court having jurisdiction over the parties or their assets subject to the procedural requirements in such jurisdiction. The arbitration hearing shall be held solely in the State of Formation. Notwithstanding the foregoing agreement to arbitrate, the parties expressly reserve the right to seek (i) provisional relief from any court of competent jurisdiction to preserve their respective rights pending arbitration and (ii) equitable relief in any court of competent jurisdiction in the State of Formation. All costs of the arbitrator shall be split equally by the claimant, on the one hand, and the respondents, on the other hand; provided, however, the arbitrator shall have the right to apportion such costs in accordance with what the arbitrator deems just and equitable under the circumstances. The arbitrator shall have the authority to award reimbursement of attorneys’ fees to the prevailing party in the arbitration.

12.04. Binding Agreement.

This Agreement shall be binding upon and inure to the benefit of the Members and the Managers and their respective heirs, executors, administrators, personal representatives, and successors.

12.05. Dispute Resolution.

In the event of a failure to reasonably resolve any issues among any of the Parties (or their owners, assigns, or successors), the disputes of those parties will be referred to binding arbitration for resolution thereof, and each party waives any right to litigation in favor of such resolution through binding arbitration. Arbitration shall be conducted under Nevada’s Arbitration Rules). Judgment on the arbitrator’s award may be entered in any court having

jurisdiction thereof. The arbitration shall be held in the City of Las Vegas and State of Nevada, and shall be conducted before a single arbitrator agreeable to the parties. The arbitrator shall make findings of fact and law in writing in support of his decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party as the arbitrator deems appropriate. The provisions hereof shall not preclude any party from seeking preliminary injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making preliminary findings of fact in connection with granting or denying such preliminary injunctive relief after and in accordance with the decision of the arbitrator. No decision of the arbitrator shall be subject to judicial review or appeal; the parties waive any and all rights of judicial appeal or review of any decision of the arbitrator. Should any party initiate a civil proceeding against any other, notwithstanding the binding arbitration provision above, such party initiating civil litigation shall recognize that it has caused material damage and harm to the other by way of their breach of this agreement, and hereby agrees to an award, to each named defendant party, liquidated damages in the amount of any costs of defense incurred by the aggrieved party plus ten thousand dollars (\$10,000.00).

12.06. Severability.

Each item and provision of this Agreement is intended to be severable. If any term or provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason whatsoever, that term or provision shall be modified only to the extent necessary to be enforced, such term or provision shall be enforced to the maximum extent permitted by law, and the validity of the remainder of this Agreement shall not be adversely affected thereby.

12.07. Entire Agreement.

This Agreement (including the exhibits hereto and the Services Agreement) supersedes any and all other understandings and agreements, either oral or in writing, between the Members with respect to the Membership Interests and constitutes the sole agreement between the Members with respect to the Membership Interests.

12.08. Further Action.

Each Member shall, upon the request of the Manager, execute and deliver all papers, documents, and instruments and perform all acts that are necessary or appropriate to implement the terms of this Agreement and the intent of the Members.

12.09. Amendment or Modification.

This Agreement (including the exhibits hereto) may be amended or modified from time to time only upon the written approval of the Company (acting through the Manager) and the Investor Member; provided, however, for so long as the Seller Member owns any Class A Units, the approval of the Seller Member shall be required to amend Section 5.01 of this Agreement (other than in connection with the issuance of New Units) or Section 6.01(b)(ii) of this Agreement. Notwithstanding the foregoing, no amendment shall create any personal

liability or personal obligation of any Member for the debts, obligations, or liabilities of the Company not otherwise provided under the Act without such Member's written consent.

12.10. Counterparts.

This Agreement may be executed in original or by facsimile in several counterparts and, as so executed, shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or to the same counterpart.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the Members have executed and adopted this Limited Liability Company Agreement effective as of September 30, 2017.

MEMBERS:

Kenneth Antos (Seller Member)

Ken Antos Rest

By: 

Name: *Ken Antos*

Title: *Member*

SJC Ventures Holdings, LLC (Investor Member)

By: 

Name: *Jay Bloom*

Title: *Manager*

MANAGER:


Jay Bloom, as Manager SJC Ventures Holdings, LLC

EXHIBIT A

DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

“Adjusted Capital Account Deficit” means, with respect to any Person, the deficit balance, if any, in such Person’s Capital Account as of the end of the relevant Fiscal Year or other period, after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Person is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentence of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) after taking into account any changes during such year in Company Minimum Gain and Member Minimum Gain; and

(a) debit to such Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to any Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the first mentioned Person. A Person shall be deemed to control another Person if such first Person possesses directly or indirectly the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, by contract or otherwise.

“Business Day” means a day, other than a Saturday or Sunday, on which commercial banks in New York, NY are open for the general transaction of business.

“Capital Account” means, with respect to any Member, the Member’s Capital Contributions, increased or decreased as provided in this Agreement.

“Capital Contribution” means, with respect to the Investor Member, the amount of money contributed to the Company by the Investor Member.

“Class A Units” means a class of Units that are denominated as “Class A Units”.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Company Minimum Gain” has the meaning ascribed to the term “partnership minimum gain” in the Regulations Section 1.704-2(d).

“Confidential Information” means any information concerning the Company or the financial condition, business, operations, prospects or assets of the Company (including the terms of this Agreement), provided that the term “Confidential Information” does not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by a Member or any of a Member’s Representatives in violation of this Agreement, (ii) is or was available to such Member on a non-confidential basis prior to its disclosure by the Company to such Member or the Representatives of such Member or (iii) was or becomes available to such Member on a non-confidential basis from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not, to such Member’s knowledge, bound by a confidentiality agreement with (or other confidentiality obligation to) the Company or another Person.

“Depreciation” means an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted tax basis at the beginning of the Fiscal Year or other period, Depreciation will be an amount which bears the same ratio to the beginning Gross Asset Value as the Federal income tax depreciation, amortization or other cost recovery deduction for the Fiscal Year or other period bears to the beginning adjusted tax basis; provided, however, that if the Federal income tax depreciation, amortization or other cost recovery deduction for the Fiscal Year or other period is zero, Depreciation will be determined by reference to the beginning Gross Asset Value using any reasonable method selected by the Manager.

“Fiscal Year” means the calendar year; but, upon the organization of the Company, “Fiscal Year” means the period from the first day of the term of the Company to the next following December 31, and upon dissolution of the Company, shall mean the period from the end of the last preceding Fiscal Year to the date of such dissolution.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, adjusted as provided in this Agreement.

“Liquidation” has the meaning as set forth in Regulations Section 1.704-1(b)(2)(ii)(g).

“Manager” means each Person comprising the Manager in accordance with Section 6.01(b) of this Agreement. A Manager may be a natural person or an entity; a Member or a non-member.

“Member” means each Person executing this Agreement as a Member or hereafter admitted to the Company as a Member as provided in this Agreement, but does not include any Person who has ceased to be a Member of the Company. For purposes of interpreting this Agreement, references to the term “Member” in ARTICLE IV and ARTICLE V shall be deemed to refer to a transferee of an interest in the Company who is not admitted as a Member under Section 7.04 unless such interpretation is inconsistent with the provisions of Section 7.06.

“Member Nonrecourse Debt Minimum Gain” has the meaning ascribed to the term “partner nonrecourse debt minimum gain” in Regulations Section 1.704-2(i)(2).

“Member Nonrecourse Debt” has the meaning ascribed to the term “partner nonrecourse debt” in Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Deduction” has the meaning ascribed to the term “partner nonrecourse deduction” in Regulations Section 1.704-2(i)(2).

“Membership Interest” means the entire interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted by this Agreement or the Act.

“Net Proceeds”, with respect to a Sale Transaction, means the gross proceeds from the Sale Transaction less (i) the payment of any indebtedness for borrowed money of the Company, together with all interest, premiums and fees due and owing thereon, (ii) the payment of any transaction fees and expenses incurred by the Company that are directly related to the Sale Transaction and (iii) any holdback, reserve or escrow established by the Manager in connection with the Sale Transaction to satisfy any post-transaction indemnification, purchase price adjustment or similar obligation (and, once the Manager determines that the need for such holdback, reserve or escrow shall have ceased, any remaining proceeds shall be distributed to the Members in accordance with Section 5.01).

“Net Profits” and “Net Losses” means, for any Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profits or Net Losses shall be subtracted from Net Profits or Net Losses;

(c) Gains or losses resulting from any disposition of Company asset with respect to which gains or losses are recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the Company asset disposed of, notwithstanding the fact that the adjusted tax basis of such Company asset differs from its Gross Asset Value;

(d) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the taxable income or loss, there will be taken into account Depreciation; and

(e) If the Gross Asset Value of any Company asset is adjusted pursuant to the definition of “Gross Asset Value,” the amount of the adjustment will be taken into account as gain or loss from the disposition of the asset for purposes of computing Net Profits or Net Losses.

Notwithstanding any other provision of this subsection, any items of income, gain, loss or deduction that are specially allocated under Section 4.01(b) or any other Section of this Agreement shall not be taken into account in computing Net Profits or Net Losses.

“New Units” mean any Units issued by the Company after the date hereof or any Units issuable by the Company upon exercise, exchange or conversion of any exercisable, exchangeable or convertible securities issued after the date hereof.

“Nonrecourse Deductions” has the meaning set forth in Regulations Sections 1.704-2(b) and (c).

“Other SPV” means a special purpose entity formed by the Company and an Investor to pursue the Purposes and which special purpose entity is funded solely by such Investor.

“Percentage Interest” means, as of any date of determination, with respect to the Investor Member, the percentage interest determined by dividing (x) the number of Class A Units owned by the Investor Member by (y) the aggregate number of Class A Units owned by all of the Members. The sum of the outstanding Percentage Interests of the Members shall at all times equal one hundred percent (100%).

“Permitted States” means States with an HOA “Super Priority” or “Safe Harbor” provision codified in its statutes, and any other such other states as may be approved by the Manager.

“Person” means an individual, corporation, association, partnership, joint venture, limited liability company, estate, trust, or any other legal entity.

“Regulations” means the Treasury Regulations promulgated under the Code, as such Regulations may be amended from time to time.

“Regulatory Allocations” has the meaning set forth in Section 4.01(c)(i).

“Representative” of a Person means that Person’s directors, officers, general partners, members, managers, employees, and agents.

“Sale Transaction” (i) a sale of all or substantially all of the issued and outstanding Units of the Company or (ii) the sale of all or substantially all of the assets of the Company (including by means of merger, consolidation, other business combination, exclusive license, equity exchange or other reorganization) to a third party.

“Services Agreement” means that certain Services Agreement, dated as of January 20, 2015, between the Company and the Seller Member.

“Transfer” means, as a noun, any voluntary or involuntary transfer, sale, pledge, hypothecation, gift, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge, hypothecate, give, or otherwise dispose of.

“Unit” means a denomination of a Membership Interest.

“Members Related Party” means each of the Members, their respective Representatives (including Jay Bloom) and any of its or their respective Affiliates.

EXHIBIT B

Name and Address of Member	Commitment	% Membership Interest	
Seller Member Kenneth Antos Fax: Attn: with a copy to: Fax: Attention:	\$100	49%	

Name and Address of Member	Commitment	% Membership Interest	
Investor Member SJC Ventures Holdings, LLC Fax: 702-974-0284 Attn: Jay Bloom with a copy to: Fax: 702-629-7925 Attention: Joseph Gutierrez, Esq.	\$150,000.00	51%	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (LAS VEGAS)

IN RE: . Case No. 21-10501-nmc
. .
. Chapter 11
SPANISH HEIGHTS .
ACQUISITION COMPANY, LLC, .
. 300 Las Vegas Blvd. South
. Las Vegas, NV 89101
Debtor. .
. Tuesday, May 18, 2021
. 10:05 a.m.
.

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 [65]
BEFORE THE HONORABLE NATALIE M. COX (VIA TELECONFERENCE)
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: Greene Infuso
By: JAMES D. GREENE, ESQ.
3030 South Jones Boulevard, Suite 101
Las Vegas, NV 89146
(702) 570-6000

Maier Gutierrez PLLC
By: DANIELLE J. BARRAZA, ESQ.
8816 Spanish Ridge Avenue
Las Vegas, NV 89148
(702) 629-7900

For the Secured
Creditors: Mushkin & Coppedge
By: MICHAEL R. MUSHKIN, ESQ.
6070 South Eastern Avenue, Suite 270
Las Vegas, NV 89119
(702) 454-3333

Audio Operator: Benji Rawling, Remote ECR

Transcription Company: Access Transcripts, LLC
10110 Youngwood Lane
Fishers, IN 46038
(855) 873-2223
www.accesstranscripts.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 (Proceedings commence at 10:05 a.m.)

2 THE CLERK: -- Rawling speaking from the courtroom.
3 We are now on record on the 10 a.m. calendar for the Honorable
4 Natalie M. Cox, and the first matter on calendar is with
5 regards to Spanish Heights Acquisition, Case Number 21-10501.
6 If we may have appearances, please?

7 MR. GREENE: Good morning, Your Honor. This is James
8 Greene. I am general bankruptcy counsel for the Debtor, and I
9 believe also on the line is Danielle Barraza, who works at
10 Maier Gutierrez law firm, which is special counsel for the
11 Debtor, to handle the state court litigation issues, and she
12 may weigh in on some of the Court's inquiries about the
13 so-called intertwined nature of the claims.

14 THE COURT: Thank you.

15 MR. MUSHKIN: Good morning, Your Honor -- good
16 morning. This is Mike Mushkin, Bar Number 2421, on behalf of
17 5148, LLC, and related parties.

18 MS. BARRAZA: Good morning. Danielle Barraza, Bar
19 Number 13822.

20 (Pause)

21 THE COURT: Okay, sorry about that. I was on mute.
22 Good morning to everybody.

23 MR. GREENE: Good morning, Your Honor.

24 THE COURT: It wouldn't be the same if --

25 MR. MUSHKIN: Good morning.



1 THE COURT: -- it wouldn't be the same if I didn't do
2 that before every hearing. I am prepared to give my oral
3 ruling; but before we do that, is there anything that we need
4 to address?

5 MR. GREENE: Your Honor, this is James Greene for the
6 Debtor. I am prepared to address any questions if the Court
7 has any after the supplemental briefing was done; but if the
8 Court is prepared to go ahead and rule, then that's obviously
9 the Court's discretion.

10 THE COURT: Thank you. Mr. Mushkin, is there
11 anything that we need to address before I proceed?

12 MR. MUSHKIN: No, Your Honor.

13 THE COURT: Okay. All right. Thank you. Then I
14 will proceed. This is my proposed oral ruling -- sorry -- my
15 oral ruling regarding the motion for sanctions at Docket 65.

16 As I requested at the April 20, 2021 hearing, the
17 parties filed supplemental briefs and related pleadings
18 addressing the questions that I posed at the last hearing on
19 this matter. I have reviewed those papers, as well as all of
20 the papers on the docket relating to this matter. On
21 February 10th, 2021, 5148 Spanish Heights, LLC, which I shall
22 refer to as "Creditors" throughout this ruling, filed at
23 Docket 17 an Emergency Motion to Dismiss the Case or, in the
24 alternative, for Relief From the Automatic Stay.

25 Although Creditors' primary request for relief was



1 dismissal of the entire bankruptcy case, Creditors' alternative
2 request was for relief from the automatic stay, to permit
3 Creditor to proceed with its rights and remedies under Nevada
4 state law, including without limitation, proceeding with
5 litigation pending in the Eighth Judicial District, Clark
6 County, Nevada, designated as Case Number A-20-813439-C, and
7 foreclosure of its deed of trust encumbering the real property
8 located at 5184 [sic] Spanish Heights, Las Vegas, Nevada,
9 81948. And that is at Docket 17, Pages 1 and 2.

10 On that same day, Creditor filed a motion for order
11 shortening time, and a supporting declaration at Docket Numbers
12 19 and 20. In the supporting declaration of Creditors'
13 counsel, Mr. Mushkin attested and (audio interference) as
14 follows:

15 At Paragraph 3. "Creditor is a party to the
16 litigation currently in process in the Eighth Judicial District
17 Court, Clark County, Nevada, as Case Number A-20-81349-B, as
18 well as the pending foreclosure of Debtors' real property."

19 Paragraph 4. "The property, the only real property
20 and asset titled in the name of the Debtor, was in foreclosure,
21 and had been noticed for a foreclosure pursuant to a notice of
22 trustee sale recorded December 15th, 2020, which foreclosure
23 sale was stayed by the filing of a motion for temporary
24 restraining order and preliminary injunction in state court
25 litigation."



1 Paragraph 5. "The judge advanced the legal issues
2 relating to CBCI's note and deed of trust to a trial on the
3 merits at the preliminary injunction hearing on February 1st,
4 2021."

5 Paragraph 6. "On Day 3 of the trial, Debtor filed
6 for Chapter 11 Bankruptcy."

7 Paragraph 13. "The movant asked that the Court hear
8 the motion before February 26th, 2021, due to the pending court
9 hearing scheduled for March 15, 2021, in the Eighth Judicial
10 District, Clark County, Nevada, (indiscernible) Case Number
11 A-20-813439-B."

12 On February 11th, 2021, the Court granted Creditors'
13 request at Docket 29 and scheduled the motion to dismiss and/or
14 for stay relief on shortened time for March 9th, 2021. At the
15 March 9th hearing, the Court heard argument, and continued the
16 matter to March 22nd for an oral ruling.

17 Despite the absence of a bankruptcy court order
18 granting stay relief, on March 15th, 2021, Creditor
19 nevertheless urged the state court to continue with the hearing
20 and its ruling regarding the state court matter on which stay
21 relief was requested, stating, quote: "I," meaning Mr.
22 Mushkin, "expected her," meaning me, Judge Cox, "to have
23 submitted a ruling, at least to say to go ahead and go forward.
24 But I'm prepared, Judge. I will try and make this as quick as
25 possible, as you expressed your desire for us to hurry and



1 finish."

2 That's at Docket 66-1 at Page 12, Lines 3 through 7.

3 And while Creditor's counsel made statements during
4 the state court hearings seemingly indicating that it was
5 appropriate to proceed only against non-debtor parties, such
6 comments fly in the case of Creditor's counsel's admission to
7 the state court that, quote,

8 "I am trying to get a straight line to foreclosure.
9 And as soon as I get the relief that I need from the
10 Bankruptcy Court, then I'll have the ability to go
11 forward. That relief will have to go through the
12 Bankruptcy Court, not through this Court, but your
13 TRO should expire."

14 That's at Docket 66-2, at Page 83, Lines 20 through
15 24.

16 And while Creditor's counsel urged the Court to
17 proceed, while acknowledging that this Court had yet to issue
18 its decision, Debtor's Counsel was strenuously objecting to
19 proceeding with the trial.

20 On March 22nd, I read my oral ruling into the record
21 denying without prejudice Creditor's Motion to Dismiss and/or
22 Relief From the Automatic Stay. I entered a formal order to
23 that same effect on March 23rd at Docket 71.

24 On April 6th, 2021, 14 days later, the state court
25 entered its findings of fact and conclusions of law regarding



1 the hearing conducted on March 15th. In Footnote 2, the state
2 court stated as follows:

3 "The Court was advised on February 3rd, 2021, that
4 Spanish Heights filed for bankruptcy protection. The
5 Court suspended these proceedings and stayed the
6 matter for 30 days as to all parties, for Defendants
7 to seek relief from stay. As no order lifting the
8 stay has been entered by the Bankruptcy Court,
9 nothing in this order creates any obligations or
10 liabilities directly related to Spanish Heights.
11 However, factual findings related to Spanish Heights
12 are included in this decision. The term "Plaintiff,"
13 as used in the findings of fact and conclusions of
14 law, is not intended to imply any action by this
15 Court against the Debtor, Spanish Heights."

16 Contrary to the Court's statement that nothing in its
17 order creates any obligations or liabilities directly related
18 to Spanish Heights, the state court issued the following order,
19 which included:

20 "It is hereby ordered, adjudged, and decreed that as
21 to the claims for declaratory relief, the Court
22 declares the third position deed of trust is a valid,
23 existing obligation deed to the property. It is
24 further ordered, adjudged, and decreed that, as to
25 the claims for declaratory relief, the Court declares



1 that the note is a valid, existing obligation.

2 "It is further ordered, adjudged, and decreed
3 that as to the claims for declaratory relief, the
4 Court declares that the pledge agreement is a valid,
5 existing obligation of SJCV's.

6 "It is further ordered, adjudged, and decreed
7 that as to the claims for declaratory relief, the
8 Court declares that the acquisition and membership
9 interest in Spanish Heights does not moot the
10 Defendant's interests.

11 "It is further ordered, adjudged, and decreed
12 that as to the claims for declaratory relief, the
13 Court declares that there has been a valid waiver of
14 the one action rule."

15 While it appears that the state court did not
16 actually find the Debtor obligated to Creditor, the ruling
17 forecloses all of Debtor's defenses to liability, making a
18 finding of liability a foregone conclusion. As recently stated
19 in In Re Moo Jeong, that's at 2020 WL 1277575 (9th Cir. B.A.P.
20 March 16th, 2020). As recently stated in that case,

21 "To hold a party in contempt, the Movant must show by
22 clear and convincing evidence that the party violated
23 a specific and definite court order. The automatic
24 stay qualifies as a specific and definite court
25 order. The stay violation also must be willful. For



1 purposes of finding contempt, willfulness does not
2 depend on the party's intent or subjective belief.
3 All the Movant needs to show is that the contemnor
4 knew of the automatic stay, and that he or she
5 intended the actions that violated the stay."

6 The Supreme Court recently clarified the legal
7 standard governing contempt in a discharge context. As held in
8 Taggart v. Lorenzen, 139 S.Ct. 1795 in 2019, the Bankruptcy
9 Court can exercise its discretion to impose civil contempt
10 sanctions when the contemnor had, quote, "No objectively
11 reasonable basis for concluding that its conduct might be
12 lawful." Put differently, when there was no fair ground of
13 doubt as to whether the subject order barred the conduct the
14 violator engaged in, the Court has the discretion to hold the
15 violator in contempt of court.

16 Although neither party raised the issue, this Court
17 asked the parties to address in their supplemental briefs
18 whether the state court's rulings involved causes of actions
19 asserted by the Debtors and the counterclaims asserted by the
20 Creditor. Pursuant to the supplemental briefs, the Court was
21 provided with the complaint and the counterclaims to allow it
22 to compare the same to the state court judge's ruling.

23 In pertinent part, Footnote 1 of the state court
24 judge's rulings of fact and conclusions of law identifies the
25 five issues that she was deciding. The state court attributed



1 Issues A, B, and C to Creditor's counterclaim 14912, while
2 attributing Issues D and E to Debtor's causes of action 3 and
3 7.

4 As stated in Paxton, In Re Paxton, at 596 B.R. 686
5 (Bankr. N.D. Cal. 2019), quote, "A party does not violate the
6 stay by defending actions commenced by the Debtor," citing to
7 In Re Palmdale Hills Property, LLC. The stay -- which cited,
8 "The stay does not prevent a defendant from protecting its
9 interest against claims brought by the debtor."

10 And also citing In Re Merrick, "An equitable
11 principle of fairness requires a defendant to be allowed to
12 defend itself from a Debtor's claims without imposing on him a
13 gratuitous impediment. The automatic stay does not tie the
14 hands of a defendant while the plaintiff/debtor is given free
15 rein to litigate." And in In Re Smith, "The stay does not
16 apply to actions commenced by the debtor against a third
17 party."

18 Based on the state court judge's attribution of
19 Issues D and E to Debtor's complaint, and all amendments
20 thereto, as well as my review of the same, Issues D and E
21 involved Debtor's causes of action to which Creditor was
22 defending itself. Therefore, Creditor did not violate the
23 automatic stay with regard to Issues D and E.

24 However, Creditor did violate the automatic stay by
25 proceeding on Issues A, B, and C, each of which the state court



1 judge determined related in pertinent part to Counterclaims 1
2 and 12 asserted against the Debtor. The Court emphasizes that
3 Issues A, B, and C clearly were issues relating to Creditor's
4 counterclaims against the Debtor. Creditor can hardly expect
5 this Court to believe that it was unaware of its own
6 counterclaims, or their relationship to the Debtor and the
7 property of the estate.

8 As stated in In Re Way, 229 B.R. 11 (9th Cir. B.A.P.,
9 1998) "A counterclaim is an independent cause of action
10 asserted under Federal Rule of Civil Procedure 13. As such,
11 the counterclaim is an action or proceeding against Debtor, and
12 relief from the stay under Section 362(a)(1) must be sought in
13 order to continue its prosecution post-petition."

14 Applying the standard previously discussed regarding
15 civil contempt, it is without doubt that the Creditor knew the
16 automatic stay applied, as it filed a motion for relief from
17 that automatic stay early on in this case, and prior to its
18 March 15th hearing before the state court.

19 The Court additionally finds that there was no fair
20 ground of doubt regarding the applicability of the automatic
21 stay. First, the state court suspended its proceedings for 30
22 days to allow Creditor to obtain relief from stay. Then
23 Creditor filed a motion for relief from the automatic stay for
24 the purpose of proceeding with the March 15th state court
25 hearing. When I did not rule as quickly as Creditor wanted, it



1 nevertheless decided to proceed with the state court hearing
2 without insisting to the state court that the Debtor be severed
3 from the action, or that absolutely no findings be entered
4 whatsoever as to the Debtor. It should have insisted that it
5 wanted to limit the state court's ruling to only the causes of
6 action asserted by the Debtor in its complaint.

7 Instead, as I have stated already, despite the
8 absence of a Bankruptcy Court order granting stay relief, on
9 March 15, 2021, Creditor nevertheless urged the state court to
10 continue with the hearing and its ruling regarding the state
11 court matter on which stay relief was requested, repeating the
12 same quote:

13 "I," meaning Mr. Mushkin, "expected that" -- Judge
14 Cox, "to have submitted a ruling, at least to say to
15 go ahead and go forward. But I'm prepared, Judge. I
16 will try and make this as quick as possible, as you
17 expressed your desire for us to hurry and finish."

18 And while Creditor's counsel made statements during
19 the state court hearing seemingly indicating that it was
20 appropriate to proceed only against non-debtor parties, such
21 comments again, as I repeated, fly in the face of Creditor's
22 counsel's admission to the state court that, "I am trying to
23 get a straight line to foreclosure. And as soon as I get the
24 relief that I need from the Bankruptcy Court, then I'll have
25 the ability to go forward. That relief will have to go through



1 the Bankruptcy Court, not through this Court, but the TRO
2 should expire."

3 As is evident from the cases I have cited, it has
4 been well-established law in the 9th Circuit for several years
5 that proceeding on a counterclaim in a state court action
6 against a debtor violates the automatic stay. Furthermore,
7 even after I entered an order denying the motion for relief
8 from the automatic stay, there is nothing in the record
9 indicating that Creditor informed the state court of this
10 development at any time prior to the state court's entry of its
11 findings of fact and conclusions of law entered on April 6th,
12 2021.

13 It appears that Attorney Mushkin knew Creditor was
14 violating the stay. The opposition raised the automatic stay,
15 the state court was concerned about the automatic stay, and
16 Attorney Mushkin on behalf of Creditor elected to proceed to a
17 judgment without having obtained relief from stay. For all
18 these reasons, there is no fair ground of doubt that the
19 automatic stay was being violated as to the counterclaims. It
20 is also without doubt that Creditor intended the actions that
21 violated the stay by proceeding with the state court hearing on
22 March 15th despite the fact that Creditor did not have an order
23 from this Court granting relief from the automatic stay.

24 In the words of Creditor's counsel, "the hearing
25 proceeded in order to establish a straight line to foreclose



1 after obtaining stay relief from the Bankruptcy Court," yet
2 it's difficult to imagine how Creditor would have a straight
3 line to foreclosure after obtaining stay relief if, as the
4 Creditor now alleges, the state court's findings of fact and
5 conclusions of law had no effect whatsoever on Debtor or
6 property of the estate.

7 Additionally, and as alluded to by the state court
8 judge's findings of fact and conclusions of law, Issues A, B,
9 and C all require some interpretation of the forbearance
10 agreement to which Debtor was a party. Therefore, regardless
11 of the limiting language that Creditor's counsel and/or the
12 state court judge tried to inject into the March 15th hearing
13 and the findings of fact and conclusions of law, the ultimate
14 effect was that issues were tried and decided involving Debtor
15 and property of the estate.

16 For all of these reasons, the Court grants the motion
17 in part with respect to Issues A, B, and C decided by the state
18 court judge, and denies the motion in part with respect to
19 Issues D and E decided by the state court judge.

20 What I'd like to do is, Mr. Greene, I'd like for you
21 to prepare an order. I would also like to schedule a hearing
22 regarding sanctions, and I want to discuss with the parties
23 whether you'd like to set up a briefing schedule and then --
24 and we can agree on a date in the future for hearing.

25 MR. MUSHKIN: Your Honor, if I may, I'd like to be



1 heard before we address those issues.

2 THE COURT: Okay, Mr. Mushkin.

3 MR. MUSHKIN: Your Honor, I believe the Court has
4 made an error in two regards. First, the Debtor is not a party
5 to the forbearance agreements. SJCV is the party that is
6 obligated to the Antos parties, to CBC. The Debtor is not a
7 party to those agreements. It didn't exist until those
8 agreements were executed.

9 The second is the repeated comments about "straight
10 line to foreclosure." I make that comment openly, and I make
11 that comment to this judge as well as to the other judge.
12 There is -- the obligations and questions -- in question are
13 those of SJCV. SJCV is a party to the state court action.

14 I was clear. The Court was clear. Those actions
15 were taken against those parties, and the fact that the Court
16 did not dissolve its TRO is further evidence that I did, and
17 the Court did, everything appropriate to make the findings
18 against non-debtor parties who are the obligors, not SHAC.

19 The Debtor is merely the owner of the property. Your
20 Honor, I appreciate the Court's ruling. I just wanted to make
21 those two comments for the record. I believe they are
22 significant. Thank you for the time.

23 THE COURT: And thank you, Mr. Mushkin. I do want to
24 be accurate. My issue with the -- and without having the
25 benefit of being able to look at (audio interference) very



1 quickly, but I am looking at my notes regarding the forbearance
2 agreement, and with respect to both the breach of contract
3 claim -- Counterclaim Number 1, as well as Counterclaim Number
4 2, at least Counterclaim Number 2 specifically references the
5 forbearance agreement, and Debtor is also listed at -- you
6 know, the title of the claim is Breach of the Covenant of Good
7 Faith and Fair Dealing, Forbear -- regarding Forbearance
8 Agreement, and then it includes Debtor, SJCV and holdings, but,
9 important --

10 MR. MUSHKIN: Your Honor, that is correct, because
11 that is a required pleading. They are the holder of the
12 property. They hold title. But the obligations in the
13 operating agreement, in the forbearance agreement, and in all
14 of the transaction documents, are obligations of SJCV, and the
15 "straight line to foreclosure" comment is specifically
16 referencing one of the obligations of SJCV, which was to quiet
17 title for all of those judgments and other liens, which they
18 never even attempted. So the only way to quiet title to those
19 is going to be through a foreclosure. That is why that
20 reference was made.

21 But rest assured, Your Honor, I said in Court, we
22 have to come back to the Bankruptcy Court for relief against
23 the Debtor; and respectfully, Judge, I did not intend to
24 violate the stay. I would never intentionally violate a stay,
25 but the Debtor signed the stipulation -- excuse me. SJCV



1 stipulated to these issues. They rested their case. For my
2 client to not be able to finish is a violation of their due
3 process rights. They are clearly, clearly entitled to finish
4 on the non-debtor parties.

5 And so respectfully, Judge, I'll -- you know, I'm
6 going to do whatever you want, but no way did we intend to
7 create this problem. As you recall from when we argued before
8 the order, I asked you if you would allow us to go over and
9 finish. You said I denied your request. The judge -- in front
10 Judge Gonzalez, I asked for another date. She said I can't
11 give you one for a long time. I said, Judge, we just need a
12 few hours. We're not going to do anything that affects the
13 estate.

14 And my last comment, Judge, the debt relief actions
15 are the plaintiff's debt relief, trying to invalidate the
16 agreements. The counterclaims are simply saying that the
17 agreements are valid. The Debtor also makes those very same
18 claims. That's why she relates them to the debt relief. Those
19 are the Debtor's claims, not the counterclaims. While the
20 Court acknowledges they overlap, they overlap because they
21 must. We're trying to enforce the agreement, they're trying to
22 invalidate the agreement.

23 Respectfully, Judge, we did not proceed on our
24 counterclaims. The bulk of our counterclaims are fraud based.

25 THE COURT: I have --



1 MR. GREENE: Your Honor, this is James Greene. May I
2 heard really briefly? I'll be much shorter. Your Honor, I
3 think the Court has made a ruling and Counsel -- oh, I'm sorry.

4 THE COURT: Mr. Greene. Let me proceed first, and
5 then I will get -- I want (audio interference) but I want to
6 address a couple points raised by Mr. Mushkin.

7 Mr. Mushkin, I spent --

8 MR. GREENE: Okay. I apologize, Your Honor.

9 THE COURT: That's okay.

10 Mr. Mushkin, I've spent a lot of time reviewing the
11 record here, and I know that there was several indications that
12 the Court was attempting in state court to attempt to rule
13 around the automatic stay. But the bottom line is, that that
14 was not effective. We can -- I don't have the ability right
15 now to double-check every issue you've stated about the
16 forbearance agreement, but it doesn't change my ruling.

17 The issues in -- of A, B, and C, even admitted to by
18 the judge, she's the one that -- who actually wrote that in her
19 order, those issues all revolve around counterclaims against
20 the Debtor. They certainly involve property of the estate, and
21 they certainly affect the Debtor's ability to defend itself
22 with respect to any action pending in the state court.

23 So I don't -- I -- there's nothing that I'm going to
24 change about my order today. I disagree with -- you know, I
25 read the transcript. I disagree with your assertions. There



1 was no strenuous effort to try to make sure that this did not
2 proceed against the debtor, there being findings against
3 debtor. So again, I'm not going to continue to defend my
4 decision, but I did want to address that.

5 Mr. Greene, you can speak now.

6 MR. GREENE: Your Honor, I apologize, I started to
7 speak and then I didn't realize you were speaking. That's why
8 I kept going, and I apologize for that.

9 Your Honor, you've made your rulings. Mr. Mushkin
10 seems to be trying to argue his motion after the fact, and I
11 think we should just proceed with the briefing issue, and
12 Mr. Mushkin knows what his remedies are. So, let us know what
13 your thoughts are on what you'd like from us as far as further
14 briefing or evidence.

15 THE COURT: Well, I would -- so let's -- I guess
16 let's talk about timing. (Audio interference) Mr. Mushkin, are
17 you going to want to have some discovery with respect to the
18 damages issue? That will obviously weigh in on how far out we
19 set this for hearing.

20 I certainly want some briefings to address that. And
21 I would want it to be -- Mr. Greene, I would like to have your
22 brief first. I would like Mr. Mushkin to be able to respond to
23 it. You can then have a reply. But I am open to setting this
24 as an evidentiary hearing that would allow for discovery.

25 MR. GREENE: Your Honor, this is James Greene. Your



1 Honor, the only damages that we have ever indicated we were
2 requesting were the attorneys' fees for the Maier Gutierrez
3 firm at the March 15th hearing and surrounding that, and then
4 the attorneys' fees and costs for prosecuting this motion for
5 sanctions. So there are no damages beyond that, any
6 consequential damages beyond that. We are simply basically
7 seeking the damages for the professional fees relating to
8 enforcing the automatic stay. So I'm not sure how much
9 discovery would be necessary.

10 We have already, in fact, filed fee applications that
11 I think have a lot of the information, but I can certainly file
12 a tailored declaration with the attorneys' fees, just relating
13 to what we're asking for. But that -- just so the Court knows,
14 that's all the damages we're asking for. We're not asking for
15 any damages beyond that. And under the 9th Circuit case laws I
16 referenced in my original filing and the supplemental brief,
17 under -- we don't have grounds under 362(k) because it's not an
18 individual debtor, and there is no ground -- there are no
19 grounds under 105 for punitive damages or anything, and we have
20 never requested those. So that should streamline any
21 discovery, I would think.

22 THE COURT: I agree. Mr. Mushkin, I'll let you weigh
23 in on that in a second, but then I would just like to see from
24 you, Mr. Greene, like you said, a more tailored motion that
25 sets forth the (audio interference) supported by declarations.



1 I would like counsel to be available at the hearing, though,
2 for cross-exam if necessary, but that seems like that --

3 MR. GREENE: Of course.

4 THE COURT: -- that should be (audio interference).

5 Mr. Mushkin, do you have an issue with that? I would
6 allow you to file an opposing brief, or an opposition, and we
7 can just set the hearing out.

8 Mr. Greene, it doesn't sound like that's going to
9 take very long. We could set this hearing out for 30 days, and
10 just have a normal, in the ordinary course, briefing?

11 MR. GREENE: This is James Greene. Yes, Your Honor,
12 I could have a declaration with our itemized fees by probably
13 middle of next week. I guess that would be May 9th? Excuse
14 me, May -- well, let me just -- maybe the 28th? By the 28th?

15 THE COURT: Yeah, let's do that. And then 30 days
16 from the 28th, we can set it for hearing, and then it would
17 just be -- the opposition would be due in the ordinary course,
18 and any reply due in the ordinary course.

19 MR. MUSHKIN: Your Honor?

20 THE COURT: Let's set that -- yes, Mr. Mushkin?

21 MR. MUSHKIN: As much as I would like to streamline
22 and get this quickly before the Court, I'm somewhat at a loss
23 because I don't know what they're going to seek. And until I
24 know what they're going to seek, and the form in which they
25 seek it, I don't know if I will need discovery to understand



1 what they've done.

2 The -- and then that -- Your Honor, I guess I would
3 also expect the Court to temper that by -- because of the parts
4 of the ruling that are enforced by the Court -- that are not
5 violative of the stay. So I just don't know, but I'll do
6 whatever the Court wishes. I do want an opportunity, if I need
7 it, to get some information about these billings. We were in
8 court --

9 THE COURT: And I --

10 MR. MUSHKIN: I'm sorry, Judge. We were in court and
11 in front of Judge Gonzalez for about three and a half hours.

12 THE COURT: Okay. All right. Well then, I will
13 certainly entertain the request, once you've had a chance to
14 see the motion, to -- you know, to get some discovery and
15 continue the hearing if need be. But right now, let's go ahead
16 and set it. Mr. Greene, I'd like to see your papers filed by
17 the 28th of May.

18 MR. GREENE: Okay. Thank you, Your Honor.

19 THE COURT: Sure. Ms. Rawlings, what's 30 days after
20 the 28th?

21 THE CLERK: Your Honor, are you looking for exactly
22 30 days, or just a hearing after that?

23 THE COURT: A hearing after that. It doesn't have to
24 be on the -- it can be on the regular calendar, just -- it can
25 be on a Tuesday calendar, just at -- ten o'clock would be fine.



1 THE CLERK: We can use June 29th or July 6th.

2 MR. MUSHKIN: I'm not available July 6th, Your Honor.

3 THE COURT: Okay. How about the following --

4 MR. GREENE: Your Honor, this is James Greene.

5 THE COURT: Go ahead.

6 MR. GREENE: Either of those dates work for me, if

7 Mister -- June 29th is fine with me.

8 THE COURT: Well, let's go -- let's push it out just
9 a little bit. Is the 13th available, Ms. Rawlings?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: Let's do -- let's set it right now for
12 10 a.m. on the 13th. And like I said, the opposition and
13 replies would just be due in the ordinary course, pursuant to
14 Local Rules.

15 MR. MUSHKIN: And you're going to take evidence on
16 that date, Your Honor?

17 THE COURT: I will.

18 MR. MUSHKIN: Thank you, Your Honor.

19 THE COURT: Sure.

20 MR. GREENE: Your Honor, would you like me to put the
21 appropriate dates in the order based on this hearing?

22 THE COURT: Yes, please.

23 MR. GREENE: And I, of course, will run it by
24 Mr. Mushkin.

25 THE COURT: Absolutely. Okay. Well, (audio



1 interference) conclude the hearing. Thank you.

2 MR. GREENE: Thank you, Your Honor.

3 MR. MUSHKIN: Thank you, Your Honor.

4 THE COURT: Off record.

5 THE CLERK: Thank you, Your Honor. Off record.

6 (Proceedings concluded at 10:38 a.m.)

7 * * * * *

8

9

10

11

12

13

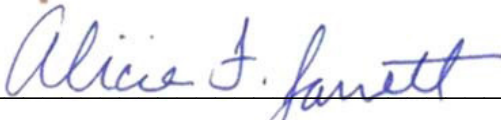
14 **C E R T I F I C A T I O N**

15

16 I, Alicia Jarrett, court-approved transcriber, hereby
17 certify that the foregoing is a correct transcript from the
18 official electronic sound recording of the proceedings in the
19 above-entitled matter.

20

21

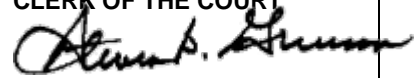
22 
23 _____

24 ALICIA JARRETT, AAERT NO. 428

DATE: June 8, 2021

25 ACCESS TRANSCRIPTS, LLC





RPLY

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.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: XI

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO AMEND THE COURT'S
FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER, OR
ALTERNATIVELY FOR
RECONSIDERATION**

Hearing Date: June 4, 2021

Hearing Time: In Chambers

Plaintiffs Spanish Heights Acquisition Company ("SHAC") and SJC Ventures Holding
Company, LLC, d/b/a SJC Ventures LLC ("SJC") (collectively "Plaintiffs"), by and through their

1 attorneys of record, MAIER GUTIERREZ & ASSOCIATES, hereby file this reply in support of the motion
2 to amend, or alternatively, for reconsideration of the Court's Findings of Fact, Conclusions of Law,
3 and Order ("FFCL") filed on April 6, 2021, with notice of entry thereof filed on April 20, 2021.
4 Specifically, the Court's FFCL did not address the March 2021 dilution of Defendants' claimed
5 membership interest in SJC, which resulted in SJC becoming the 100% owner of SHAC, and how that
6 ownership affects the declaratory relief claims that were adjudicated by the Court in the FFCL
7 following the preliminary injunction hearing and non-jury trial that was held on February 1-3, 2021,
8 and March 15, 2021.

9 This reply is made and based upon the memorandum of authorities, the exhibits attached
10 hereto, and the papers and pleadings on file in this matter.

11 DATED this 28th day of May, 2021.

12 Respectfully submitted,

13 **MAIER GUTIERREZ & ASSOCIATES**

14 /s/ Danielle J. Barraza

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

19
20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. LEGAL ARGUMENT**

22 In their opposition, Defendants argue that Plaintiffs have presented "gross misrepresentations
23 of the underlying documents" before insisting that "SJC is no longer a member of Spanish Heights
24 Acquisition Company, LLC ("SHAC")". Opp. at p. 3. Ironically, that itself is a gross
25 misrepresentation, as this Court never issued such a finding or conclusion in its Findings of Fact and
26 Conclusions of Law ("FFCL") filed on April 6, 2021.

27 To the contrary, the Court merely ruled that the Pledge Agreement (that SJC never executed)
28 "is a valid existing obligation of SJC." FFCL at p. 20. The Pledge Agreement states that the

1 “Secured Party shall have the right, at any time in Secured Party’s discretion after a Non-Monetary
2 Event of Default . . . to transfer to or to register in the name of Secured Party or any of Secured Party’s
3 nominees any or all of the Pledged Collateral.” FFCL at p. 12.

4 But what is *not* addressed by the FFCL is whether SHAC or SJC actually ever incurred a “Non-
5 Monetary Event of Default,” especially in light of CBC Partners I, LLC admittedly materially
6 defaulting on the Forbearance Agreement by failing to make payments on the first and second
7 mortgage.

8 Also unaddressed by the FFCL is whether CBC Partners I, LLC’s “notice” sent on April 1,
9 2020 which stated that it was exercising its rights under the Pledge Agreement “by transferring the
10 pledged collateral to [CBC Partners I, LLC’s] nominee CBC Partners, LLC” actually served to transfer
11 SJC’s rights to SHAC to CBC Partners, LLC, again as that notice came after CBC Partners I, LLC
12 had already defaulted on the Forbearance Agreement. FFCL at p. 15, ¶ 71.

13 All of this is pertinent to the claims for declaratory relief as to the Pledge Agreement, although
14 a decision on this motion may need to be stayed until after trial has determined which party materially
15 breached the Forbearance Agreement, and whether any alleged breach by Plaintiffs was excused due
16 to a material breach committed by CBC Partners I, LLC.

17 Further, this Court’s FFCL did not address the dilution event that occurred in March 2021 with
18 respect to SHAC’s ownership. Because SJC issued a capital call in March of 2021 which the
19 Defendants declined to participate in, any membership interest that Defendants (including 5148
20 Spanish Heights, LLC or CBC Partners I, LLC) claim to have in SJC under the Pledge Agreement has
21 been diluted as a result of SJC becoming the 100% owner of SHAC.

22 As the Court found, the only party that actually executed an Assignment of Company and
23 Membership Interest in SHAC was the Antos Trust – not SJC. FFCL at p. 15, ¶ 72. It is therefore
24 unclear how Defendants can legitimately argue that “SJC is no longer a member” of SHAC, as the
25 Court never found that SJC issued an assignment of its interest, and the Court never found that SJC
26 or SHAC defaulted on the Amended Forbearance Agreement. As such, the March 2021 capital call
27 was in fact valid, and Defendants’ failure to participate in that capital call resulted in their claimed
28 interest (received from the Antos Trust) was diluted.

1 The Court did not address the March 2021 dilution event in its FFCL. As such, Plaintiffs are
2 simply seeking clarification or reconsideration on that issue (especially as now the Defendants appear
3 to be under the impression that SJC is no longer a member of SHAC) even if such direction from the
4 Court indicates that this issue will be decided following trial on the remaining claims..

5 **II. CONCLUSION**

6 Based on the foregoing, Plaintiffs request that the Court reconsider or in the alternative amend
7 its FFCL regarding the March 2021 dilution event that occurred in SHAC's membership interest, as
8 a result of the Defendants failing to participate in the validly-noticed Capital Call. Such non-
9 participation resulted in SJC becoming the 100% owner of SHAC.

10 DATED this 28th day of May, 2021.

11 Respectfully submitted,

12 **MAIER GUTIERREZ & ASSOCIATES**

13 /s/ Danielle J. Barraza

14 JOSEPH A. GUTIERREZ, ESQ.
15 Nevada Bar No. 9046
16 DANIELLE J. BARRAZA, ESQ.
17 Nevada Bar No. 13822
18 8816 Spanish Ridge Avenue
19 Las Vegas, Nevada 89148
20 *Attorneys for Plaintiffs*
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
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*

An Employee of MAIER GUTIERREZ & ASSOCIATES

A-20-813439-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

June 04, 2021

A-20-813439-B Spanish Heights Acquisition Company LLC, Plaintiff(s)
vs.
CBC Partners I LLC, Defendant(s)

June 04, 2021

3:00 AM

Motion to Reconsider

HEARD BY: Gonzalez, Elizabeth

COURTROOM: Chambers

COURT CLERK: Valeria Guerra

JOURNAL ENTRIES

The Court having reviewed Motion to Amend FFCL or Alternatively Reconsider and the related briefing and being fully informed, states that the dilution event was not part of the scope described in footnote 1 and the issue will be decided following trial on the remaining claims or appropriate motion practice. Counsel for Movant is directed to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

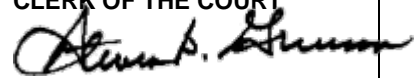
CLERK'S NOTE: A copy of this minute order was distributed via Odyssey File and Serve. -
vg//6/7/21

PRINT DATE: 06/07/2021

Page 1 of 1

Minutes Date: June 04, 2021

AA4432



NOT

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.

AND RELATED CLAIMS.

Case No.: A-20-813439-B

Dept. No.: XI

**NOTICE OF THE BANKRUPTCY COURT
FINDING THAT DEFENDANTS
VIOLATED THE STAY OF LITIGATION
RESULTING IN VOID FFCL**

Plaintiff SJC Ventures Holding Company, LLC, d/b/a SJC Ventures LLC ("SJC" or
"Plaintiff"), by and through its attorneys of record, MAIER GUTIERREZ & ASSOCIATES, hereby files

1 this notice regarding the proceedings taking place in the SHAC Bankruptcy case.

2 Debtor Spanish Heights Acquisition Company, LLC (“SHAC”) filed a petition under Chapter
3 11 of the United States Bankruptcy Code on February 3, 2021 (“Petition Date”). As a result of that
4 filing, an Automatic Stay arose prohibiting any opposing parties in pending litigation from
5 commencing or continuing litigation against SHAC. 11 U.S.C. §362(a)(1), (3) and (6). Promptly
6 thereafter, three entities that were parties in litigation with Debtor that was pending on the Petition
7 Date (the “CBC Parties”) filed a motion seeking to dismiss SHAC’s bankruptcy case or to obtain relief
8 from the Automatic Stay (“Stay Relief Motion”). A hearing on the Stay Relief Motion was held on
9 March 9, 2021 at which time the Bankruptcy Court took the matter under advisement. As a result, the
10 Automatic Stay remained in effect.

11 Despite failing to obtain dismissal of SHAC’s case or relief from the Stay, the CBC Parties
12 chose to proceed with trial in this instant action on March 15, 2021, in the hope of getting a “straight
13 line to foreclose” on SHAC’s real property.

14 Thereafter, SHAC filed a motion in the Bankruptcy Court asserting that the continuation of
15 the state court trial on March 15, 2021 violated the Automatic Stay (“Stay Violation Motion”). While
16 the Stay Violation Motion was pending, this Court issued its FFCL on April 6, 2021, which adversely
17 affected SHAC on at least three issues that were part of the CBC Parties’ counterclaims against SHAC
18 (“FFCL”). Those issues are:

- 19 (a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note
20 between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;
- 21 (b) Interpretation and/or validity of the claimed third-person Deed of Trust and all
22 modifications thereto, and determination as to whether any consideration was provided in
23 exchange for the Deed of Trust; and
- 24 (c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended
25 Forbearance Agreement and all associated documents/contracts.

26 *See 4/6/2021 FFCL, on file, at fn. 1.*

27 At a hearing on May 18, 2021, the Bankruptcy Court issued its ruling regarding the Stay
28 Violation Motion holding that “there is no fair ground of doubt that the automatic stay was being

1 violated as to the counterclaims. It is also without doubt that Creditor [the CBC Parties] intended the
2 actions that violated the stay by proceeding with the state court hearing on March 15th despite the fact
3 that Creditor did not have an order from this Court granting relief from the automatic stay.” See
4 **Exhibit 1** hereto, page 13, lines 16-23. The Bankruptcy Court later held a hearing on appropriate
5 sanctions for the stay violations and that issue remains under submission with the Bankruptcy Court.

6 The law concerning the effect of the Automatic Stay on actions take in violation of the Stay
7 has been crystal clear in the Ninth Circuit for at least 30 years: Such actions are VOID. The seminal
8 Ninth Circuit case on this issue is *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th
9 Cir. 1992) (“Our decision today clarifies this area of the law by making clear that violations of the
10 automatic stay are void, not voidable.”). Since issuing the *Schwartz* ruling, the Ninth Circuit has
11 repeatedly and clearly reiterated that actions taken in violation of the automatic stay are void. *Burton*
12 *v. Infinity Capital Mgmt.*, 862 F.3d 740, 746 (9th Cir/ 2017); *Contractors’ State License Bd. Of Calif.*
13 *V. Dunbar (In re Dunbar)*, 245 F.3d 1058, 1062 (9th Cir. 2001); *Gruntz v. County of Los Angeles (In*
14 *re Gruntz)*, 202 F.3d 1074, 1081-1082 (9th Cir. 2000).

15 Because actions taken in violation of the Automatic Stay are void (and not voidable), a debtor
16 need take no action to have the action unwound or otherwise declared void. It is as if the action simply
17 had not occurred. *Gruntz*, 202 F.3d at 1081 (“The automatic stay is self-effectuating, effective upon
18 the filing of the bankruptcy petition.”). The Bankruptcy Court has the exclusive jurisdiction to
19 determine the scope of the automatic stay and whether to grant relief from the stay. *Id.* (“Any state
20 court modification of the automatic stay would constitute an unauthorized infringement upon the
21 bankruptcy court’s jurisdiction to enforce the stay.”).

22 In this case, the Bankruptcy Court has determined that the trial held on March 15, 2021
23 violated the automatic stay specifically as it relates to the following issues:

- 24 (a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note
25 between CBC Partners I, LLC, and KCI Investments, LLC, and all modifications;
- 26 (b) Interpretation and/or validity of the claimed third-person Deed of Trust and all
27 modifications thereto, and determination as to whether any consideration was provided in
28 exchange for the Deed of Trust; and
- (c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended

Forbearance Agreement and all associated documents/contracts.

See Ex. 1 at p. 2. As a result, the findings from that trial related to those issues are void and it is as if they never happened. *Id.* at 1082 (“judicial proceedings in violation of the automatic stay are void.”) (quoting *Phoenix Bond & Indemnity Co. v. Shamblin (In re Shamblin)*, 890 F2d 123, 125 (9th Cir. 1989)). By logical extension, therefore, the majority of this Court’s FFCL issued on April 6, 2021 is similarly void, at least as to the issues identified by the Bankruptcy Court in its ruling. SHAC submits that it is literally impossible to separate out the issues addressed at the March 15, 2021 trial and treat them as if they somehow avoid the effect of the automatic stay. Therefore, to the extent that any subsequent ruling is based on the testimony and arguments made on March 15, 2021 and the resulting FFCL, those actions are void as well.

DATED this 6th day of August, 2021.

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

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Michael R. Mushkin, Esq.
MUSHKIN & COPPEDGE
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*

An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1

Natalie M. Cox

Honorable Natalie M. Cox
United States Bankruptcy Judge



Entered on Docket
May 26, 2021

GREENE INFUSO, LLP
3030 South Jones Boulevard, Suite 101
Las Vegas, Nevada 89146
(702) 570-6000

James D. Greene, Esq.
Nevada Bar No. 2647
GREENE INFUSO, LLP
3030 South Jones Boulevard
Suite 101
Las Vegas, Nevada 89146
Telephone: (702) 570-6000
Facsimile: (702) 463-8401
E-mail: jgreene@greeneinfusolaw.com

Attorneys for Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC,

Debtor.

Bankruptcy No. BK-S-21-10501-NMC

Chapter 11

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
SANCTIONS FOR VIOLATION OF
AUTOMATIC STAY OF BANKRUPTCY
CODE SECTION 362(a) AND RELATED
RELIEF**

Hearing Date: May 18, 2021

Hearing Time: 10:00 a.m.

Debtor's Motion for Sanctions for Violation of the Automatic Stay of Bankruptcy Code §362(a) and Related Relief ("Sanctions Motion") came on for hearing at the above date and time, the Honorable Natalie M. Cox, United State Bankruptcy Judge, presiding. Debtor was

1 represented by James D. Greene, Esq. of Greene Infuso, LLP and Danielle J. Barraza, Esq. of
2 Maier Gutierrez & Associates. Parties 5148 Spanish Heights, LLC, CBC Partners I, LLC and
3 CBC Partners, LLC (collectively “CBC Parties”) were represented by Michael R. Mushkin Esq.
4 of Mushkin & Coppedge. No other appearances were entered. For the reasons stated on the
5 record at the hearing and incorporating those findings of fact and conclusions of law herein
6 pursuant to Federal Rule of Bankruptcy Procedure 7052, and with good cause appearing,

7 IT IS HEREBY ORDERED that the Motion is Granted in part and the Court finds that the
8 CBC Parties violated the automatic stay of 11 U.S.C. §362(a) with respect to the items designated
9 as issues (a), (b), and (c) on ECF No. 79-2, page 3, note 1, lines 17-20;

10 IT IS FURTHER ORDERED that the Motion is Denied with respect the issues designated
11 as issues (d) and (e) on ECF 79-2, page 3, note 1, lines 21-23;

12 IT IS FURTHER ORDERED that the Debtor is entitled to an award of sanctions against
13 the CBC Parties for their stay violations under the standards of *Taggart v. Lorenzen*, 139 S. Ct.
14 1795 (2019);

15 IT IS FURTHER ORDERED that Debtor’s counsel shall submit briefing and evidence
16 supporting its claims for damages as a result of the CBC Parties’ stay violations on or before May
17 28, 2021;

18 IT IS FURTHER ORDERED that the CBC Parties may file any opposition and related
19 documents or evidence relating to the Debtor’s damage claims on or before June 29, 2021;

20 IT IS FURTHER ORDERED that the Debtor may file a reply in support of its damages
21 claim on or before July 6, 2021;

GREENE INFUSO, LLP
3030 South Jones Boulevard, Suite 101
Las Vegas, Nevada 89146
(702) 570-6000

1 IT IS FURTHER ORDERED that a hearing regarding Debtor's request for sanctions shall
2 be held on July 13, 2021 at 10:00 a.m.

3 Submitted by:

4 **GREENE INFUSO, LLP**

5 /s/ James D. Greene
6 JAMES D. GREENE, ESQ.
3030 South Jones Boulevard, Suite 101
7 Las Vegas, Nevada 89146

8 Approved by:

9 **MAIER GUTIERREZ & ASSOCIATES**

10
11 /s/ Danielle Barraza
12 Danielle Barraza
8816 Spanish Ridge Ave
13 Las Vegas, Nevada 89148

14
15 Approved by:

16
17 **MUSHKIN & COPPEDGE**

18
19 /s/ Michael R. Mushin
Michael R. Mushkin, Esq.
20 6070 South Eastern Ave Ste 270
Las Vegas, Nevada 89119
21
22
23
24
25
26
27
28

GREENE INFUSO, LLP
3030 South Jones Boulevard, Suite 101
Las Vegas, Nevada 89146
(702) 570-6000

LOCAL RULE 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐

The court has waived the requirement set forth LR 9021(b)(1).

☐

No party appeared at the hearing or filed an objection to the motion.

☒

I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐

I certify that this is a chapter 7 or 13 case, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

###