

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SPANISH HEIGHTS ACQUISITION  
COMPANY, LLC; SJC VENTURES  
HOLDING COMPANY, LLC, d/b/a SJC  
VENTURES, LLC,

Petitioners,

v.

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

Respondents.

Electronically Filed  
Apr 11 2022 04:30 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No. 82868  
District Court Case No. A-20-813439-B

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**APPENDIX TO MOTION TO DISMISS APPEAL**

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## MOTION TO DISMISS APPEAL

	Document
A.	Grant Bargain Sale Deed
B.	Secured Promissory Note
C.	Amendments to Secured Promissory Note
D.	Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing
E.	First Modification to Deed of Trust, Assignment of rents, Security Agreement and Fixture Filing
F.	Email from Jay Bloom
G.	Forbearance Agreement
H.	Amendment to Forbearance Agreement
I.	Letter of Default
J.	Note Purchase and Sale Agreement
K.	Stipulation Regarding Legal Issues to Be Decided by the Court at Bifurcated Trial Commencing February 1, 2021 filed January 1, 2021
L.	Transcript of Proceedings – Preliminary Injunction Hearing and Trial – Day 2 Filed February 19, 2021.
M.	Findings of Fact and Conclusions of Law filed April 6, 2021
N.	Order Granting in Part Kenneth Antos and Sheila Neumann- Antos Motion for Summary Judgment
O.	Status Report Regarding Lifting of Bankruptcy Stay filed July 28, 2021
P.	Transcript of Proceedings – Hearing of November 15, 2021
Q.	Order Confirming Third Amended Plan of Reorganization for the Debtor Under Chapter 11 of the United States Bankruptcy Code

R.	Notice of Trustee's Sale
S.	Transcript of Proceedings – Hearing of January 28, 2022
T.	Trustee's Deed Upon Sale
U.	Transcript of OST RE: Motion for Order to Show Cause for Violation for Confirmed Chapter 11 Plan and Related Relief

# EXHIBIT “A”



A.P. N.: 163-29-615-007  
R.P.T.T.: \$ EXEMPT #7

Escrow #10-05-0444-KMD

Mail tax bill to and when recorded mail to:  
Kenneth M. Antos and Shelia Antos Living  
Trust dated April 26, 2007  
5148 Spanish Heights Drive  
Las Vegas, NV 89148

Inst #: 201010140002674  
Fees: \$16.00 N/C Fee: \$0.00  
RPTT: \$0.00 Ex: #007  
10/14/2010 11:14:33 AM  
Receipt #: 540369  
Requestor:  
NEVADA TITLE LAS VEGAS  
Recorded By: GILKS Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

## **GRANT, BARGAIN, SALE DEED**

**THIS INDENTURE WITNESSETH**, That **Kenneth M. Antos and Shelia M. Neumann-Antos, husband and wife, as joint tenants**, for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to **Kenneth M. Antos and Shelia M. Neumann-Antos, Trustees of The Kenneth and Shelia Antos Living Trust dated April 26, 2007, and any amendments thereto**, all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

**SEE LEGAL DESCRIPTION ATTACHED HERETO  
AND MADE A PART HEREOF AS EXHIBIT "A".**

### **SUBJECT TO:**

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any;
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

**TOGETHER WITH** all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

IN WITNESS WHEREOF, this instrument has been executed this October, 2010.

7 day of

Kenneth M. Antos

Kenneth M. Antos

Sheila M. Neumann-Antos  
Sheila M. Neumann-Antos

State of NEVADA }  
County of Clark } ss:

This instrument was acknowledged before me on

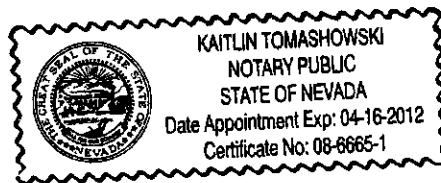
10/7/10

by Kenneth M. Antos and Sheila M. Neumann-Antos

Kaitlin Tomashowski

NOTARY PUBLIC  
My Commission  
Expires:

4/16/12



Kaitlin Tomashowski  
Cert. 08-6665-1  
Exp. 04-16-2012



**EXHIBIT "A"**

LOT SEVEN (7) IN BLOCK FIVE (5) OF SPANISH HILLS ESTATES UNIT 5A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 107, OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.



# EXHIBIT “B”

## SECURED PROMISSORY NOTE

\$300,000.00

Bellevue, Washington  
June 22, 2012

For value received, KCI Investments, LLC, a Nevada limited liability company ("Borrower") promises to pay to the order of CBC Partners I, LLC, a Washington limited liability company, or its assigns ("Lender") the sum of the aggregate unpaid principal amount of the amount advanced to Borrower under this Secured Promissory Note plus interest thereon accruing from and after the date of the advance. Lender will lend to Borrower up to the maximum amount of \$300,000.00, to be lent through a single advance (the "Advance") (such borrowing, in the aggregate, the "Loan"). The principal of, and interest on, the Loan shall be payable in lawful currency of the United States of America by wire transfer in immediately available funds to the account of Lender, as provided in writing to Borrower by Lender. All payments shall be applied first to fees, costs and charges relating to this Secured Promissory Note (including, without limitation, any costs of collection), then to accrued and unpaid interest, and thereafter to principal.

### 1. Certain Definitions.

#### 1.1 As used in this Agreement:

"Advance" has the meaning specified in the first paragraph of this Secured Promissory Note.

"Ancillary Documents" means all instruments, agreements or other documents to be executed by Borrower or others including without limitation the Security Agreement and any other instruments, agreements, or documents in fact executed in connection with this Secured Promissory Note.

"Business Day" means a day which is not a Saturday, Sunday, or day on which banks in Seattle, Washington are generally closed for business.

"Default Rate" means an interest rate five percent (5%) per annum higher than the Note Rate.

"Event of Default" has the meaning set forth in Section 7 of this Secured Promissory Note.

"Liabilities" means all monetary and other obligations of Borrower hereunder, whether or not then due and payable, under the Note and under the Ancillary Documents.

"Loan" has the meaning specified in the first paragraph of this Secured Promissory Note.

"Maturity Date" means the date that is 1 month following the date first above written.



"Note Rate" has the meaning specified in Section 2.2.1 of this Secured Promissory Note.

"Prime Rate" means the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks as quoted by the Wall Street Journal.

1.2 **Miscellaneous Terms.** All terms of an accounting character used in this Secured Promissory Note and not specifically defined have the meanings assigned to such terms by U.S. generally accepted accounting principles.

## **2. Term Loan**

2.1 **Advance.** Lender must receive a written request for a specific amount and use signed by Borrower in the form attached hereto as Exhibit A (the "Advance Request") within five business days of the execution of this Note. The Advance will not be made for less than \$300,000 unless otherwise agreed to in writing by Lender in its sole discretion. The Advance shall not be made on or after the Maturity Date, or after the occurrence of an Event of Default which has not been cured. Borrower agrees that Lender may rely on the Advance Request given by any person Lender reasonably believes is authorized to make such request without the necessity of independent investigation.

2.2 **Interest.** Absent an Event of Default, the amount of the Advance shall accrue interest at the rate equal to thirteen and one-half percent (13.5%) ("Note Rate"). Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days. Notwithstanding the foregoing, it is intended that the rate of interest hereon shall never exceed the maximum rate, if any, which may be legally charged on the Loan (the "Maximum Rate"), and if the provisions for interest contained in this Secured Promissory Note would result in a rate higher than the Maximum Rate, interest shall be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal. Neither Borrower nor any guarantor or endorser of this Secured Promissory Note shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any such excess interest.

2.3 **Default Interest.** Upon the occurrence of an Event of Default, the unpaid principal amount of the Loan and accrued and unpaid interest thereon shall bear interest at a rate equal to the lesser of the (i) Maximum Amount or (ii) Default Rate. Such interest shall accrue, commencing upon the occurrence of an Event of Default and continue until such Event of Default is cured or waived.

2.4 **Payments.** Borrower shall make monthly payments of interest beginning on the first (1<sup>st</sup>) day of the month following the date of the Advance. Borrower may prepay all or any portion of the Loan, at any time prior to the Maturity Date, without premium or penalty.

2.5 Late Charges. If Lender has not received the full amount of any payment due hereunder by the date it is due, Borrower shall promptly pay a late charge to the Lender in the amount of ten percent (10%) of the overdue amount. Borrower agrees this late charge is to compensate the Lender for damages the Lender will suffer in servicing the Loan including expenses directly attributable to handling delinquent payments. Borrower further agrees that the actual damages suffered by Lender will be extremely difficult and impractical to ascertain and the sum of five percent (5%) of the overdue payment is fair and reasonable.

2.6 Origination Fee and Expenses. Borrower shall pay to Lender an origination fee in the amount of one thousand dollars (\$1,000.00) contemporaneously with Borrower's execution and delivery to Lender of this Secured Promissory Note. Notwithstanding the foregoing, the Parties have agreed that the origination fee will be paid by funds at the time of closing. Borrower's execution of this Secured Promissory Note shall constitute its agreement, regardless of whether the Loan closes and funds, to pay upon demand all reasonable expenses in connection with the Loan, including (without limitation) legal fees for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Secured Promissory Note and the Ancillary Documents, and all other fees and costs incidental to the closing and making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

3. **Conditions Precedent.** The execution and performance of this Secured Promissory Note by Lender, including the Advance, is subject to the following conditions precedent:

3.1 Documents. Execution by Borrower and delivery to Lender of this Secured Promissory Note and the Ancillary Documents, in each case, in form and substance satisfactory to Lender.

3.2 Authorization. Delivery to Lender of such consents or resolutions of or for Borrower as Lender deems necessary or desirable in order to evidence the due authorization of this Secured Promissory Note and the Ancillary Documents.

3.3 No Default. No Event of Default shall have occurred and remain uncured and no event which would constitute an Event of Default upon the giving of notice and/or the expiration of any cure period shall have occurred and remain uncured.

3.4 Representations and Warranties. The representations and warranties in Section 4 of this Secured Promissory Note shall be true and correct as of the date of this note and of the Advance.

3.5 Advance Request. The Advance shall have been requested by Borrower pursuant to the Advance Request and approved by Lender.



3.6 Guaranties. Lender shall have obtained all guaranties of the Loan it has requested from third parties.

3.7 Financial Condition. There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

4. Representations and Warranties. To induce Lender to enter into this Secured Promissory Note, Borrower hereby represents, warrants, and covenants from the date of this note and until final payment in full and performance of all obligations hereunder and except as specifically set forth in the disclosure schedule attached to this note ("Disclosure Schedule") as follows:

4.1 Organization, Good Standing and Qualification. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and has all requisite corporate power and authority to carry on its business. Borrower is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business, properties, operations, prospects or condition (financial or otherwise).

4.2 Authorization of Agreement, Etc. The execution, delivery and performance by Borrower of this Secured Promissory Note and the Ancillary Documents have been duly authorized by all requisite corporate action by Borrower in accordance with applicable law. This Secured Promissory Note and the Ancillary Documents are valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other laws of general application effecting enforcements of creditors' rights or general principles of equity.

4.3 No Conflicts. The execution, performance, issuance, and delivery of this Secured Promissory Note and the Ancillary Documents, and compliance with the provisions hereof and thereof by Borrower, will not (a) to the knowledge of Borrower, violate any provision of any law, statute, rule or regulation applicable to Borrower or any ruling, writ, injunction, order, judgment or decree of any court, arbitrator, administrative agency or other governmental body applicable to Borrower or any of its properties or assets or (b) conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute (with notice or lapse of time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of, any encumbrance upon any of the material assets of Borrower under, the Articles of Incorporation or Bylaws of Borrower (as they may be amended to date) or any agreement, obligation, indenture or other or instrument to which Borrower is a party. As used herein, "encumbrance" shall mean any liens, charges, encumbrances, equities, claims, options, proxies, pledges, security interests, licenses or other similar rights of any nature.

4.4 Compliance with Other Instruments. Borrower is not in violation of any term of its Certificate of Formation, as amended, including any certificate of designation filed therewith, and/or the Borrower's Operating Agreement. The Borrower is not, in any material respect, in violation of any term of any mortgage, indenture, contract, agreement, instrument, judgment, obligation, decree, order, statute, rule or regulation to which it is subject. To the best of Borrower's knowledge, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a breach or violation, in any material respect, under any applicable judgments, orders, writs, decrees, federal, state and/or local laws, rules or regulations which would have a material adverse affect on the condition, financial or otherwise, or operations of Borrower (as it is currently conducted and as it is proposed to be conducted) or on any material assets owned, controlled, licensed, possessed, and/or used by Borrower. To the best of its knowledge, Borrower has avoided every condition, and has not performed any act, the occurrence of which would result in Borrower's loss of any right granted under any license, distribution agreement or other agreement.

4.5 Approvals. No permit, authorization, consent or approval of or by, or any notification of or filing with, any person (governmental or private) is required in connection with the execution, performance, issuance, sale and/or delivery of this Secured Promissory Note or any Ancillary Document, and consummation by Borrower of the transactions contemplated hereby and thereby.

4.6 Litigation. There is no action, suit, proceeding or investigation pending or, to the knowledge of Borrower, currently threatened against Borrower, its properties, assets or business. Borrower is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no action, suit, proceeding or investigation by Borrower currently pending or which Borrower intends to initiate.

4.7 No Liens. Except for liens created by this Secured Promissory Note or the Ancillary Documents and except as set forth in this Section 4.7 of the Disclosure Schedule, none of Borrower's material assets are subject to any existing lien, pledge, security interest or other encumbrance of any kind, direct or indirect, contingent or otherwise.

4.8 Full Disclosure. Neither this Secured Promissory Note nor any Ancillary Document, nor any written report, certificate, instrument or other information furnished to Lender in connection with the transactions contemplated under and/or in connection with this Agreement contains any material misstatement, or is misleading in any material respect.

4.9 No Other Security Interests or Other Encumbrances. Except as set forth in this Section 4.9 of the Disclosure Schedule, there are no existing security interests, pledges, liens or other encumbrances of any kind, direct or indirect, contingent or otherwise (including without limitation any licensing or partnering arrangements or agreements), in or relating to any of Borrower's assets.



4.10 Tax Returns. All tax returns and reports of Borrower required by law to be filed have been duly filed and all taxes, assessments, and other governmental charges upon Borrower and upon Borrower's assets or income, which are due and payable, have been fully paid and shall continue to be paid.

4.11 Financial Statements and Other Information. All financial statements delivered to Lender by Borrower are accurate, complete in all material respects, and prepared in accordance with U.S. generally accepted accounting principles consistently applied, and accurately represent the financial condition of Borrower and reflect accurately Borrower's assets and results of operation of Borrower's business as of the dates thereof. No material adverse change has occurred in Borrower's financial condition since the financial statement for the most recent period provided to Lender, and Borrower has incurred no additional liabilities since such date except for routine payables that occur in the normal course of Borrower's business. All other documents and information delivered to Lender by Borrower are accurate in all material respects.

**5. Affirmative Covenants. Borrower promises and agrees to:**

5.1 Office. Maintain its principal office in the State of Nevada. If Borrower moves its office location outside of the state of Nevada, or moves material activities outside the U.S., Borrower will provide written notice to Lender not less than thirty (30) days prior to such move.

5.2 Additional Documents. Execute promptly, upon Lender's request, all additional documents and instruments deemed by Lender necessary or desirable to perfect, continue or realize upon the security interests having been granted to Lender under the Security Agreement.

5.3 Compliance With Law. Comply with all statutes, laws and governmental rules, regulations, and orders applicable to Borrower's businesses and properties.

5.4 Notice of Material Change. Promptly (but in no event more than five (5) Business Days after the occurrence of each such event or matter) notify Lender of the violation by Borrower of any term, promise, covenant, or agreement of Borrower to or with Lender, including without limitation any Event of Default (as that term is defined herein) any material change in the property, business, or affairs of Borrower, any change in the location of Borrower's place of business, or change of Borrower's form, state of formation, or name, and any other event or matter that may have a material adverse effect on the debts, liabilities, or obligations of Borrower to Lender, or on the collateral covered by the Security Agreement.

5.5 Use of Proceeds. Use the proceeds from the Loan solely to pay for general corporate purposes and working capital requirements arising out of the ordinary course of business.

5.6 Information. Submit to Lender such financial statements, information, budgets, and reports regarding the financial status and business plans of Borrower as Lender may request from time to time. Without limiting the generality of the foregoing, Borrower will deliver (a) company-prepared monthly financial statements to Lender, within 30 days of the end of each month-end, (b) company-prepared quarterly financial statements to Lender, within 30 days of the end of each

calendar quarter, (c) yearly financial statements to Lender, within 90 days of the end of each fiscal year, all prepared in accordance with generally accepted accounting principles consistently applied, (d) copies of Borrower's tax returns when filed, (e) materials prepared for, and provided to, Borrower's Board of Directors, including without limitation budgets and forecasts, with such materials being provided to Lender in advance or contemporaneously with the Board of Directors, and (f) other notices, including without limitation, audit and litigation reports. Each financial statement required hereunder will include income statements, cash flow statements and a balance sheet. Contemporaneously with each monthly, quarterly and annual financial statement of Borrower required by this Section 5.5.6, Borrower shall deliver a certificate of the chief executive officer or chief financial officer of Borrower certifying that said financial statements are accurate and that there exists no Event of Default nor any condition, act or event which with the giving of notice or the passage of time or both would constitute an Event of Default.

5.7 Access/Accounting Records. So long as any principal and/or interest under this Secured Promissory Note shall remain outstanding, Borrower shall maintain adequate books and records in accordance with generally accepted accounting principles consistently applied, and permit Lender and its agents or representatives to visit and inspect Borrower's properties, to examine its books of account and records and to discuss Borrower's affairs, finances and accounts with its officers, all at such times during normal business hours as reasonably may be requested by Lender.

5.8 Punctual Payments. Punctually pay all principal, interest, fees or other liabilities due under this Secured Promissory Note or the Ancillary Documents at the times and place and in the manner specified therein.

6. **Negative Covenants.** Borrower will not, directly or indirectly, unless approved in writing by Lender in advance:

6.1 Business. Cease or otherwise materially change business operations, dissolve, or liquidate.

6.2 Organizational Changes. Consolidate or merge with any other entity, change organizational form or jurisdiction or sell, transfer, lease or otherwise dispose of all or substantially all of Borrower's assets to any other person or entity (or take or permit to be taken any other action that would have substantially the same effect as any of the foregoing), make any substantive change in the nature of Borrower's business as conducted as of the date hereof or acquire all or substantially all of the assets of any other entity.

6.3 Misrepresentations. Furnish any document to Lender that contains any untrue statement of material fact or that omits to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

6.4 Limitation on Debt. Incur, create, assume or permit to exist any debt other than the Loan and trade debt incurred in the ordinary course of business, without the prior written consent of Lender and the execution of an inter-creditor agreement, in form provided by Lender, between Lender, Borrower, and the lender of such additional debt.



6.5 Liens. Grant to any person or entity, or permit to exist, a security interest, lien, license, or other encumbrance of any kind, direct or indirect, contingent or otherwise, in, to or upon any assets of Borrower.

6.6 Distributions and Redemptions. Declare or pay any dividends or make any distributions of cash, property or securities of Borrower with respect to any of its equity securities or, directly or indirectly, redeem, purchase, or otherwise acquire for any consideration any of its equity securities.

6.7 Use of Funds. Use any of the proceeds of any credit extended hereunder except for the purposes stated in Section 5.5 herein.

6.8 Guaranties. Guarantee or become liable in any way as a surety, endorser (other than as endorser of negotiable instruments for deposit or collection in the ordinary course of business) or otherwise for, nor pledge or hypothecate any assets of Borrower as security for, any liabilities or obligations of any person or entity, except any of the foregoing in favor of Lender.

6.9 Contracts. Enter into, or materially amend or terminate, any contract the termination of which may have a material adverse effect on the condition, financial or otherwise, or operations of Borrower, or Borrower's ability to comply with its obligations to Lender.

6.10 Employment/Severance. Enter into, or materially amend, any employment contract or agreement to pay severance.

6.11 Sale/Transfer of Assets. Sell, transfer or dispose of any assets of Borrower, other than in the ordinary course of Borrower's business.

## **7. Default and Remedies.**

7.1 Default. Time being of the essence, any of the following events shall constitute an "Event of Default":

7.1.1 if a default occurs in the payment of any principal of, interest on, or other obligation with respect to, this Secured Promissory Note, whether at the due date thereof or upon acceleration thereof,

7.1.2 if any representation or warranty of Borrower made herein shall have been false or misleading in any material respect, or shall have contained any material omission, as of the date hereof;

7.1.3 if a default occurs in the due observance or performance of any covenant or agreement on the part of Borrower (other than payment) to be observed or performed pursuant to the terms of this Secured Promissory Note and such default remains uncured for three (3) Business Days after written notice thereof from Holder;

7.1.4 if Borrower or any guarantor of the obligations hereunder shall (i) discontinue its business, (ii) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Borrower or any of its property, (iii) make a general assignment for the benefit of creditors, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation laws or statutes, or file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;

7.1.5 if there shall be filed against Borrower or any guarantor of the obligations hereunder an involuntary petition seeking reorganization of Borrower or the appointment of a receiver, trustee, custodian or liquidator of Borrower or a substantial part of its assets, or an involuntary petition under any bankruptcy, reorganization or insolvency law of any jurisdiction, whether now or hereafter in effect (any of the foregoing petitions being hereinafter referred to as an "Involuntary Petition") and such Involuntary Petition shall not have been dismissed within ninety (90) days after it was filed;

7.1.6 if final judgment(s) for the payment of money in excess of an aggregate of \$100,000 (excluding any portion thereof that an insurance company of nationally recognized standing and creditworthiness has agreed to pay) shall be rendered against Borrower or any guarantor of the obligations hereunder and the same shall remain undischarged for a period of thirty (30) days;

7.1.7 if there occurs any event that may have a material adverse effect on the condition, financial or otherwise, or operations of Borrower (as they are currently conducted and as they are proposed to be conducted) or any guarantor of the obligations hereunder, or on any material assets developed, owned, controlled, licensed, possessed, or used by Borrower or any such guarantor.

7.1.8 the death or incapacity of Borrower or any guarantor of the obligations hereunder, if an individual. The dissolution or liquidation of Borrower or any such guarantor if a corporation, partnership, joint venture or other type of entity; or Borrower or any guarantor of the obligations hereunder, or any of Borrower or guarantor's directors, shareholders or members, shall take action seeking to effect the dissolution or liquidation of such Borrower or guarantor.

7.2 Acceleration. Upon each and every such Event of Default and at any time thereafter during the continuance of such Event of Default : (i) any and all indebtedness of Borrower to Lender under this Secured Promissory Note or otherwise shall at Lender's option



and without notice become immediately due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest and any Default Interest) without presentment, demand, protest, notice of dishonor, notice of acceleration or notice of intent to accelerate, all of which are hereby expressly waived by Borrower; and (ii) Lender may exercise all the rights of a creditor under applicable state and/or federal law, provided, however, that upon the occurrence of any Event of Default described in Sections 7.1.4 or 7.1.5, any and all indebtedness of Borrower to Lender under this Secured Promissory Note shall automatically and immediately become due and payable, both as to principal and interest (including any deferred interest and any accrued and unpaid interest and any Default Interest), without notice or demand of any kind.

7.3 Remedies on Default, Etc. In case any one or more Events of Default shall occur and be continuing, and acceleration of this Secured Promissory Note or any other indebtedness of Borrower to Lender shall have occurred, Lender may, *inter alia*, proceed to protect and enforce its rights by an action at law, suit in equity and/or other appropriate proceeding, whether for the specific performance of any agreement contained in this Secured Promissory Note, or for an injunction against a violation of any of the terms hereof or thereof or in furtherance of the exercise of any power granted hereby or thereby or by law. No right conferred upon Lender by this Secured Promissory Note shall be exclusive of any other right referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise, and may be exercised by Lender at any time by Lender and from time to time after the occurrence of an Event of Default.

## 8 Defenses.

8.1 No Offsets. The obligations of Borrower under this Secured Promissory Note shall not be subject to reduction, limitation, impairment, termination, defense, set-off, counterclaim or recoupment for any reason.

8.2 Usury Limitations. It is the intention of the parties hereto to comply with all applicable usury laws; accordingly, it is agreed that notwithstanding any provisions to the contrary in this Secured Promissory Note or any other agreements or instruments between them, in no event shall such agreements or instruments require the payment or permit the collection of interest (which term, for purposes hereof, shall include any amount which, under applicable law, is deemed to be interest, whether or not such amount is characterized by the parties as interest) in excess of the maximum amount permitted by such laws. If any excess of interest is unintentionally contracted for, charged or received under the Secured Promissory Note or under the terms of any other agreement or instrument between the parties, the effective rate of interest shall be automatically reduced to the maximum lawful rate of interest allowed under the applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof.

9. Attorneys' and Collection Fees. Should the indebtedness evidenced by this Secured Promissory Note or any part hereof be collected at law or in equity or in bankruptcy,

receivership or other court proceedings, Borrower agrees to pay, in addition to principal and interest due and payable hereon, all costs of collection, including, without limitation, reasonable attorneys' fees and expenses, incurred by Lender in collecting or enforcing this Secured Promissory Note.

**10. Waivers; Confession of Judgment; Consent to Jurisdiction.**

10.1 Waivers by Borrower. Borrower hereby waives presentment, demand for payment, notice of dishonor, notice of protest and all other notices or demands in connection with the delivery, acceptance, performance or default of this Secured Promissory Note.

10.2 Actions of Lender not a Waiver. No delay, failure or discontinuance by Lender in exercising any power or right hereunder shall operate as a waiver of any power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or right hereunder or otherwise; and no waiver, permit, consent, approval or modification of any kind of the terms hereof shall be valid unless set forth in writing by Lender and then only to the extent set forth therein.

10.3 Consent to Jurisdiction. Borrower hereby irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Washington over any suit, action, or proceeding arising out of or relating to this Secured Promissory Note or any other agreements or instruments with respect to Lender. Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that Lender may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon Borrower and may be enforced in any court in which Borrower is subject to jurisdiction by a suit upon such judgment, provided that service of process is effected upon Borrower as provided in this Secured Promissory Note or as otherwise permitted by applicable law.

10.4 Waiver of Jury Trial. BORROWER WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS SECURED PROMISSORY NOTE OR ANY DEALINGS BETWEEN BORROWER AND LENDER RELATING TO THE SUBJECT MATTER OF THIS SECURED PROMISSORY NOTE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS NOTE, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENT OR AGREEMENT RELATING TO THE LOAN.



10.5 Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Secured Promissory Note by delivery of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower, and/or by delivery of a copy thereof to a registered agent of Borrower. Refusal to accept delivery, and/or avoidance of delivery, shall be deemed to constitute delivery. Borrower irrevocably agrees that service in accordance with this Section 10.5 shall be deemed in every respect effective service of process upon Borrower in any such suit, action or proceeding, and shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon Borrower. Nothing in this Section 10.5 shall affect the right of Lender to serve process in any manner otherwise permitted by law or limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

11. **Security Interest.** To secure Borrower's obligations under this Secured Promissory Note:

11.1 Borrower has granted and pledged to Lender a first priority senior security interest in Borrower's right, title and interest in, to and under all of Borrower's tangible and intangible property pursuant to a security agreement ("KCI Security Agreement") of even date herewith; and

11.2 Guarantor Kenneth M. Antos ("Antos") has granted and pledged to Lender a first priority senior security interest in Antos's right, title and interest in, to and under all accounts, payment intangibles, general intangibles and rights to payment arising from that certain Strategic Alliance Agreement, as amended, modified or supplemented from time to time ("Alliance Agreement") by and among Twin Towers Trading Site Management, LLC, David L. Beacklean and Antos, dated as of August \_\_, 2003, pursuant to a security agreement ("Antos Security Agreement") of even date herewith.

11.3 The KCI Security Agreement and Antos Security Agreement shall be referred to collectively herein as the "Security Agreement."

12. **Indemnification.**

12.1 Indemnification Agreement.

12.1.1 In addition to all rights and remedies available to Lender at law or in equity, Borrower shall indemnify Lender and each subsequent holder of this Secured Promissory Note, and their respective affiliates, equity holders, officers, directors, employees, agents, representatives, successors and assigns (collectively, the "Indemnified Persons") and save and hold each of them harmless against and pay on behalf of or reimburse such party as and when incurred for any loss, liability, demand, claim, action, cause of action, cost, damage, deficiency, tax, penalty, fine or expense (other than any demand, claim, action or cause of action instituted by Borrower), including interest, penalties, reasonable attorneys' fees and expenses, and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, "Losses") which any such party may suffer, sustain or become subject to, as a result of, in connection with, relating or incidental to or by virtue of:

(i) any material misrepresentation in, or material omission from, or breach of any of the representations, warranties, statements, schedules and/or exhibits hereto, certificates or other instruments or documents furnished to Lender by Borrower in connection with this Secured Promissory Note; or

(ii) any material nonfulfillment or material breach of any covenant or agreement on the part of Borrower under this Secured Promissory Note.

12.1.2 Notwithstanding the foregoing, Borrower shall not be liable for any portion of Losses resulting from the gross negligence or willful misconduct of Lender or a subsequent holder of this Secured Promissory Note.

12.1.3 Within twenty (20) days after receipt of notice of commencement of any action or the assertion of any claim by a third party, Lender shall give Borrower written notice thereof together with a copy of such claim, process or other legal pleading of such claim. Borrower shall have the right to assist in the defense thereof by representation of its own choosing.

12.2 Survival. All indemnification rights hereunder shall survive the execution and delivery of this Secured Promissory Note and the consummation of the transactions contemplated hereby (i) for a period of three years with respect to representations and warranties made by Borrower, and (ii) until fully performed with respect to covenants and agreements made by Maker, regardless of any investigation, inquiry or examination made for or on behalf of, or any knowledge of Lender and/or any of the Indemnified Persons or the acceptance by Lender of any certificate or opinion.

12.3 Payment. Any indemnification of Lender or any other Indemnified Person by Borrower pursuant to this Section 12 shall be effected by wire transfer of immediately available funds from Borrower to an account designated by Lender or such other Indemnified Person within fifteen (15) days after the determination thereof.

### **13. Miscellaneous.**

13.1 Notices. All notices, demands and requests of any kind to be delivered to any party in connection with this Secured Promissory Note shall be in writing and shall be deemed to be effective upon delivery if (i) personally delivered, (ii) sent by confirmed facsimile with a copy sent by nationally recognized overnight courier, (iii) sent by nationally recognized overnight courier, or (iv) sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:



if to Borrower: KCI Investments, LLC  
4033 S. Dean Martin Drive  
Las Vegas, NV  
Fax: ()  
Attn: Ken Antos

if to Lender: CBC Partners I, LLC  
305 108<sup>th</sup> Ave NE, Suite 101  
Bellevue, WA 98004  
Fax: (425) 688-7003  
Attention: Alan Hallberg

or to such other address as the party to whom notice is to be given may have furnished to the other parties hereto in writing in accordance with the provisions of this Section.

13.2 Parties in Interest. This Secured Promissory Note shall bind and inure to the benefit of Lender, Borrower and their respective successors and permitted assigns. Borrower shall not transfer or assign this Secured Promissory Note without the prior written consent of Lender. Lender may transfer and assign this Secured Promissory Note, including participation in all or any part of the Loan without the prior consent of Borrower.

13.3 Governing Law. This Secured Promissory Note has been executed and delivered to Lender in the State of Washington. Borrower agrees that the law of the State of Washington (exclusive of principles of conflicts of law) shall be applicable for the purpose of construing this Secured Promissory Note and the Security Agreement, determining the validity hereof and enforcing the same. The parties hereto consent to the jurisdiction and venue of the state and federal courts sitting in King County, Washington in any action or judicial proceeding brought to enforce, or construe or interpret this Secured Promissory Note or the Security Agreement.

13.4 Entire Agreement. This Secured Promissory Note contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the parties with respect thereto

13.5 Captions. Any captions applied to the sections of this Secured Promissory Note are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Secured Promissory Note.

13.6 Amendments. No provision of this Secured Promissory Note may be amended or waived without the express written consent of both Borrower and Lender, provided, however, that Lender may waive any provision hereof that inures to the benefit of Lender without the prior written consent of Borrower.

13.7 Nature of Obligation. This Secured Promissory Note is being made for business and investment purposes, and not for household or other purposes

13.8 Survival. All covenants, representations and warranties made by Borrower in this Secured Promissory Note shall survive the execution and delivery of this Agreement and the making of the Loan.

13.9 Invalidity. If any term, condition or provision of this Secured Promissory Note or the Security Agreement shall be held invalid for any reason, such offending term, condition or provision shall be stricken therefrom, and the remainder shall not be affected.

13.10 Derivative Rights. Any obligation of Lender to make disbursements under this Secured Promissory Note is imposed solely and exclusively for the benefit of Borrower and no other person, firm or entity shall, under any circumstances, be deemed to be a beneficiary of such condition, nor shall it have any derivative claim or action against Lender.

13.11 Time. Time is of the essence in each and every provision of this Secured Promissory Note or any Ancillary Document.

13.12 Counterparts; Facsimiles. This Secured Promissory Note may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures shall be deemed to be original signatures. In addition, if any of the parties sign facsimile copies of this Agreement, such copies shall be deemed originals.


13.13 Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**



IN WITNESS WHEREOF, this Secured Promissory Note has been executed by the parties as of the date first written above.

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company

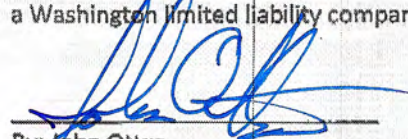


By: Ken Antos  
Its: Managing Member

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:**

CBC PARTNERS, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

Address: 305 108<sup>th</sup> Ave NE  
Suite 101  
Bellevue, WA 98004  
Facsimile: (425) 688-7003

**EXHIBIT A**  
**FORM OF REQUEST FOR ADVANCE**

Date: \_\_\_\_\_

Borrower: \_\_\_\_\_

Lender: CBC Partners I, LLC

Secured Promissory Note Date: \_\_\_\_\_

Amount of this advance request: \$ \_\_\_\_\_

Effective Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Borrower represents and warrants to Lender as follows:

Borrower is not in default under the terms of the Loan Agreement of the Ancillary Documents, each of the representations and warranties contained in the Loan Agreement is true and correct in all material respects as of the date hereof, and Borrower is in compliance in all material respects with all affirmative and negative covenants contained in the Loan Agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

By: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT B**  
**DISCLOSURE SCHEDULE**

# EXHIBIT “C”



## FIRST MODIFICATION TO SECURED PROMISSORY NOTE

THIS FIRST MODIFICATION TO SECURED PROMISSORY NOTE (this "Modification"), effective as of July 19, 2012, is entered into by and between KCI Investments, LLC, a Nevada limited liability company ("Borrower"), and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note between Borrower and Lender dated as of June 22, 2012, as amended from time to time ("Note").

WHEREAS, Lender and Borrower have agreed to certain changes in the terms and conditions set forth in the Note and have agreed to amend the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be amended as follows:

1. Amended definition of "Maturity Date". The definition of "Maturity Date" as set forth in Section 1.1 of the Note, is deleted in its entirety and replaced with the following:

"Maturity Date" means the date that is twelve (12) months following the date first above written.

2. Increased Principal Amount. The maximum principal amount of the Note is hereby amended to be Two Million Dollars (\$2,000,000.00).

3. Amended Section 2.1. Section 2.1 of the Note is deleted in its entirety and replaced with the following:

2.1 Advance. On June 25, 2012, \$300,000 of the principal balance of this Secured Promissory Note was advanced to Borrower. On or before July 20, 2012, Borrower may request an additional advance in an amount not to exceed \$1,700,000. Such request shall be in writing, specify Borrower's intended use for the advance and be signed by Borrower in the form attached hereto as Exhibit A (the "Advance Request"). The Advance shall not be made on or after the Maturity Date, or after the occurrence of an Event of Default which has not been cured. Borrower agrees that Lender may rely on the Advance Request given by any person Lender reasonably believes is authorized to make such request without the necessity of independent investigation.

4. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder.

5. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:



(a) Borrower has all requisite power and authority to execute this Modification and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Modification and all such other agreements and instruments has been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms.

(b) The execution, delivery and performance by Borrower of this Modification and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Borrower, or the limited liability agreement of Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in Section 4 of the Note are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

(d) The execution and delivery of Warrant Agreement in form and substance satisfactory to Lender, in its sole discretion.

6. Origination Fee and Expenses. Borrower shall pay to Lender a fully earned and nonrefundable origination fee in the amount of sixty thousand dollars (\$60,000.00) (the "Origination Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Notwithstanding the foregoing, the Parties have agreed that the origination fee will be paid by funds at the time of closing. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the Loan closes and funds, to pay upon demand all reasonable expenses in connection with the Loan, including (without limitation) legal fees for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents, and all other fees and costs incidental to the closing and making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

7. Conditions Precedent. The execution and performance of this Modification by Lender, including the increased principal amount, is subject to the following conditions precedent:

(a) Execution by Borrower and delivery to Lender of this Modification and the Warrant Agreement, in each case, in form and substance satisfactory to Lender.

(b) Execution by each of the Guarantors of the Agreement and Acknowledgement of Guarantors attached hereto.

(c) Payment in full and in good funds of the Origination Fee.

(d) The representations and warranties in Section 5 of this Modification shall be true and correct as of the date of this Modification and any additional Advance.

(e) There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

8. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby; and any and all references in the Loan Documents to the Note shall be deemed to refer to the Note as amended hereby.

9. No Waiver. The execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any Default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document.

10. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

11. Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date first above written.

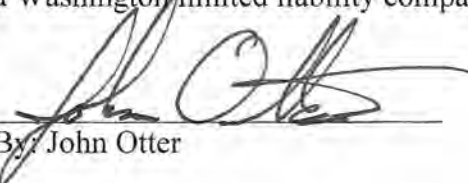
**BORROWER:** KCI INVESTMENTS, LLC, a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:** CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter



Its: Authorized Manager Representative

Address: 305 108<sup>th</sup> Ave NE  
Suite 101  
Bellevue, WA 98004

Facsimile: (425) 688-7003

## SECOND MODIFICATION TO SECURED PROMISSORY NOTE

THIS SECOND MODIFICATION TO SECURED PROMISSORY NOTE (this "Modification"), effective as of October 22, 2012, is entered into by and between KCI Investments, LLC, a Nevada limited liability company ("Borrower"), and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note between Borrower and Lender dated as of June 22, 2012, as modified pursuant to that First Modification to Secured Promissory Note dated as of July 19, 2012, and as further amended from time to time (as modified, the "Note").

WHEREAS, Lender and Borrower have agreed to certain changes in the terms and conditions set forth in the Note and have agreed to amend the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be amended as follows:

1. Increased Principal Amount. The maximum principal amount of the Note is hereby amended to be Three Million Dollars (\$3,000,000.00).

2. Amended Section 2.1. Section 2.1 of the Note is deleted in its entirety and replaced with the following:

2.1 Advance. On June 25, 2012, \$300,000 of the principal balance of this Secured Promissory Note was advanced to Borrower. On July 19, 2012, an additional \$1,700,000 of the principal balance of this Secured Promissory Note was advanced to Borrower. Additional advances in an amount not to exceed \$1,000,000 shall be made as follows:

(a) On or before October 24, 2012, Borrower may request an additional advance in an amount not to exceed \$900,000; and

(b) At Borrower's request, Lender may, at its sole discretion, issue an additional advance in an amount not to exceed \$100,000, subject to availability of funds.

Requests for additional advances shall be in writing, specify Borrower's intended use for each requested advance and be signed by Borrower in the form attached hereto as Exhibit A (the "Advance Request"). Advances shall not be made on or after the Maturity Date, or after the occurrence of a default or Event of Default which has not been cured or waived by Lender, any such waiver to be granted at Lender's sole discretion. Borrower agrees that Lender may rely on any Advance Request given by any person Lender reasonably believes is authorized to make such request without the necessity of independent investigation. Notwithstanding anything to the contrary contained herein, the aggregate principal amount



of all advances made hereunder shall not exceed Three Million Dollars (\$3,000,000.00) at any time.

3. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder.

4. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has all requisite power and authority to execute this Modification and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Modification and all such other agreements and instruments has been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms.

(b) The execution, delivery and performance by Borrower of this Modification and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Borrower, or the limited liability agreement of Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in Section 4 of the Note are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

5. Origination Fee and Expenses. Borrower shall pay to Lender a fully earned and nonrefundable origination and amendment fee in the amount of thirty thousand dollars (\$30,000.00) (the "Origination Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Notwithstanding the foregoing, the Parties have agreed that the Origination Fee will be paid by funds at the time of closing. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 6 below are satisfied, to pay upon demand all reasonable expenses in connection with this Modification and the Loan, including (without limitation) legal fees for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.



6. Conditions Precedent. The execution and performance of this Modification by Lender, including the increased principal amount, is subject to the following conditions precedent:

(a) Execution by Borrower and delivery to Lender of this Modification, in form and substance satisfactory to Lender.

(b) Execution by Borrower and delivery to Lender of a Warrant Agreement, for approximately 1.5% of the ownership of the Borrower, in form and substance satisfactory to Lender.

(c) Execution by each of the Guarantors of the Agreement and Acknowledgement of Guarantors attached hereto.

(d) Payment in full and in good funds of the Origination Fee.

(e) The representations and warranties in Section 5 of this Modification shall be true and correct as of the date of this Modification and any additional Advance.

(f) There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

7. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby; and any and all references in the Loan Documents to the Note shall be deemed to refer to the Note as amended hereby.

8. No Waiver. The execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any Default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document.

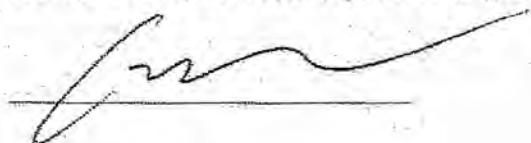
9. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

11. Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date first above written.

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company

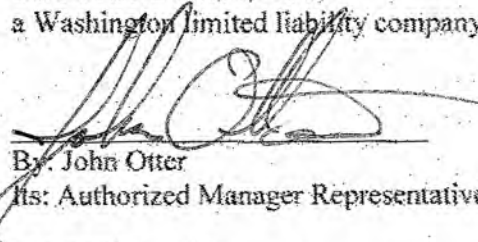


By: Ken Antos  
Its: Managing Member

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

Address: 305 108<sup>th</sup> Ave NE  
Suite 101  
Bellevue, WA 98004

Facsimile: (425) 688-7003



### THIRD MODIFICATION TO SECURED PROMISSORY NOTE

THIS THIRD MODIFICATION TO SECURED PROMISSORY NOTE (this "Modification"), effective as of July 19, 2013, is entered into by and between KCI Investments, LLC, a Nevada limited liability company ("Borrower"), and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

#### RECITALS

WHEREAS, Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note between Borrower and Lender dated as of June 22, 2012, as modified pursuant to that First Modification to Secured Promissory Note dated as of July 19, 2012, and that Second Modification to Security Promissory Note dated as of October 22, 2012, and as further amended from time to time (as modified, the "Note").

WHEREAS, Lender and Borrower have agreed to certain changes in the terms and conditions set forth in the Note and have agreed to amend the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be amended as follows:

1. Amended definition of "Maturity Date". The definition of "Maturity Date" as set forth in Section 1.1 of the Note, is deleted in its entirety and replaced with the following:

"Maturity Date" means October 19, 2013.

2. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder.

3. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has all requisite power and authority to execute this Modification and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Modification and all such other agreements and instruments has been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms.

(b) The execution, delivery and performance by Borrower of this Modification and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Borrower, or the limited liability agreement of Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in Section 4 of the Note are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

4. Amendment Fee and Expenses. Borrower shall owe to Lender a fully earned and nonrefundable amendment fee in the amount of twenty-two thousand five hundred dollars (\$22,500.00) (the "Amendment Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 5 below are satisfied, to pay upon demand the Amendment Fee and all reasonable fees and expenses of Lender incurred in connection with this Modification and the Loan, including (without limitation) attorneys' fees and expenses for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

5. Conditions Precedent. The execution and performance of this Modification by Lender is subject to the following conditions precedent:

(a) Execution by Borrower and delivery to Lender of this Modification, in form and substance satisfactory to Lender.

(b) Execution by each of the Guarantors of the Agreement and Acknowledgement of Guarantors attached hereto.

(c) Payment in full and in good funds of the Amendment Fee.

(d) The representations and warranties in Section 3 of this Modification shall be true and correct as of the date of this Modification and any additional Advance.

(e) There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

6. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby, and any and all references in the Loan Documents to the Note shall be deemed to refer to the Note as amended hereby. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Note.

7. No Waiver. The execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any Default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document.



8. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument.

9. Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date first above written.

**BORROWER:**

KCI INVESTMENTS, LLC, a Nevada limited liability company

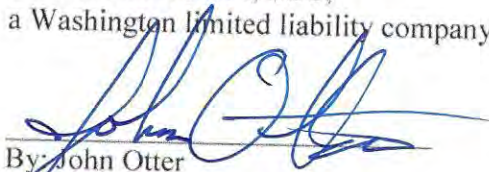


By: Ken Antos  
Its: Managing Member

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

Address: 305 108<sup>th</sup> Ave NE  
Suite 101  
Bellevue, WA 98004  
Facsimile: (425) 688-7003



## FIFTH MODIFICATION TO SECURED PROMISSORY NOTE

THIS FIFTH MODIFICATION TO SECURED PROMISSORY NOTE (this "Modification"), effective as of January 19, 2014, is entered into by and between KCI INVESTMENTS, LLC, a Nevada limited liability company ("Borrower"), and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note between Borrower and Lender dated as of June 22, 2012, as modified pursuant to that First Modification to Secured Promissory Note dated as of July 19, 2012, that Second Modification to Secured Promissory Note dated as of October 22, 2012, that Third Modification to Secured Promissory Note dated as of July 19, 2013, and that Fourth Modification to Secured Promissory Note dated as of November 19, 2013, and as further amended from time to time (as modified, the "Note").

WHEREAS, Borrower has notified Lender that it is in the process of completing a reverse merger into a public shell corporation (the "Reverse Merger") and has requested Lender's consent to the Reverse Merger.

WHEREAS, Borrower has requested that Lender modify the Note in certain respects, including to extend the Maturity Date, and Lender has agreed, subject to the terms and condition set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be amended as follows:

1. Amended definition of "Maturity Date". The definition of "Maturity Date", as set forth in Section 1.1 of the Note, is deleted in its entirety and replaced with the following:

"Maturity Date" means April 19, 2014.

2. Consent to Reverse Merger. Lender hereby consents to the Reverse Merger, provided, that (a) Borrower shall cause the entity into which it proposes to merge (the "Public Shell") to become a borrower and pledgor under the terms of the Note and the Ancillary Documents prior to consummating the Reverse Merger, in each case, on terms and conditions, and subject to documentation satisfactory to Lender in its sole and absolute discretion, (b) Borrower shall cause the Public Shell to assume all warrants issued on or prior to the date hereof by Borrower to Lender (collectively, the "Warrants"), on terms and conditions satisfactory to Lender in its sole and absolute discretion, and (c) within fourteen (14) days after the date hereof, Borrower shall grant to Lender registration rights with respect to the shares to be acquired by Lender upon its exercise of the Warrants, such grant to be made pursuant to a registration rights agreement in form and substance satisfactory to Lender in its sole and absolute discretion.

3. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder.

4. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has all requisite power and authority to execute this Modification and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Modification and all such other agreements and instruments has been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms.

(b) The execution, delivery and performance by Borrower of this Modification and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Borrower, or the limited liability agreement of Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in Section 4 of the Note are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

5. No Waiver. The execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any Default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document.

6. Amendment Fee and Expenses. Borrower shall owe to Lender a fully earned and nonrefundable amendment fee in the amount of forty thousand five hundred dollars (\$40,500.00) (the "Amendment Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 7 below are satisfied, to pay upon demand the Amendment Fee and all reasonable fees and expenses of Lender incurred in connection with this Modification and the Loan, including (without limitation) attorneys' fees and expenses for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

7. Conditions Precedent. The execution and performance of this Modification by Lender is subject to the following conditions precedent:

(a) Execution by Borrower and delivery to Lender of this Modification, in form and substance satisfactory to Lender.



(b) Execution by each of the Guarantors of the Agreement and Acknowledgement of Guarantors attached hereto.

(c) Payment in full and in good funds of the Amendment Fee.

(d) The representations and warranties in Section 4 of this Modification shall be true and correct as of the date of this Modification and any additional Advance.

(e) There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

8. Principal Payments. In addition to the monthly payments of interest required under Section 2.4 of the Note, Borrower shall pay to Lender on February 17, 2014 and March 31, 2014, a principal payment under the Note of \$150,000, each.

9. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby, and any and all references in the Loan Documents to the Note shall be deemed to refer to the Note as amended hereby. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Note.

10. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Electronic delivery of an original signature shall constitute an original signature.

11. Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

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IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date first above written.

**BORROWER:** KCI INVESTMENTS, LLC, a Nevada limited liability company



By: Ken Antos  
Its: Managing Member

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:** CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

Address: 305 108<sup>th</sup> Ave NE  
Suite 101  
Bellevue, WA 98004  
Facsimile: (425) 688-7003

## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

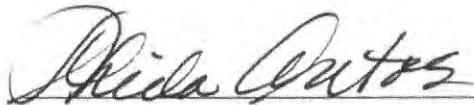
Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company (the "Borrower") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her respective Guaranty dated June 22, 2012, (the "Guaranty"), hereby (i) acknowledges receipt of the Fifth Modification to Secured Promissory Note; (ii) consents to the terms and execution thereof; (iii) reaffirms all obligations to Lender pursuant to the terms of the Guaranty; and (iv) acknowledges that Lender may amend, restate, extend, renew or otherwise modify the Note and any indebtedness or agreement of the Borrower, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Guaranty for all of the Borrower's present and future indebtedness to Lender.

Dated effective as of the 19th day of January, 2014.

GUARANTORS:



Kenneth Antos



Shelia Antos

## SIXTH MODIFICATION TO SECURED PROMISSORY NOTE AND WAIVER OF DEFAULTS

THIS SIXTH MODIFICATION TO SECURED PROMISSORY NOTE AND WAIVER OF DEFAULTS (this "Modification"), effective as of April 19, 2014, is entered into by and between KCI INVESTMENTS, LLC, a Nevada limited liability company ("Borrower"), and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrower is currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note between Borrower and Lender dated as of June 22, 2012, as modified pursuant to that First Modification to Secured Promissory Note dated as of July 19, 2012, that Second Modification to Secured Promissory Note dated as of October 22, 2012, that Third Modification to Secured Promissory Note dated as of July 19, 2013, that Fourth Modification to Secured Promissory Note dated as of November 19, 2013, and that Fifth Modification to Secured Promissory Note dated as of January 19, 2014 (the "Fifth Modification"), and as further amended from time to time (the "Note").

WHEREAS, Borrower is currently in default under the terms of the Note as a result of its failure to make the principal payments due on February 17, 2014, and March 31, 2014, as set forth in Section 8 of the Fifth Modification (collectively, the "Existing Defaults").

WHEREAS, Borrower has asked that Lender extend the maturity of the Note and waive the Existing Defaults and Lender has agreed to such requests, subject to the terms and conditions set forth in this Modification.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be amended as follows:

1. Amended definition of "Maturity Date". The definition of "Maturity Date", as set forth in Section 1.1 of the Note, is deleted in its entirety and replaced with the following:

"Maturity Date" means October 31, 2014.

2. Amended Section 7.1.3. Section 7.1.3 of the Note is deleted in its entirety and replaced with the following:

7.1.3 if a default occurs in the due observance or performance of any covenant or agreement on the part of Borrower (other than payment) to be observed or performed pursuant to the terms of this Secured Promissory Note, the Ancillary Documents, the Antos Settlement Agreement (as defined below) and such default remains uncured for three (3) Business Days after written notice thereof from Lender;

3. Waiver. Lender waives its default rights with respect to the Existing Defaults. This waiver applies only to the Existing Defaults and, except as to the Existing Defaults, the execution of this Modification and the acceptance of all other agreements and instruments related



hereto shall not be deemed to be a waiver of any default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect without waiver or modification. Borrower represents and warrants that as of the date hereof, there are no claims or offsets against or defenses or counterclaims to Borrower's obligations under the Note or any other Loan Document.

4. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder.

5. Representations and Warranties. Borrower hereby represents and warrants to Lender as follows:

(a) Borrower has all requisite power and authority to execute this Modification and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Modification and all such other agreements and instruments has been duly executed and delivered by Borrower and constitute the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms.

(b) The execution, delivery and performance by Borrower of this Modification and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to Borrower, or the limited liability agreement of Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in Section 4 of the Note are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

6. No Waiver. The execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document, except as expressly stated herein.

7. Amendment Fee and Expenses. Borrower shall owe to Lender a fully earned and nonrefundable amendment fee in the amount of Sixty-three Thousand Dollars (\$63,000.00) (the "Amendment Fee") contemporaneously with Borrower's execution and delivery to Lender of this Modification. Borrower's execution of this Modification shall constitute its agreement, regardless of whether the conditions precedent set forth in Section 8 below are satisfied, to pay upon demand the Amendment Fee and all reasonable fees and expenses of Lender incurred in connection with this Modification and the Loan, including (without limitation) attorneys' fees and expenses for the preparation, negotiation, examination and enforcement of documents

(including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan). Lender shall not be required to pay any premium, brokerage fee, loan broker fee, commission or similar compensation in connection with this transaction, and Borrower agrees to defend, indemnify, and hold Lender harmless from and against all claims asserted by any person on account of any such fee, commission or compensation, including attorneys' fees paid or incurred by Lender with respect to any such claim.

8. Conditions Precedent. The execution and performance of this Modification by Lender is subject to the following conditions precedent:

(a) Execution by Borrower and delivery to Lender of this Modification, in form and substance satisfactory to Lender.

(b) Execution by Borrower and delivery to Lender of two Warrant Agreements for seven hundred eighty-one thousand three hundred seventy-four and three hundredths (781,374.03) additional membership units of Borrower and for one million five hundred thousand (1,500,000) additional membership units of Borrower, in each case, in form and substance satisfactory to Lender.

(c) Execution by Borrower and delivery to Lender of resolutions of Borrower to enter into both Warrant Agreements referenced in clause (b), in each case, in form and substance satisfactory to Lender.

(d) Execution by each of the Guarantors of the Agreement and Acknowledgement of Guarantors attached hereto.

(e) Payment in full and in good funds of the Amendment Fee.

(f) The representations and warranties in Section 4 of the Note shall be true and correct as of the date of this Modification and any additional Advance.

(g) There shall have been no material adverse change, as determined by Lender, in the financial condition or business of Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value of any collateral required hereunder or a substantial or material portion of the assets of Borrower (or any such guarantor).

9. Principal Payment. In addition to the monthly payments of interest required under Section 2.4 of the Note, Borrower shall pay to Lender a principal payment under the Note of Three Hundred Thousand Dollars (\$300,000) within five (5) calendar days of Borrower's receipt of One Million Dollars (\$1,000,000) or more, in the aggregate, in capital contributions, received on or after the date of this Modification, but in any event, by no later than June 30, 2014.

10. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby, and any and all references in the Loan



Documents to the Note shall be deemed to refer to the Note as amended hereby. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Note.

11. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Electronic delivery of an original signature shall constitute an original signature.

12. Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

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IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date first above written.

**BORROWER:**

KCI INVESTMENTS, LLC,  
a Nevada limited liability company

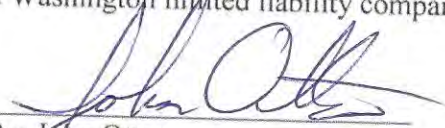


By: Ken Antos  
Its: Managing Member

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company



By: John Otter  
Its: Authorized Manager Representative

Address: 305 108<sup>th</sup> Ave NE  
Suite 101  
Bellevue, WA 98004  
Facsimile: (425) 688-7003

## ACKNOWLEDGMENT AND AGREEMENT OF GUARANTORS

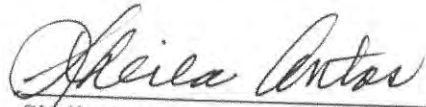
Each of the undersigned guarantors of the indebtedness of KCI Investments, LLC, a Nevada limited liability company (the "Borrower") to CBC Partners I, LLC ("Lender"), a Washington limited liability company, or its assigns, pursuant to his/her respective Guaranty dated June 22, 2012, (the "Guaranty"), hereby (i) acknowledges receipt of the Sixth Modification to Secured Promissory Note; (ii) consents to the terms and execution thereof; (iii) reaffirms all obligations to Lender pursuant to the terms of the Guaranty; and (iv) acknowledges that Lender may amend, restate, extend, renew or otherwise modify the Note and any indebtedness or agreement of the Borrower, or enter into any agreement or extend additional or other credit accommodations, without notifying or obtaining the consent of the undersigned and without impairing the liability of the undersigned under the Guaranty for all of the Borrower's present and future indebtedness to Lender.

Dated effective as of the 19th day of April, 2014.

GUARANTORS:



Kenneth Antos



Shelia Antos

## EIGHTH MODIFICATION TO SECURED PROMISSORY NOTE AND WAIVER OF DEFAULTS

THIS EIGHTH MODIFICATION TO SECURED PROMISSORY NOTE AND WAIVER OF DEFAULTS (this "Modification"), effective as of January 23, 2015, is entered into by and among KCI INVESTMENTS, LLC, a Nevada limited liability company ("KCI"), PREFERRED RESTAURANT BRANDS, INC., a Florida corporation ("PRB" and, together with KCI, each a "Borrower" and collectively, "Borrowers") and CBC PARTNERS I, LLC, a Washington limited liability company, or its assigns ("Lender").

### RECITALS

WHEREAS, Borrowers are currently indebted to Lender pursuant to the terms and conditions of that certain Secured Promissory Note by and among Borrowers and Lender dated as of June 22, 2012, as modified pursuant to that certain First Modification to Secured Promissory Note dated as of July 19, 2012, that certain Second Modification to Secured Promissory Note dated as of October 22, 2012, that certain Third Modification to Secured Promissory Note dated as of July 19, 2013, that certain Fourth Modification to Secured Promissory Note dated as of November 19, 2013, that certain Fifth Modification to Secured Promissory Note dated as of January 19, 2014, that certain Sixth Modification to Secured Promissory Note dated as of April 19, 2014, and that certain Seventh Modification to Secured Promissory Note dated as of October 31, 2014 (the "Seventh Modification") and as further amended from time to time (the "Note");

WHEREAS, Borrowers are currently in default under the terms of the Note as a result of (i) transferring assets outside the ordinary course of business to various subsidiaries of KCI in violation of Section 6.11 of the Note; (ii) failing to provide the certified resolutions and warrants of KCI Holding 1, LLC ("Holdings") in violation of Section 19 of the Seventh Modification, and (iii) failing to deliver a fully executed springing blocked account agreement by and among Kenneth M. Antos ("Antos"), Lender and JPMorgan Chase & Co. or its affiliate in violation of Section 21 of the Seventh Modification (the "Existing Defaults");

WHEREAS, PRB desires to obtain secured funding from TCA Global Credit Master Fund, LP ("TCA") pursuant to those certain Securities Purchase Agreement and Secured Redeemable Debenture, each dated December 31, 2014, which (absent written approval by Lender) would violate Sections 6.4 and 6.5 of the Note; and

WHEREAS, Borrowers have asked that Lender waive the Existing Defaults and approve the indebtedness and liens in favor of TCA, and Lender has agreed to such requests, subject to the terms and conditions set forth in this Modification;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be amended as follows:

1. Waiver. Lender waives its default rights with respect to the Existing Defaults. This waiver applies only to the Existing Defaults and, except as to the Existing Defaults, the



execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any default or Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect without waiver or modification. Each Borrower represents and warrants that as of the date hereof, there are no claims or offsets against or defenses or counterclaims to such Borrower's obligations under the Note or any Ancillary Document.

2. Consent to Exceptions to Negative Covenants. Lender approves, as an exception to Sections 6.4 and 6.5 of the Note, the indebtedness of PRB to TCA in the amount of \$2,000,000 and security interests in the assets of the Borrowers to secure that amount, subject to the terms and conditions herein, including execution of an Intercreditor Agreement in form and substance satisfactory to Lender in its discretion.

3. No Other Changes. Except as explicitly amended by this Modification, all of the terms and conditions of the Note shall remain in full force and effect and shall apply to any Advance or Letter of Credit thereunder.

4. Representations and Warranties. Each Borrower hereby represents and warrants to Lender as follows:

(a) Such Borrower has all requisite power and authority to execute this Modification and any other agreements or instruments required hereunder and to perform all of its obligations hereunder, and this Modification and all such other agreements and instruments has been duly executed and delivered by such Borrower and constitute the legal, valid and binding obligation of such Borrower, enforceable in accordance with its terms.

(b) The execution, delivery and performance by such Borrower of this Modification and any other agreements or instruments required hereunder have been duly authorized by all necessary corporate action and do not (i) require any authorization, consent or approval by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect, having applicability to such Borrower, or the governing documents of such Borrower, or (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which such Borrower is a party or by which it or its properties may be bound or affected.

(c) All of the representations and warranties contained in Section 4 of the Note are correct on and as of the date hereof as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

(d) As of the date of this Modification, there exists no Event of Default as defined in the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default, other than the Existing Defaults.

5. No Waiver. The execution of this Modification and the acceptance of all other agreements and instruments related hereto shall not be deemed to be a waiver of any default or

Event of Default under the Note or a waiver of any breach, default or event of default under any Loan Document, except as expressly stated herein.

6. Conditions Precedent. The execution and performance of this Modification by Lender is subject to the following conditions precedent:

(a) Execution by each Borrower and delivery to Lender of this Modification, in form and substance satisfactory to Lender.

(b) Execution by Borrowers and delivery to Lender of a Pledge Agreement, in form and substance satisfactory to Lender.

(c) Execution by PRB and delivery to Lender of a Warrant Agreement for five hundred thousand (500,000) shares of PRB, in form and substance satisfactory to Lender.

(d) Execution by KCI Restaurant I LLC, KCI Restaurant II LLC, PRB I LLC, and any other subsidiaries of Borrowers (collectively, the "Subsidiaries") and delivery to Lender of a Security Agreement, in form and substance satisfactory to Lender.

(e) Execution by the Subsidiaries and delivery to Lender of a Guaranty, in form and substance satisfactory to Lender.

(f) Delivery to Lender of satisfactory evidence of corporate authority of Borrowers and the Subsidiaries to take the action and execute the documents required by this Modification, including by PRB for the Warrant Agreement referenced in clause (c), in each case, in form and substance satisfactory to Lender.

(g) Execution by each of the Guarantors of the Agreement and Acknowledgement of Guarantors attached hereto.

(h) Delivery to Lender of a fully executed Intercreditor Agreement by and among Lender, Borrowers, and TCA, in form and substance satisfactory to Lender.

(i) Payment in full and in good funds of all fees and expenses of Lender incurred in connection with this Modification, including (without limitation) attorneys' fees and expenses for the preparation, negotiation, examination and enforcement of documents (including, without limitation, this Modification and any Ancillary Documents executed or delivered in connection herewith, and all other fees and costs incidental to the closing of this Modification and the making of the Loan) for which Lender has made demand.

(j) The representations and warranties in Section 4 of the Note shall be true and correct as of the date of this Modification.

(k) Since September 30, 2014, there shall have been no material adverse change, as determined by Lender, in the financial condition or business of either Borrower (or any guarantor hereunder), nor any material decline, as determined by Lender, in the market value



of any collateral required hereunder or a substantial or material portion of the assets of either Borrower (or any such guarantor).

7. Holdings Resolutions and Warrant.

(a) Within thirty (30) days of the date hereof (which date may be extended in Lender's sole discretion), Borrowers shall deliver to Lender evidence satisfactory to Lender in its discretion of the ratification of the conversion of 5,858,225 membership units of KCI into an equal number of membership units of Holdings and the issuance of 5,858,225 membership units of Holdings to Lender.

(b) Borrowers shall take all actions necessary, in good faith, to cause Holdings to issue membership units in Holdings to Lender, within thirty (30) days of the date hereof (which date may be extended in Lender's sole discretion), based upon the exercise of those certain Warrants to Purchase Membership Units issued by KCI dated July 19, 2012, October 22, 2012, and November 19, 2013, for an aggregate of 5,858,225 membership units in Holdings.

(c) Within thirty (30) days of the date hereof (which date may be extended in Lender's sole discretion), Borrowers shall deliver to Lender evidence satisfactory to Lender in its discretion of the assignment and assumption by Holdings reflecting the exchange of those certain Warrants to Purchase Membership Units issued by KCI dated April 19, 2014, for an aggregate of 1,818,574 membership units of KCI, for warrants issued by Holdings to Lender for an aggregate of 1,818,574 membership units of Holdings.

8. Account Ownership. Within fifteen (15) days of the date hereof (which date may be extended in Lender's sole discretion), Borrower shall cause Kenneth M. Antos ("Antos") to change the ownership of account number 8712783477, routing number 322271627 (the "Account") with JPMorgan Chase & Co. or its affiliate ("Chase") (which is the Account in which Antos deposits or receives payments under that certain Settlement Agreement and Mutual Release, as amended by and among Twin Towers Trading Site Management, LLC, Jeffrey Brandon, Eric Scholer, David L. Beacklean, SMG Group, Inc., and Antos, dated as of September 1, 2012 (the "Settlement Agreement")) to provide for Lender as sole owner and signatory thereunder (the "Ownership Change"), including executing and delivering to Lender or Chase any documents or instruments necessary to effect such change. Lender agrees that, following the Ownership Change, upon receipt of notice from Antos to Lender of the receipt of any payment into the Account pursuant to the Settlement Agreement, provided that no Event of Default has occurred and is continuing at such time, Lender shall promptly and in any event within five (5) days transfer such funds to Antos pursuant to wire instructions provided by Antos from time to time. Antos hereby grants and transfers to Lender a security interest in and lien on the Account and all funds now or hereafter deposited into the Account.

9. References. All references in the Note to "this Secured Promissory Note" shall be deemed to refer to the Note as amended hereby, and any and all references in the Ancillary Documents to the Note shall be deemed to refer to the Note as amended hereby. All references in the Note and all Modifications to Note to the "Loan Documents" shall be deemed to refer to the "Ancillary Documents," as such may be amended or modified. Capitalized terms used herein



and not defined herein shall have the meanings assigned thereto in the Note. Failure by any Borrower or Guarantor to strictly comply with the terms of this Modification shall constitute an Event of Default under the Note.

10. Miscellaneous. This Modification and each of the Agreement and Acknowledgement of Guarantors may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts, taken together, shall constitute one and the same instrument. Electronic delivery of an original signature shall constitute an original signature.

11. Ratification. KCI agrees that any and all actions taken previously hereto by Antos as "Managing Member" or "Manager" on behalf of KCI in connection with the transactions contemplated by the Note and the Ancillary Documents, including execution of any such documents, be, and they hereby are, authorized, ratified, and confirmed in all respects, regardless of the title used.

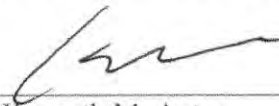
12. Statutory Notice. **ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

*Intentionally blank*

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be duly executed as of the date first above written.

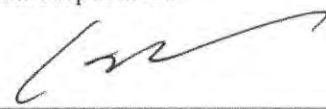
**BORROWERS:**

KCI INVESTMENTS, LLC,  
a Nevada limited liability company

  
By: Kenneth M. Antos  
Its: Manager

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

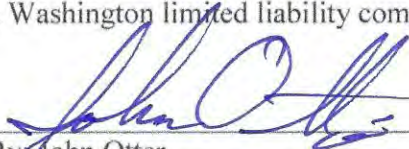
PREFERRED RESTAURANT BRANDS, INC.,  
a Florida corporation

  
By: Kenneth M. Antos  
Its: President

Address: 4033 S. Dean Martin Drive  
Las Vegas, NV 89103

**LENDER:**

CBC PARTNERS I, LLC,  
a Washington limited liability company

  
By: John Otter  
Its: Authorized Manager Representative

Address: 777 108<sup>th</sup> Ave NE  
Suite 1895  
Bellevue, WA 98004  
Facsimile: (425) 688-7003



# EXHIBIT “D”

APN: 163-29-615-007

When recorded, return to:  
LANE POWELL pc  
601 SW Second Ave, Suite 2100  
Portland, OR 97204  
Attn: Skyler Tanner  
NCS 706 877

Inst #: 20141229-0002856  
Fees: \$39.00  
N/C Fee: \$25.00  
12/29/2014 12:03:20 PM  
Receipt #: 2265155  
Requestor:  
FIRST AMERICAN COMMERCIAL N  
Recorded By: CYV Pgs: 23  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

This Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing is made as of December 17, 2014, by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto, as trustor ("Trustor"), having a notice address of 5148 Spanish Heights Drive, Las Vegas, NV 89148, to First American Title Insurance Company, a Nebraska corporation, as trustee ("Trustee"), having a notice address of 2 First American Way, Santa Ana, CA 92707, for the benefit of CBC Partners I, LLC, a Washington limited liability company, as beneficiary ("Beneficiary"), having a notice address of 777 108th Ave NE, Suite 1895, Bellevue, WA 98004.

**WITNESSETH**

FOR GOOD AND VALUABLE CONSIDERATION, TRUSTOR hereby jointly and severally irrevocably grants, bargains, sells, transfers and assigns to Trustee, its successors and assigns, in trust pursuant to this document and Nevada law, WITH POWER OF SALE, the real property located in Clark County, Nevada, described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Real Property**").

TOGETHER WITH all and singular the tenements, hereditaments, rights, rights-of-way, easements, privileges, reversions and appurtenances thereunto belonging, or in anywise appertaining (whether now or hereafter acquired) and the buildings and improvements thereon (all as part of the premises hereby conveyed) which shall be deemed to include but not to be limited to any and all of the following whether now owned or hereafter acquired:

(i) all leases (subject to the absolute assignment hereinafter described) and other agreements affecting the use, enjoyment or occupancy of the premises and/or improvements now or hereafter entered into (the "**Leases**"), and all rents, issues, profits, damages, deposits, royalties, revenue, proceeds and benefits therefrom and from any business or other activity conducted or operated thereon, now existing or hereafter created;

(ii) all improvements, landscaping, fixtures, equipment and building materials and supplies (whether or not annexed thereto or located thereon) now or hereafter used in connection therewith (collectively, the "**Improvements**"), including, without in any manner limiting the generality of the foregoing, all machinery, materials, appliances and fixtures for



generating or distributing air, water, heat, electricity, light, fuel or refrigeration, for ventilating, cooling or sanitary purposes, for the exclusion of vermin or insects and for the removal of dust, refuse or garbage; telephone, computer, security, surveillance and other electronic or similar systems; wall safes, engines, machinery, boilers, furnaces, oil burners, coolers, refrigeration plants, motors, cabinets, shelving, lockers, partitions, doors, vaults, elevators, sprinkling systems, irrigating systems, awnings, window shades, Venetian blinds, curtains, draperies, light fixtures, fire hoses, fire brackets, fire boxes, fire sprinklers, alarm systems, drapery rods, brackets, screens, floor tile, linoleum, carpets, plumbing, water systems and power systems, washers and dryers, incinerators, communication systems, kitchen and other appliances, built-in furniture and bars, walk-in refrigerator boxes, deep freeze cabinets, steam tables, dishwashers, bake ovens, set-up tables, kitchen ranges and any and all other kitchen equipment or installations; and all other and further installations and appliances on the Real Property, all of said items, whether now or hereafter located thereon, shall, at the option of Beneficiary, be deemed to be for all purposes of this instrument a part of the realty;

(iii) all development rights or credits, air rights and all water and water rights (whether riparian, appropriative or otherwise and whether or not appurtenant) in or hereafter relating to or used in connection with the Real Property and any and all shares of stock evidencing any such water rights;

(iv) Trustor's right, title and interest in and to all reciprocal easement and similar agreements, rights to the nonexclusive use of common drive entries or similar benefits applicable to the Real Property or any part thereof, together with Trustor's right, title and interest in and to the estates or interests burdened thereby;

(v) all right, title and interest of Trustor in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Real Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Real Property;

(vi) all the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire in the real property encumbered hereby, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the real property encumbered hereby, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

(vii) all deposits made with or other security given to utility companies by Trustor with respect to the Real Property and/or the Improvements; all advance payments of insurance premiums made by Trustor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance; and any monies on deposit with or for the benefit of Beneficiary, including but not limited to deposits for the payment of real estate taxes or special assessments against the Real Property, Improvements and/or Leases or for the payment of premiums on policies of fire and other hazard insurance for or with respect to the Real Property, Improvements and/or Leases;



(viii) all Trustor's rights, title and interests, privileges, benefits and remedies in, to and under all permits, licenses, franchises, certificates, approvals, consents and agreements required for the construction, use, occupancy, marketing or operation of any and all Improvements now or hereinafter erected on the Real Property or any business operated by Trustor thereon, including, without limitation, building permits, zoning approvals and use permits, variances, environmental certificates, licenses, certificates of operation, warranties and guarantees;

(ix) all names under or by which the Real Property or the Improvements or the businesses operated by Trustor thereon may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, logos, designs, trade names, patents pending and the goodwill associated therewith;

(x) all books and records, signs, customer lists, promotional materials, and general intangibles of Trustor relating to the Real Property and/or Improvements, and all accounts, contract rights, instruments, chattel paper, claims for relief or indemnity, choses in action and other rights of Trustor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made relating to the Real Property and/or Improvements, including, without limitation, all property tax refunds and refunds of any other monies paid by or on behalf of Trustor relating to the Real Property and/or Improvements;

(xi) all rights of Trustor to the use, in connection with the Real Property, of any contracts executed by Trustor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Real Property and/or Improvements, including:

(1) all agreements heretofore or hereafter entered into with any design architect, landscape architect, civil engineer, electrical engineer, soils engineer, mechanical engineer, or other contractor, architect or engineer in connection with the design or engineering of the Project;

(2) all construction contracts, all subcontracts and all other agreements relating to the construction of the Project or required for the use, occupancy or operation of the Project;

(3) all other agreements heretofore or hereafter entered into with any property manager with respect to the management, leasing, or operation of the Project;

(4) all plans and specifications, designs, drawings, engineering drawings, blueprints, surveys and other matters relating to the existing Improvements or prepared for any construction on or improvements to the Real Property and/or Improvements and all studies, data and drawings related thereto; and

(5) any and all present and future amendments, modifications, supplements, general conditions, change orders and addenda to any of the items described in clauses (1), (2), (3) and (4) above;

(xii) all rights of Trustor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which Trustor has obtained the agreement of any person or entity to pay or disburse any money for Trustor's sale (or borrowing on the security) of the Real Property and/or Improvements or any part thereof, including all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Real Property or the Improvements, together with all deposits and other proceeds of the sale thereof provided that the foregoing shall not be deemed to permit such sales or transfers in violation of the terms hereof;

(xiii) all rights, if any, of Trustor in or to any fund, program or trust monies and any reimbursement therefrom directly or indirectly established, maintained or administered by any governmental authority or any other individual or entity which is designed to or has the effect or providing funds (whether directly or indirectly or as reimbursement) for the repair or replacement of storage tanks (whether above or below ground) located on the Real Property or the remediation or cleanup of any spill, leakage or contamination from any such tank or resulting from the ownership, use or maintenance of any such tank or to compensate third parties for any personal injury or property damage;

(xiv) all substitutions and replacements of, and accessions and additions to, any of the foregoing; and

(xv) all proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any thereof (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

All property granted, transferred and assigned to Trustee hereunder is hereinafter referred to as the "**Trust Property**," and Trustor warrants that it is well and truly seized of a good and marketable title in fee simple to the real property hereby conveyed; Trustor warrants that its interest in the title to all property conveyed by this Deed of Trust is clear, free and unencumbered, and Trustor shall forever warrant and defend the same unto Trustee, its successors and assigns, against all claims whatsoever, except those matters consented to in writing by Beneficiary. Trustor agrees that any greater title to the Trust Property hereafter acquired by Trustor during the term hereof shall be subject hereto, provided, however, that no merger of title shall occur without Beneficiary's prior written consent.

#### FOR THE PURPOSE OF SECURING:

One: Payment of any and all amounts (collectively, the "**Guarantied Obligations**") due and owing by Trustor under that certain Guaranty from Kenneth Antos and Sheila Antos (individually and collectively, "**Guarantor**") dated June 22, 2012, in favor of Beneficiary (the "**Guaranty**"), guarantying the indebtedness evidenced by that certain Secured Promissory Note (and any renewals, extensions, modifications and substitutions thereof) (collectively, the "**Note**"), executed by KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively, "**Borrower**"), dated June 22,

2012, as modified, in the maximum principal sum of THREE MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,250,000.00), together with interest thereon, late charges and collection costs as provided in the Note.

Two: Payment of such additional amounts as may hereafter be loaned by Beneficiary or its successors or assigns to Borrower or Trustor or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

Three: Payment of all moneys herein agreed or provided to be paid by Borrower or Trustor, including, without limitation, any and all advances made by Beneficiary or its successors or assigns, to protect or preserve the security of this Deed of Trust.

Four: (i) Performance of each agreement of Trustor contained in this Deed of Trust or in any other agreement, document or instrument given by Guarantor or Trustor to secure the Guaranteed Obligations (collectively, the "**Loan Documents**"); and (ii) the satisfaction of those terms and conditions contained herein if applicable to Trustor or within Trustor's control.

## ARTICLE ONE

### TRUSTOR'S COVENANTS

#### TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

1.01 Payment of Indebtedness. To perform, observe and comply with each and every provision hereof, of the Loan Documents and of all other instruments of security or other agreements entered into in connection herewith.

1.02 Payment of Taxes and Other Charges. To pay: (a) before delinquency, all taxes and assessments of every type or nature affecting the Trust Property or any part thereof, including all rents or charges for water, sewer and other utilities (collectively, the "**Impositions**"); (b) all other adverse claims, liens, charges, and encumbrances which now are or shall hereafter be or appear to be a lien on the Trust Property prior to the lien of this Deed of Trust; (c) all taxes upon this Deed of Trust or the interest of Beneficiary herein, or upon the Note or debt secured hereby (excluding federal income taxes or state business taxes payable by Beneficiary); and (d) all assessments, fees, maintenance charges and other expenses payable by Trustor pursuant to any declaration of covenants, conditions, restrictions or easements applicable to the Trust Property or any part thereof. If any law is enacted which imposes payment of all or any of the taxes in the aforesaid clause (c) upon Beneficiary, and the agreement of Trustor, as herein provided, to pay such tax or taxes, is legally inoperative, then the debt hereby secured, without any deduction, shall, at the option of Beneficiary, become immediately due and payable, notwithstanding anything to the contrary contained herein or in any law heretofore or hereafter enacted.

1.03 Insurance. To provide and maintain policies of "all risk" property insurance on the Trust Property, in an amount not less than the full replacement cost from time to time of the improvements, fixtures, and equipment comprising the Trust Property but not, in any event, to be less than \$3,660,000 — .00, together with a standard mortgagee clause (Form 438BFU

1-374





or similar) making losses thereunder payable to Beneficiary and a so-called Replacement Cost or Restoration Endorsement with an Agreed Amount Endorsement. Trustor will also provide public liability and property damage insurance with a single combined liability limit in the amount of at least \$1,000,000 and containing a Broad Form Comprehensive General Liability Endorsement; earthquake insurance; flood insurance, if the Real Property or any part thereof lies within a federally designated flood zone; and, when required by Beneficiary, insurance against any other risks as may be designated by Beneficiary. All such policies shall be in amounts acceptable to Beneficiary, shall be with companies or associations of companies authorized to do business in the State of Nevada and rated A or better in the "Best's Insurance Guide", shall name any person designated by Beneficiary (including without limitation, Beneficiary) as additional insureds, shall contain a provision to the effect that the waiver of subrogation rights by the insured does not void coverage, shall contain such special endorsements as may be required by the terms of any Leases, and shall otherwise be in form and substance satisfactory to Beneficiary. Additionally, all such policies of insurance shall not be subject to cancellation without thirty (30) days' prior notice to Beneficiary and shall not be subject to modification without Beneficiary's prior written approval.

If at any time during the term hereof the amount or coverage of insurance which Trustor is required to carry under this Section 1.03 is, in Beneficiary's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or lessees of properties located in Clark County, Nevada, which are similar to and operated for similar purposes as the Trust Property, Beneficiary shall have the right to require Trustor to increase the amount or change the types of insurance coverage required under this Section 1.03.

If the coverage or the insurers that Trustor has obtained or selected fail to adhere to the foregoing standards, Trustor fails to upgrade their coverage, and Beneficiary in its sole discretion determines that such failure could result in a material impairment of Beneficiary's security, Beneficiary may procure appropriate insurance that meets the foregoing standards and may advance funds under the Deed of Trust to pay for such coverage, or if insurance is not available that meets the foregoing standards, Beneficiary shall have the right to declare the indebtedness hereby secured to be immediately due and payable, and thereafter such indebtedness shall be fully due and payable. If Trustor has notice of any condition that would wholly or partially invalidate any such insurance, Trustor shall promptly cure such condition. At least thirty (30) days before expiration of such policies, Trustor shall deliver to Beneficiary renewals thereof, with evidence of premiums paid.

In the event of loss, Trustor shall give prompt notice by mail to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, instead of to Trustor or Trustor and Beneficiary jointly; such insurance proceeds or any part thereof may be applied by Beneficiary in its sole discretion to the payment of interest due on the indebtedness secured hereby, the reduction of the principal amount of said indebtedness (in the inverse order of maturity), the payment of any other obligation hereby secured, or the restoration or repair of the Trust Property, with the balance, if any, after such application payable to Trustor. Notwithstanding the foregoing, any proceeds attributable to a loss of rents shall be held by Beneficiary for the benefit of Trustor and applied to the payment of interest and principal as and when due under the terms of the Note. Beneficiary shall not be responsible for such insurance or for the collection of any insurance moneys, or for the solvency of any insurer or any insurance underwriter. Application of

insurance proceeds by Beneficiary shall not cure or waive any default hereunder or invalidate any act done hereunder because of any such default.

In the event of sale of the Trust Property under the power of sale herein granted to Trustee, or foreclosure of this Deed of Trust as a mortgage, or in the event Beneficiary or a receiver appointed by the court shall take possession of the Trust Property without sale, all right, title and interest of Trustor in and to all transferable insurance policies covering the Trust Property then in force and any unearned premiums paid thereon shall inure to the benefit of and pass to Beneficiary in possession, receiver or purchaser at such sale, as the case may be, and Beneficiary is hereby appointed attorney-in-fact for Trustor to assign and transfer said policies.

1.04 [Reserved.]

1.05 Care of Property. To keep the Trust Property and all common areas (collectively, the "**Common Areas**") appurtenant to, or benefiting all or any portion of the Trust Property which are within Trustor's control in good condition and repair, and not to commit or permit waste thereof; not to remove or demolish, nor alter the design or structural character of, any building, fixture, equipment, fence, wall, or other improvements comprising part of the Trust Property, without the prior written consent of Beneficiary; to keep all buildings or improvements comprising part of the Trust Property free of termites, dry rot, fungus, roaches and all other harmful or destructive insects; to keep all plants, trees and shrubs comprising part of the Trust Property neatly pruned and in good condition; to keep the Trust Property free of rubbish and other unsightly or unhealthful conditions; and not to in any way change or restrict the use of the Trust Property or Common Areas without the prior written consent of Beneficiary. Beneficiary or Trustee, or both, may, at any time or from time to time, enter and inspect or protect the Trust Property, in person or by a representative, in such manner and to such extent as it may deem necessary.

1.06 Improvements, Repairs. Subject to the limitations on Trustor's alteration of the Trust Property, as provided in Section 1.05, to promptly complete any improvements that may be commenced in a good and workmanlike manner and, in conformity with plans and specifications approved by Beneficiary, and Trustor shall, with reasonable diligence, repair and restore any portions of the Trust Property that may be damaged or destroyed, whether or not insurance against the cause of such damage or destruction is collected. Trustor shall pay when due all claims for work performed or materials furnished, or both, on or in connection with the Trust Property or any part thereof, and, subject to Section 1.12, shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialmen's charges, liens, claims of liens, or encumbrances upon the Trust Property.

1.07 Actions Affecting Trust Property. To appear in and prosecute or defend any action or proceeding that may affect the Trust Property or the priority of this Deed of Trust, the security of Beneficiary hereunder or the title of Trustee hereunder; and Trustor will pay all reasonable costs, expenses (including the cost of searching title), and attorneys' and paralegal fees incurred in such action or proceeding. Beneficiary or Trustee may, at its option, appear in and defend any action or proceeding purporting to affect the priority of this Deed of Trust or the Trust Property or the rights or powers of Beneficiary or Trustee. Beneficiary, at its option, may (but shall have no obligation to) pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien, that in

the judgment of Beneficiary appears to be prior or superior to the lien of this Deed of Trust (a "**Prior Encumbrance**"). All amounts paid, suffered or incurred by Beneficiary in exercising the authority herein granted, including reasonable attorneys' and paralegal fees, shall be secured hereby and shall be reimbursed to Beneficiary upon demand. Notwithstanding the foregoing, in the event Beneficiary pays, purchases, or expends any sums to discharge in full or in part any such Prior Encumbrance, Beneficiary shall be subrogated to the lien position of the holder of the Prior Encumbrance to the extent of any such payment, purchase or sum expended.

1.08 Laws. To comply with all laws, ordinances, regulations, orders, rules, covenants, conditions and restrictions affecting the Trust Property, and not to suffer or permit any act to be done in or upon the Trust Property or in or upon any Common Areas within Trustor's control in violation thereof, and to preserve and keep in full force and effect all licenses and permits affecting Trustor or the Trust Property or the Common Areas within Trustor's control. Trustor shall promptly comply with and deliver to Beneficiary copies of all notices received by Trustor alleging any violation of any laws, ordinances, regulations, orders, rules, covenants, conditions or restrictions affecting the Trust Property or Common Areas.

1.09 Beneficiary's Right to Perform. That, if Trustor fails to do so, Beneficiary may (but shall not be obligated to) do any or all things required of Trustor by any of the provisions of this Deed of Trust and incur and pay all reasonable expenses in connection therewith.

1.10 Beneficiary's Expenses. To reimburse Trustee and Beneficiary, respectively, promptly upon demand, all sums of money which either shall pay pursuant to any of the provisions of this Deed of Trust, together with interest thereon, until repaid, from the time of the payment thereof, at the default rate payable pursuant to Section 2.3 of the Note (the "**Default Rate**").

1.11 [Reserved.]

1.12 Right of Contest. The validity or the amount of any tax or statutory lien upon the Trust Property may be contested by Trustor by appropriate proceedings, in good faith and with reasonable diligence, and, during the period of such contest, the nonpayment of such tax or lien (the "**Contested Lien**") shall not be the cause of an Event of Default, if and only if:

(a) The Contested Lien is discharged of record, if permitted under applicable law, and such contest shall have the effect of preventing the collection of the amount of the Contested Lien and the enforcement of the Contested Lien as a lien or charge upon the Trust Property;

(b) Such contest does not involve a forfeiture or sale of the Trust Property or otherwise impair or adversely affect the lien hereof;

(c) Trustor gives reasonable advance written notice to Beneficiary of Trustor's intention to contest the validity or the amount of such Contested Lien; and



(d) Prior to such contest, Trustor provides evidence reasonably satisfactory to Beneficiary of Trustor's ability to pay the amount of such Contested Lien if the validity thereof is sustained by a court of competent jurisdiction.

1.13 Hazardous Waste. The real property and improvements constituting the Trust Property have not contained, do not presently contain, and Trustor shall not suffer or permit such property to contain or to be used in any manner for the storage, use or disposal of, (a) any oil, petroleum or any other hazardous or toxic chemical, material, substance or waste as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., and the applicable provisions of Nevada Revised Statutes ("NRS") including, without limitation, NRS Chapters 444, 444A, 445A, 445B, 445C, 459, 486A, 590 and 618 or any regulations adopted pursuant to any of the foregoing; (b) asbestos in any form which is or could become friable; (c) urea formaldehyde foam insulation; (d) transformers or other equipment which contain dielectric fluids containing levels of polychlorinated biphenyls, in excess of fifty (50) parts per million; (e) any other chemical, material, or substance exposure to which is prohibited, limited or regulated by any governmental authority or agency or may or could pose a hazard to the health and safety of the occupants of the Trust Property or the owners of property adjacent to the Trust Property or clean up obligations upon an owner of the Trust Property. There is no underground storage tank on the Trust Property. Trustor has not stored nor caused to be stored any of the equipment or substances described in subsections (a) through (e) of this Section 1.13 on, in, under, or about the Trust Property. The Trust Property is not subject to any federal, state or local "superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal or remediation of any hazardous substance from the Trust Property or from any other real property owned or controlled by Trustor or in which Trustor has any interest, legal or equitable, in Nevada. Trustor shall forthwith notify Beneficiary in writing of any notices of environmental violations affecting the Trust Property, or any other real property owned by Trustor in Nevada, which notice shall include a copy of the notice of violation. Trustor hereby grants to Beneficiary, its agents, employees, consultants and contractors the right to enter upon the Trust Property and to perform such tests of the Trust Property as are reasonably necessary to determine Trustor's compliance with this Section or, should Beneficiary elect to do so in its sole and absolute discretion, to correct any violation of the laws or regulations of the nature described in this Section.

1.14. Indemnity. Trustor shall indemnify, defend, protect and hold Beneficiary and Trustee harmless from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees) arising from or in connection with, or caused by (i) any act, omission or negligence of Trustor or any tenant of the Trust Property, or their respective contractors, licensees, invitees, agents, servants or employees, wheresoever the same may occur, or (ii) any use of the Trust Property, or any part thereof, and any service delivery facilities excluding any such claims, loss, proceedings, damages, cause of action, liability, costs or expense (including attorneys' fees) arising from or in connection with, or caused solely by, Beneficiary's active negligence or willful misconduct after the entry of possession upon the Trust Property by Beneficiary or its agents pursuant to Article Four of this Deed of Trust; or (iii) the use, storage, existence or generation of any hazardous substance or materials of the type described in Section 1.13 either upon or in connection with the Trust Property, including, without limitation, the

cost of any clean up, removal, remediation or other response required by any governmental entity having jurisdiction over such matters, or (iv) any failure of Trustor or the Trust Property to comply with any requirements of The Americans With Disabilities Act, 42 U.S.C. ' 12101, et seq., and all applicable rules and regulations promulgated thereunder (the "ADA"). The provisions of this Section 1.14 shall survive the repayment of the obligations secured hereby and shall survive any foreclosure, transfer by deed in lieu of foreclosure or other sale hereunder.

1.15. [Reserved.]

## **ARTICLE TWO**

### **ASSIGNMENT OF RENTS**

2.01. Assignment of Rents. Notwithstanding anything to the contrary contained in this Deed of Trust, all of the existing and future rents, issues, profits, income, revenues, security and other tenant deposits arising out of or otherwise relating to the Trust Property or any part thereof or from the operation or conduct of any business or other activity thereon by Trustor, together with the Leases are hereby presently and absolutely assigned to Beneficiary. Trustor hereby authorizes and directs the tenants of the Trust Property that, upon written notice from Beneficiary and after the occurrence of an Event of Default, all payments required under the Leases, or in any way respecting same, shall be made directly to Beneficiary as they become due. Trustor hereby relieves the tenants from any liability to Trustor by reason of said payments being made to Beneficiary. Nevertheless, until Beneficiary gives written notice to the tenants of the Trust Property to make such payments to Beneficiary, Trustor is given conditional permission to collect and retain all such rents and/or payments in accordance with the terms of the Assignment. Beneficiary is hereby authorized to give such notification upon the occurrence of any Event of Default hereunder.

2.02 Insurance Proceeds. All proceeds of any insurance required by Section 1.03 are hereby assigned to Beneficiary, subject to the provisions of Section 1.03.

2.03 Condemnation and Other Proceedings. All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any condemnation or other proceedings for public use of or for any damage to the Trust Property or any part thereof and any award for change of grade of streets thereon are hereby assigned and shall be paid to Beneficiary. Beneficiary shall have the right to participate in any such proceedings, and Trustor shall not settle or otherwise resolve any such proceedings or execute or deliver any deed in lieu thereof without the prior written consent of Beneficiary. Trustor agrees to execute such further assignments of any such award, judgment or settlement as Beneficiary may reasonably require, and to deliver to Beneficiary all proceeds of any such award, judgment or settlement which may be received by Trustor. Any such monies shall be applied in the same manner and with the same effect as provided in this Deed of Trust for the disposition of the proceeds of fire and other insurance.

2.04 Royalties. Trustor hereby assigns and transfers to Beneficiary all damages, royalties and revenue of every kind, nature and description whatsoever that Trustor may be entitled to receive whether by reason of loss of or damage to the Trust Property or from any person owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Trust

Property, together with the right in Beneficiary to receive and receipt therefor and apply the same to the indebtedness hereby secured either before or after any default hereunder, and Beneficiary may demand, sue for and recover any such payments but shall not be required so to do.

2.05 Application. Neither the application nor the release of any sums described in this Article Two shall cure or waive any Event of Default or notice of breach and election to sell hereunder or notice of sale or invalidate any act done pursuant to such notice.

### **ARTICLE THREE**

#### **SECURITY AGREEMENT AND FIXTURE FILING**

3.01 Security Agreement. Trustor hereby grants to Beneficiary a security interest under the Nevada Uniform Commercial Code (the "UCC") in and to such portions of the Trust Property as may constitute goods, accounts, general intangibles, chattel paper, inventory, fixtures, equipment or other personal property, and any replacements, modifications or additions thereof or thereto, whether now or hereafter acquired, and any and all "**Proceeds**" thereof. As used herein, "Proceeds" has the meaning assigned to it under the UCC, and, in any event, shall include but not be limited to (i) any and all proceeds of any insurance (including without limitation, property, casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Trust Property (including without limitation the provisions of the security agreement contained herein); (ii) any and all proceeds in the form of accounts, security or other tenant deposits, prepaid expenses, tax escrows, down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel papers, liens and security instruments, guaranties (whether such guaranties are given by individuals, corporations, partnerships, or by any federal, state or local government or quasi-government entities), or general intangibles relating in whole or in part to the Trust Property and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligations due Trustor thereunder; (iii) any and all payments (in any form whatsoever) made or due and payable from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Trust Property by any governmental authority; (iv) the rents, issues and profits or other benefits, including security or other tenant deposits, arising out of, in connection with or pursuant to any lease, license or other use of the Trust Property or any part thereof, including, without limitation, any business or other activity operated or conducted on the Trust Property or any part thereof; and (v) any and all other amounts from time to time paid or payable in connection with any of the Trust Property.

Trustor shall execute any and all documents and writings, including without limitation financing statements, as Beneficiary may reasonably request, to preserve and maintain the priority of the security interest created hereby on property which may be subject to the foregoing security agreement, and shall pay to Beneficiary on demand any reasonable expenses incurred by Beneficiary in connection with the preparation, execution and filing of any such documents. Trustor hereby authorizes and empowers Beneficiary to execute and file, on Trustor's behalf, all financing statements and refilings and continuations thereof as Beneficiary deems necessary or advisable to create, preserve and protect said security interest. This Deed of Trust shall be deemed a security agreement as defined in the UCC and the remedies for any violation of the covenants,



terms and conditions to the agreements contained in this Deed of Trust shall be (i) as prescribed herein, (ii) as available under general law, (iii) as to such part of the collateral which is also reflected in a financing statement by the specific statutory consequences now or hereafter enacted and specified in the UCC, or (iv) any combination of the foregoing, all at Beneficiary's sole election. A photographic or other reproduction of this Deed of Trust shall be sufficient as a financing statement for filing wherever filing may be necessary to perfect or continue the security interest granted herein.

Trustor and Beneficiary agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing Beneficiary's option, as provided in this Deed of Trust, that everything used in connection with the production of income from the Trust Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust, at all times and for all purposes and in all proceedings both legal or equitable, may be regarded as part of the real property encumbered by this Deed of Trust.

All property which is subject to the provisions of this security agreement shall be purchased or obtained by Trustor in its name and free and clear of any lien or encumbrance, except the lien hereof, for use only at the Trust Property, and shall be and at all times remain free and clear of any lease or similar arrangement, chattel financing, installment sale agreement, security agreement and any encumbrance of like kind, so that the lien hereof shall attach to and vest in Trustor for the benefit of Beneficiary, with the priority herein specified, immediately upon the installation or use of the same in the Trust Property, and Trustor warrants and represents that Beneficiary's security interest in such property is a validly attached and binding lien, properly perfected and prior to all other liens therein.

Trustor agrees that all property of every nature and description covered by the lien and charge of this Deed of Trust, together with all such property and interests covered by such security interest or interests, are encumbered as a unit, and upon the occurrence of an Event of Default hereunder, or under any security or other agreement now or hereafter securing the indebtedness hereby secured, at Beneficiary's option, may be foreclosed upon or sold in the same proceedings or at the same time, and all of said property and interests may, at Beneficiary's option be sold as such in one unit as a going business and not in lots or parcels, or, at Beneficiary's option, may be sold in lots, parcels or such other convenient designation as Beneficiary in its sole discretion may elect.

3.02 Fixture Filing. Trustor agrees that the filing of this Deed of Trust in the real estate records of the county where the real property described in **Exhibit "A"** is located shall also operate from the time of filing as a fixture filing in accordance with the UCC. The address of the secured party from which information concerning the security interests granted hereunder may be obtained is the address of Beneficiary set forth on page 1 above.

## **ARTICLE FOUR**

### **EVENTS OF DEFAULT AND REMEDIES**

4.01 Event of Default. The term "**Event of Default**," wherever used in this Deed of Trust, shall mean any one or more of the following events (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) An Event of Default under the Note

(b) Failure by Trustor to pay (1) any taxes and assessments prior to delinquency; or (2) any renewal insurance premiums thirty (30) days prior to expiration or cancellation of existing policies; or (3) any other sums to be paid by Trustor hereunder or under any other instrument securing the Note when due or, if a due date is not specified, then failure to pay such sums within five (5) days after written demand by Beneficiary.

(c) If any intentional material inaccuracy shall exist in any of the financial statements or in any other information furnished by or to be furnished by or on behalf of Trustor to Beneficiary pursuant to the provisions of this Deed of Trust or furnished or to be furnished to Beneficiary to induce Beneficiary to make the loan evidenced by the Note.

(d) (1) The filing by or against Trustor of a petition in bankruptcy or for relief under any bankruptcy or similar laws, and with respect to a petition filed against Trustor, such petition is not dismissed within sixty (60) days after it is filed; or (2) the entry of an order for relief with respect to Trustor under any federal or state law relating to bankruptcy or insolvency; or (3) if Trustor seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, sequestrator or liquidator of itself or of all of the rent, revenues, issues, earnings, profits or income from the Trust Property or any part thereof; or (4) if Trustor makes any general assignment for the benefit of creditors; or (5) if Trustor is or becomes insolvent (under any definition of such term); or (6) any trustee, receiver, sequestrator or liquidator of Trustor or any part of the Trust Property is appointed and, in the case of any involuntary proceeding, such action is not dismissed within sixty (60) days; or (7) the cessation, dissolution or abandonment by Trustor of the Trust Property; or (8) the attachment, execution, commencement of foreclosure against or other judicial seizure of or affecting the Trust Property or material part thereof, unless Trustor dissolves, bonds against, or otherwise eliminates such action, attachment, execution or seizure within fifteen (15) days of its occurrence.

(e) The entry by any court of competent jurisdiction of a judgment or decree that an undertaking by Trustor as herein provided to pay the Note or any interest thereon, or any taxes, assessments, levies, liabilities, obligations or encumbrances is legally inoperative or cannot be enforced, or in the event of the passage of any law changing in any way or respect the laws now in force for the taxation of deeds of trust or mortgages or debts secured thereby for any purpose, or the manner of collection of any such taxes, so as to affect adversely either the security of this Deed of Trust, the indebtedness or other sums secured hereby, the rate of interest on the Note or all or any portion of the indebtedness, and such judgment shall not be appealed and stayed pending appeal within ten (10) days after entry thereof.

(f) Except as otherwise provided in Section 1.12 hereof, default in any obligation of Trustor owed to a third party and secured by a lien on the Trust Property.

(g) Subject to Section 1.12 hereof, whether by operation of law or otherwise, Trustor shall create or permit the creation of any lien or other encumbrance upon the Trust Property, except for assessment and taxes levied but not yet due and payable.

(h) A breach of the provisions of Section 1.03 hereof.

(i) A Disposition or an Encumbrance (as such terms are defined in Section 5.01 hereof) in violation of the provisions of Section 5.01 hereof.

(j) Failure by Trustor to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Deed of Trust or any other agreement or instrument executed by Trustor evidencing or securing the indebtedness evidenced by the Note within the time periods provided therein, and (except as otherwise provided in any other provision of this Section 4.01) with respect to any curable, non-monetary Event of Default having no specific time period within which such act or event becomes an Event of Default, Trustor shall have received from Beneficiary twenty (20) days' notice specifying the defect or failure and shall have failed to comply with such notice, provided, however, that the right to cure such default shall exist only so long as (i) the defect or failure is capable of cure, (ii) no forfeiture or taking of the Trust Property can occur during the period of such curing and (iii) no other Event of Default shall exist or be continuing.

(k) The occurrence of any of the events described in Section 4.01 (c) or 4.01 (d) with respect to Borrower or any guarantor of the Note.

4.02 Acceleration; Sale. Upon the occurrence of an Event of Default, Beneficiary, without further notice or demand, may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature of such default, which notice may contain an election to cause the Trust Property to be sold under this Deed of Trust. Notice of acceleration to Trustor shall not be required. If Beneficiary elects to cause the sale of the Trust Property, Beneficiary shall provide the Trustee with true and correct copies of this Deed of Trust, the Note, and all documents evidencing expenditures secured hereby. Trustee shall record and give such notices of breach and election to sell by trustee's sale in the manner required by law, and after the lapse of time such as then may be required by law, Trustee, without notice to Trustor, under the power of sale contained herein, shall sell the Trust Property at the time and place fixed by it in said notice of trustee's sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine, subject to any statutory or common law right which Trustor may have to direct such order, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale, provided that Beneficiary, in lieu of a cash bid, may bid in all or part of the indebtedness hereby secured. Trustee may postpone sale of all or any portion of the Trust Property by public declaration at such time and place of sale, and from time to time thereafter may postpone such sale by public declaration at the time and place fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Trust Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any



matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee incurred in connection with such sale, including costs to insure or obtain evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate; all other sums secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

4.03 Notices. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee and relating to the Trust Property or unless otherwise required by law. All notice and cure periods provided herein or in the Loan Documents shall run concurrently with any notice or cure period required by law. Without limiting the foregoing, Beneficiary or Trustee shall be entitled to cause a notice of breach or default and election to sell to be recorded and mailed if any event occurs which, with the giving of notice and/or passage of time, would constitute an Event of Default or would entitle Beneficiary to accelerate the indebtedness secured hereby and the recording and mailing to Trustor of such notice of breach or default and election to sell shall constitute notice of the failure to perform pursuant hereto or thereto. The foregoing shall not be deemed to limit, modify or impair any rights of Trustor to receive notices and/or any applicable cure periods expressly provided in this Deed of Trust.

4.04 Foreclosure Permitted. In lieu of sale pursuant to the power of sale conferred hereby, at the option of Beneficiary this Deed of Trust may be foreclosed in the same manner provided for by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies, available to it hereunder, and otherwise available at law or in equity. All rights and remedies shall be cumulative.

4.05 Possession after Default. Upon the occurrence of an Event of Default, Beneficiary, in its name and/or in the name of Trustor, may operate and maintain all or any portion of the Trust Property or any business or other activity conducted or operated thereon to such extent as Beneficiary deems advisable, and Trustor agrees that Beneficiary shall be entitled to do and perform any acts necessary or proper to preserve the value of the Trust Property, and to sue for and otherwise collect and receive all rents, issues, income and profits thereof and from the operation of any business or other activity conducted or operated thereon, including those past due and unpaid as well as those accruing thereafter, and may rent or lease the Trust Property or any portion thereof to such person or persons and for such periods of time and on such terms and conditions as Beneficiary in its discretion may determine. Trustor further agrees that Beneficiary may also take possession of, and use, any and all personal property of Trustor contained in the Trust Property or used by Trustor in the rental or leasing of the Trust Property or any part thereof. Beneficiary may apply all such rents, issues, profits and income collected or received by it to the payment of the costs and expenses incurred in the operation of the Trust Property or to protect and preserve the security thereof, and then in the manner hereinabove specified in respect of proceeds of sale of the Trust Property or any business or other activity conducted or operated thereon, or any part or all of such moneys may be released by Beneficiary at its sole option. The expenses (including receiver's fees, if any, and compensation to any agent appointed by Beneficiary, and counsel fees and costs and disbursements, including paralegal fees) incurred in taking possession and effecting collection or attempting to take possession and effect collection, shall be deemed an expense of this Deed of

Trust to be paid by Trustor and secured hereby. Neither the entering upon and taking possession of the Trust Property nor the collection of such rents, issues, profits and income and the application or release thereof as aforesaid, shall cure or waive any Event of Default or notice of breach and election to sell hereunder or notice of sale or invalidate any act done pursuant to such notice. In dealing with the Trust Property or any related personal property, Beneficiary shall not be deemed to be a mortgagee in possession, except at its option, and Beneficiary shall be without any liability, charge or obligation to Trustor with respect to such dealing, except for liability for willful misconduct and gross negligence, and all net losses, costs and expenses incurred shall be secured hereby and payable by advancements reimbursed by Trustor to Beneficiary upon demand.

4.06 Additional Security. If the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, security interests, deeds of trust, pledges, contracts of guaranty, letters of credit, assignments of rents, assignments of insurance policies or other additional security, Beneficiary, in its sole and absolute discretion, may exhaust all or any portion of such security as well as the security hereunder, either concurrently or independently and in such order as it may determine in its sole and absolute discretion, and may apply the proceeds received upon the indebtedness secured hereby without affecting the status of, or waiving any right to exhaust, all or any other security including the security hereunder and without waiving any breach or default or any right or power, whether exercised hereunder or contained herein or in any such other security agreement or instrument. Trustor hereby waives any right or privilege which it or its creditors might otherwise have to require Trustee and/or Beneficiary to proceed against the assets encumbered hereby or by any other security agreements or instruments securing the Note in any particular order or fashion under any legal or equitable doctrine or under principles of marshaling or suretyship, and further agree that upon the occurrence of an Event of Default hereunder or under any such agreement or instrument and after the expiration of any applicable grace period following notice, Beneficiary may proceed to exercise any or all remedies with regard to any or all assets encumbered hereby or by any other security agreements or instruments securing the Note in such manner and order as Beneficiary in its sole and absolute discretion may determine.

4.07 Acceptance of Sums After Default. The acceptance by Beneficiary of any sum in payment, or part payment, of any indebtedness secured hereby, after the same is due or after the giving of any notice of default, or the giving or recording of any notice of breach, or after giving of any notice of sale, shall not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining Event of Default or invalidate any sale held pursuant to such notice for any such remaining Event of Default, or prejudice any of the rights of Beneficiary under this Deed of Trust. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other agreement securing the Note and without limiting the generality of this Section 4.07, in the case of any Event of Default, Beneficiary may accept payments or performance of any obligations due hereunder without thereby waiving the existence of such Event of Default if the payment or performance is not sufficient to completely cure such Event of Default. Beneficiary, from time to time before a Trustee's sale, may rescind any notice of breach or default and election to sell by executing, delivering and causing Trustee to record a written notice of such rescission. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other notices of

breach and election to sell, nor otherwise affect any term, covenant or condition hereof or under any obligation secured hereby, or any of the rights, obligations or remedies of the parties thereunder.

4.08 Beneficiary's Costs. In the event Beneficiary deems it necessary to employ legal counsel or to take legal action to collect the indebtedness secured hereby, to enforce any provision hereof, to prepare any modification, renewal or extension of the Note, this Deed of Trust, or any related loan or security document, to prepare documents regarding any transfer of all or any part of the Trust Property, or to protect any of Beneficiary's rights hereunder (including any protection of Beneficiary's rights in connection with any proceedings under any state or federal bankruptcy or insolvency laws and in connection with any appellate proceedings), Trustor covenants and agrees to pay to Beneficiary, in addition to taxable costs of any legal proceeding or action, attorneys' fees and paralegal fees actually incurred, and all reasonable costs of preparation and conduct of such proceedings and documents, including costs of title searches and title policy commitments, all of which shall be secured hereby and, if paid by Beneficiary, shall bear interest at the Default Rate from the date such sums are evidenced by Beneficiary.

4.09 [Reserved.]

## **ARTICLE FIVE**

### **DUE ON SALE OR ENCUMBRANCE**

5.01 Due on Sale or Encumbrance. Upon the voluntary or involuntary sale, lease, exchange, assignment, conveyance, transfer or other disposition (herein collectively called "**Disposition**") of all or any portion of the Trust Property (or any interest therein), or all or any part of the beneficial ownership interest in Trustor (if Trustor is a corporation, partnership, trust, or other legal entity), including, but not by way of limitation, a Disposition of all or any portion of the Trust Property (or any interest therein), or all or any portion of the beneficial interest in Trustor between or among Trustor (if more than one) or co-owners of any Trustor, or in the event Trustor conveys or grants to any other person a lien or a security interest in the Trust Property or any part thereof or voluntarily or involuntarily permits or suffers the Trust Property to be further encumbered (herein collectively called "**Encumbrance**"), then Beneficiary may at its option, declare an Event of Default hereunder and in connection therewith enforce any and all of its rights, remedies and recourses as set forth in this Deed of Trust and any other loan documents entered into in connection with the loan secured hereby; provided, however, Beneficiary shall not enforce such rights, remedies, and recourses if, prior to the Disposition or Encumbrance, it consents in writing to the Disposition or Encumbrance in question. It is expressly agreed that in connection with determining whether to grant or withhold such consent the determination made by Beneficiary shall be conclusive and Beneficiary may require as conditions to granting such consent payment in full of any outstanding amounts under the Note and Beneficiary's reasonable attorneys' fees in connection with such Disposition or Encumbrance.

## **ARTICLE SIX**

### **MISCELLANEOUS PROVISIONS**



6.01 No Waiver or Release. Without affecting the liability of Trustor, Borrower, any guarantor, co-maker or endorser of the Note or any person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after maturity of the Note, and without notice or consent:

(a) Release any guarantor or other person liable for payment of all or any part of the indebtedness or for performance of any obligation secured hereby.

(b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness secured hereby, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof.

(c) Exercise or refrain from exercising or waive any right or remedy Beneficiary may have.

(d) Accept additional security of any kind.

(e) Consent to the filing of any map, plat or replat of the Trust Property.

(f) Consent to the granting of any easement on the Trust Property.

(g) Make or consent to any agreement with Trustor changing the terms of this Deed of Trust, releasing all or any part of the security or collateral for the Note or subordinating the lien or any charge hereof.

6.02 Successor Trustee. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor; in addition Beneficiary in its discretion may appoint another Trustee in the place and stead of said Trustee or any successor in trust. The title herein conveyed to Trustee shall be vested in said successor, which appointment shall be in writing and shall be duly recorded in the Recorder's Office of the county in which the above-described land is situated.

6.03 Irrevocable Trust. The trusts herein created are irrevocable.

6.04 Statement. Trustor agrees to pay Beneficiary's reasonable charge, up to the maximum amount permitted by law, for any statement regarding the obligations secured by this Deed of Trust requested by Trustor or on its behalf.

6.05 No Offset. No offset or claim that Trustor now has or may in the future have against Beneficiary shall relieve Trustor from paying installments or performing any other obligation herein or otherwise secured hereby. Trustor within ten (10) days after any request of Beneficiary, shall furnish a written statement of the amount due on the Note and a description of any alleged offsets, counterclaims, or defenses to the payment thereof.

6.06 Defects. Trustor shall, upon request of the Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgments hereof (the costs and expenses of which shall be paid by Trustor), and shall execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be requested by the Trustee or by the Beneficiary to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

6.07 Further Assurances. Trustor shall execute and deliver to Beneficiary, upon demand, any additional instruments or security documents necessary to secure to Beneficiary or to Trustee any right or interest granted by this Deed of Trust. If any rights, easements or other hereditaments shall hereafter become appurtenant to the Trust Property, or any part thereof, Trustor shall deliver to Beneficiary, upon demand, a supplemental deed of trust in the form approved by Beneficiary covering such rights and interests.

6.08 [Reserved.]

6.09 Business Purpose. The proceeds of the Note secured hereby shall be used by Trustor exclusively for commercial, investment or business purposes and not for personal, family or household purposes.

6.10 Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey, without warranty, the estate in the Trust Property then held by Trustee. The grantee in such reconveyance may be designated and described as the "person or persons legally entitled thereto," or by other appropriate terms.

6.11 Construction. Subject to the provisions of Section 5.01, this Deed of Trust shall inure to and bind the heirs, legatees, administrators, executors, successors and assigns of the parties hereto, and shall be so construed that wherever applicable with reference to any of the parties hereto, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of the masculine gender shall include the feminine gender, and shall likewise be so construed as applicable to and including a corporation or corporations that may be a party or parties hereto. The captions herein are for reference only. As used herein, the terms "Trustor" and "Beneficiary" shall be deemed to include their respective heirs, successors, legal representatives and assigns, whether by voluntary action of the parties or by operation of law. In the event that more than one person or entity is a Trustor hereunder, then all references to "Trustor" shall be deemed to refer equally to each of said persons or entities, all of whom shall be jointly and severally liable for all of the obligations of Trustor hereunder. The term "**Beneficiary**" shall mean the owner and the holder of the Note secured hereby, whether or not named as Beneficiary herein. Any appointment herein of Beneficiary as attorney-in-fact for Trustor shall be with full power of substitution. This Deed of Trust was prepared after negotiations by and between Trustor and Beneficiary; the fact that it has been typed by one party does not require the language of this Deed of Trust to be strictly interpreted against either Trustor or Beneficiary.

6.12 Notice of Sale. Trustor hereby requests that a copy of any notice of sale hereunder be mailed to it at its address hereinbefore set forth.

6.13 No Usury Intended. If from any circumstances whatever, payment or performance of any provision of this Deed of Trust or of the Note secured hereby, at the time performance of such provision shall be due, shall require a payment in excess of that permitted by any applicable law, the obligation to be paid or performed shall be reduced to the limit allowed by such law, so that in no event shall any exaction be possible under this Deed of Trust, the Note, or any other agreement given in connection herewith, that is in excess of any limitation of law. By acceptance of this Deed of Trust, Beneficiary expressly waives the right to demand any such excess. The provisions of this paragraph shall control every other provision of this Deed of Trust, the Note, and any other such agreement.

6.14 Time for Performance. Time is of the essence hereof. No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon the occurrence of an Event of Default or any waiver thereof shall be construed to prejudice its rights in the event of any other or subsequent Event of Default. No delay on the part of Beneficiary in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of such Event of Default. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently at its option.

6.15 Changes. This Deed of Trust may not be changed orally but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. No waiver, change, modification or discharge of this Deed of Trust shall be binding and enforceable against the Beneficiary unless duly executed in writing by a corporate officer of the Beneficiary with an office located at Beneficiary's principal office.

6.16 Manner of Giving Notice. Unless otherwise required by applicable law, all notices required to be given hereunder shall be served personally, sent by overnight courier by a nationally recognized courier service, or by registered or certified mail, postage prepaid, return receipt requested, and addressed to Trustor, Trustee and Beneficiary at their respective addresses first above written. Such addresses may be changed by notice to the other parties given in the same manner as provided in this paragraph. Notices shall be deemed to have been given upon the receipt thereof if personally served, or three (3) days after depositing such notice in the U.S. Mail in accordance with this section.

6.17 Severability. If any one or more of the provisions of this Deed of Trust or the applicability of any such provision to a specific situation shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Deed of Trust and all other applications of such provisions shall not be affected thereby.

6.18 Waiver of Statute of Limitations. Trustor waives the provisions of any applicable statute of limitations, to the full extent permitted by law.



6.19 Participations. Beneficiary shall have the right at any time to sell, assign, transfer, negotiate or grant participations in all or any part of the loan secured hereby or the Note. Trustor hereby acknowledges and agrees that any such disposition will give rise to a direct obligation of Trustor to each such participant.

6.20 Governing Law. This Deed of Trust shall be governed by the laws of the State of Washington, except to the extent that the laws of the State of Washington violate the public policy of the State of Nevada, or conflict with the laws of the State of Nevada with respect to the creation, perfection and enforcement of the liens and security interests created by this Deed of Trust.

6.21 Waivers.

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


(b) Except to the extent prohibited by law, Trustor and Guarantor each waive the provisions of NRS 40.495(3) and (4), including, without limitation the right to a fair market hearing pursuant to NRS 40.495(4)(a) and the limitation on the money judgment set forth in NRS 40.495(4)(b), and agree that the amount of a money judgment against Guarantor shall be in the full amount of the Guaranteed Obligations.

(c) Except to the extent prohibited by law, Trustor and Guarantor each waive the provisions of NRS 107.095 and agree that, notwithstanding NRS 107.095(3), Guarantor's liability under the Guaranty shall not be affected by Lender's failure to give any notice required by that statute.

6.22 Statutory Covenants. The following covenants, Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 of NRS 107.030 are adopted and made a part of this Deed of Trust. The parties agree that the amount of fire insurance required by Covenant Number 2 shall be equal to 100% of the full replacement costs of the improvements, fixtures and other property constituting the Property, the rate of interest in Covenant Number 4 shall be the interest rate then accruing pursuant to the Note, and the percent of counsel fees under Covenant No. 7 shall be reasonable. Except for Covenants Numbers 6, 7 and 8, to the extent that any terms of this Deed of Trust are inconsistent with such statutory covenants, the terms of this Deed of Trust will control. Covenants Number 6, 7 and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

*Intentionally blank*

IN WITNESS WHEREOF, these presents have been executed the day and year first above written.

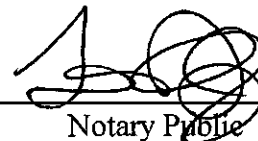
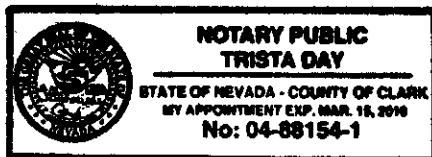



Kenneth M. Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto

STATE OF NEVADA

COUNTY OF CLARK

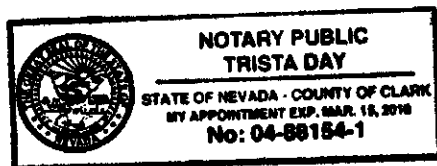
This instrument was acknowledged before me on December 17, 2014, by Kenneth M. Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto.

  
Notary Public  
Sheila M. Neumann-Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on December 17, 2014, by Sheila M. Neumann-Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto.

  
Notary Public

## **EXHIBIT "A"**

### **Legal Description**

Situated in the State of Nevada, County of Clark, described as follows:

LOT SEVEN (7) IN BLOCK FIVE (5) OF SPANISH HILLS ESTATES UNIT 5A, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 107, OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

The Trust Property or its address is commonly known as 5148 Spanish Heights Drive, Las Vegas, NV 89148. The Trust Property tax identification number is 163-29-615-007.



# EXHIBIT “E”

APN: 163-29-615-007

When recorded, return to:  
LANE POWELL PC  
601 SW Second Ave, Suite 2100  
Portland, OR 97204  
Attn: Skyler Tanner  
FATCO NCS 106877

Inst #: 20161219-0002739  
Fees: \$22.00  
N/C Fee: \$25.00  
12/19/2016 01:07:02 PM  
Receipt #: 2959842  
Requestor:  
FIRST AMERICAN COMMERCIAL N  
Recorded By: GWC Pgs: 6  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**FIRST MODIFICATION TO  
DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

This First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (this "**Modification**") is made effective as of December 2, 2016, by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust, dated April 26, 2007, and any amendments thereto, as trustor ("**Trustor**"), having a notice address of 5148 Spanish Heights Drive, Las Vegas, NV 89148, and CBC Partners I, LLC, a Washington limited liability company, as beneficiary ("**Beneficiary**"), having a notice address of 777 108th Ave NE, Suite 1895, Bellevue, WA 98004.

**WITNESSETH**

A. This Modification modifies the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing made December 17, 2014, and recorded in the Official Records of Clark County, Nevada on December 29, 2014, as instrument number 20141229-0002856, under which Trustor is the trustor, Lender is the beneficiary, and First American Title Insurance Company, a Nebraska corporation, having a notice address of 2 First American Way, Santa Ana, CA 92707, is the trustee (as amended, corrected, or modified, the "**Deed of Trust**"). The Deed of Trust covers the real property described in the Deed of Trust. Capitalized terms not defined herein shall have the meaning provided in the Deed of Trust.

B. Borrower and Lender have entered into modifications to the Note to sever a portion of the principal thereof into a separate note that is not secured by the Deed of Trust. As the Deed of Trust secures the Guarantors' Guaranty of the Note, Trustor and Lender wish to amend the terms of the Deed of Trust to reflect the reduced principal amount of the Note.

**AGREEMENT**

1. The paragraph labeled "One" immediately after the Heading "FOR THE PURPOSES OF SECURING:" commencing on page 4 of the Deed of Trust is amended and restated in its entirety to read as follows:

One: Payment of any and all amounts (collectively, the "**Guarantied Obligations**") due and owing by Kenneth Antos and Sheila Antos (individually and collectively, "**Guarantor**") under that certain Guaranty dated June 22, 2012, in favor of Beneficiary (the "**Guaranty**"), guarantying, *inter alia*, the indebtedness



evidenced by that certain Secured Promissory Note (and any renewals, extensions, modifications and substitutions thereof) (collectively, the "**Note**"), by and among KCI Investments, LLC, a Nevada limited liability company, and Preferred Restaurant Brands, Inc., a Florida corporation (individually and collectively, "**Borrower**") and Beneficiary, dated June 22, 2012, as now or hereafter modified, in the maximum principal sum of TWO MILLION NINE HUNDRED AND SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,975,000.00), together with interest thereon, late charges and collection costs as provided in the Note.

2. Except as amended hereby, the Deed of Trust remains in full force and effect, without waiver or amendment. The real property described in the Deed of Trust shall remain subject to the lien, charge or encumbrance created in the Deed of Trust and, except as expressly stated herein, nothing herein contained or done pursuant to this Modification shall affect or be construed to affect the liens, charges or encumbrances created in the Deed of Trust, or the priority thereof over other liens, charges or encumbrances, or to increase or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Deed of Trust.

3. This Modification may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

*Intentionally blank*



IN WITNESS WHEREOF, these presents have been executed the day and year first above written.



Kenneth M. Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto



Sheila M. Neumann-Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto

CBC PARTNERS I, LLC,  
a Washington limited liability company

By: John Otter  
Its: Authorized Manager Representative

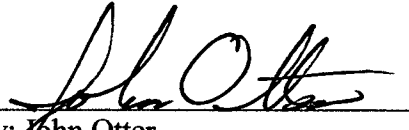
*Notary acknowledgements follow*

IN WITNESS WHEREOF, these presents have been executed the day and year first above written.

Kenneth M. Antos, as Trustee of the Kenneth  
and Sheila Antos Living Trust dated April 26,  
2007, and any amendments thereto

Sheila M. Neumann-Antos, as Trustee of the  
Kenneth and Sheila Antos Living Trust dated  
April 26, 2007, and any amendments thereto

CBC PARTNERS I, LLC,  
a Washington limited liability company

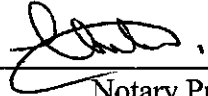
  
By: John Otter  
Its Authorized Manager Representative

*Notary acknowledgements follow*

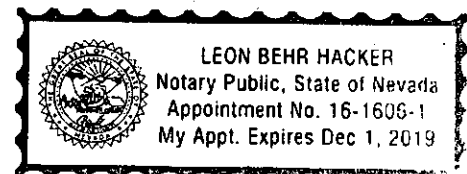
STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on <sup>December 13<sup>th</sup></sup> ~~November~~ \_\_, 2016, by Kenneth M. Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto.



Notary Public



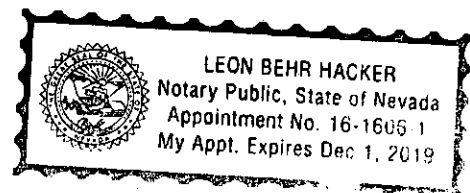
STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on <sup>December 13<sup>th</sup></sup> ~~November~~ \_\_, 2016, by Sheila M. Neumann-Antos, as Trustee of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto.



Notary Public



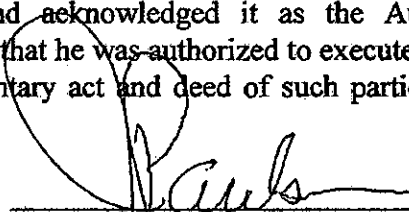
State of NEVADA  
County of CLARK



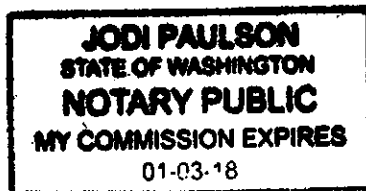
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that John Otter is the person who personally appeared before me, and said person acknowledged that he signed this instrument, and that he is authorized to execute the instrument, and acknowledged it as the Authorized Manager Representative of CBC Partners I, LLC, and that he was authorized to execute the instrument and that said instrument was the free and voluntary act and deed of such parties for the uses and purposes mentioned in this instrument.

DATED: November 30 2016

  
Print Name: Jodi A. Paulson  
NOTARY PUBLIC for the State of Washington,  
residing at Bellevue

My appointment expires: 1/3/2018



# EXHIBIT “F”

Date : 7/21/2017 2:31:28 PM

From : "Gavin Ernstone" gavinernstone@gmail.com

To : "'Alan Hallberg"' alan@cbcpartnersllc.com, "'Ken Antos"' kantos@cox.net

Subject : FW: 5148 Spanish Heights Drive proposal for consideration

**SHAC (Buyer) obligations:**

- Service the existing 3<sup>rd</sup> lender debt (I would like to see the existing 3<sup>rd</sup> position Note) starting 90 days after SHAC possession of the premises,
- Effect repairs to the premises to bring it back to top quality standard and working repair (we estimate to be in excess of \$100,000.00 in repairs/improvements completed over the first 90 days).
- Maintain and provide for all costs related to the ongoing maintenance of the premises
- Pay all utilities
- Pay all insurance
- Pay all HOA dues
- Pay all property taxes (on a "go forward" basis)
- Pay all Landscaping
- Pay all Pool maintenance
- Pay all ongoing repairs to the premises
- Provide that portion of the judgment necessary as additional collateral to the 3<sup>rd</sup> lender to fully securitize 3<sup>rd</sup> lender's debt position where security from the property is deficient to do so
- At the earlier of 2 years or upon collection of the judgment proceeds, pay off in full the 3<sup>rd</sup> position loan against the property
- At the earlier of 2 years or upon collection of the judgment proceeds, either assume service of or retire either or both of the 1<sup>st</sup> and 2<sup>nd</sup> position lenders
- 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 1<sup>st</sup> or 2<sup>nd</sup> lender

**3<sup>rd</sup> Lender obligations:**

- Re-age any delinquency under its 3<sup>rd</sup> position Note to bring its Note current
- Amend the 3<sup>rd</sup> position Note to be "interest only" payments at 3.5% APR for 24 months
- Amend the 3<sup>rd</sup> position Note to reset the maturity of the 3<sup>rd</sup> position Note to 24 months
- Amend the 3<sup>rd</sup> position Note to provide for a balloon payment due at maturity in 24 months
- Continue to service the 1<sup>st</sup> and 2<sup>nd</sup> position Notes for a period of not more than 24 months, adding any protective advances past and future, to its 3<sup>rd</sup> position Note face balance

**Owner (Seller) obligations:**

- Convey all rights of possession of the premises
- Add SHAC as Joint Tenant w/ rights of survivorship on the Deed
- Provide quitclaim deed for the benefit of SHAC of Seller's interest in property to SHAC attorney to hold in escrow pending recordation upon satisfaction of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Deeds of Trust
- Agree to amend the 3<sup>rd</sup> position Note to be "interest only" payments at 3.5% APR
- Agree to amend the 3<sup>rd</sup> position Note to set the maturity to 24 months
- Agree to amend the 3<sup>rd</sup> position Note to provide for a balloon payment due at maturity in 24 months

When you have a moment, lets discuss this proposal, and your thoughts as to each of the Seller's and 3<sup>rd</sup> position lender's receptiveness to this offer.

My thought is that this proposal gets the 3<sup>rd</sup> lender:

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

As to the Seller, he:

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

I believe that the 1<sup>st</sup> and 2<sup>nd</sup> position lenders are not involved in the transaction and remain unaffected.

I look forward to speaking again tomorrow, if you are available.

All the Best,

**Jay Bloom**

Director

1st One Hundred

m [702.423.0500](tel:702.423.0500) | f [702.974.0284](tel:702.974.0284)

[jbloom@f100llc.com](mailto:jbloom@f100llc.com) | [www.f100llc.com](http://www.f100llc.com)

**5148SH 003618**



**Corporate Headquarters**  
2485 Village View Drive, Suite 190  
Henderson, NV 89074

Please consider the environment

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CONFIDENTIALITY NOTICE: This message is for the named person's use only. It may contain sensitive and private proprietary or legally privileged information. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments.

# EXHIBIT “G”

## FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (the "Forbearance Agreement") is made and dated as of the 27<sup>th</sup> 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 ("SJCv")

### RECITALS

#### **A. The Parties and Background**

1. CBCI is a Washington limited-liability company. CBCI is the holder of a certain Secured Promissory Note dated June 22, 2012; which has been amended, by ten subsequent Amendments; all of which have been executed by KCI Investments, LLC and Preferred Restaurant Brands, Inc. (collectively the "Amended Note").

2. The Amended Note is secured by certain Personal Guarantees signed by Kenneth Antos and Sheila Antos. The Amended Note is also secured by certain Security Agreements, Subsidiary Guarantees, and Intercreditor Agreements, Deeds of Trust, Assignment of Rents, and Fixture Filings (collectively, the "Security Agreements").

3. In particular, the Amended Note is secured by a certain DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING made as of December 17, 2014, by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the



Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto, as trustor ("Trustor"), First American Title Insurance Company, a Nebraska corporation, as trustee ("Trustee"), for the benefit of CBCI. (the "2014 Deed of Trust"). Subsequently, the 2014 Deed of Trust was modified by a certain **FIRST MODIFICATION TO DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** made effective as of November 30, 2016, by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust, dated April 26, 2007, and any amendments thereto, as trustor ("Trustor"), and CBCI ("Beneficiary") (collectively, the "Modified Deed of Trust") that encumbers the property commonly known as 5148 Spanish Heights Drive, Las Vegas, NV (the "Property"). The Property is owned by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust, dated April 26, 2007, and any amendments thereto (the "Antos Trust"). Agreement, Kenneth Antos, Sheila Antos and the Antos Trust may be collectively referred to as the "Antos Parties."

4. Several Events of Default (the "Identified Defaults") exist under the Amended Note, the Security Agreements; including the Modified Deed of Trust (collectively the "Loan Documents"). As a result of the Identified Defaults, CBCI is entitled to pursue certain remedies under the Loan Documents. These remedies include, foreclosing on the Property in accordance with the Deed of Trust. Pursuant to the terms of this Forbearance Agreement, CBCI is willing to forbear from exercising its right to foreclose on the Property in accordance with the Deed of Trust, with respect to the Identified Defaults, during the "Forbearance Period" defined below.

5. Pursuant to the terms hereunder, the Antos Trust intends to convey the Property to SHAC. SHAC is a Nevada limited-liability company. The Members of SHAC are SJC Ventures, LLC ("SJCv") and the Antos Trust. Pursuant to the terms hereunder, SHAC intends to acquire

the Property and make certain payments to CBC and other parties pursuant to the terms of this Forbearance Agreement.

3. SHAC is a Nevada limited-liability company. The Members of SHAC are SJCVC and the Antos Parties. Pursuant to the terms hereunder, SHAC intends to acquire the Property and make certain payments to CBCI and other parties pursuant to the terms of this Forbearance Agreement.

4. SHAC intends to rent the Property to SJCVC. SJCVC is a Nevada limited liability company. SJCVC owns a 24.912% Membership Interest in 1st One Hundred Holdings, LLC. 1st One Hundred Holdings, LLC, is the judgment creditor in possession of a final judgment in the amount of \$2.2 billion (the "Judgment"). The majority owner of 1st One Hundred Holdings, LLC is Tangled Web Family Trust. Jay Bloom is the Managing Member of 1st One Hundred Holdings LLC. Tangled Web Family Trust is the sole-member of SJCVC. Mr. Bloom is a trustee and beneficiary of the Tangled Web Family Trust. Mr. Bloom is also the Manager of SJCVC (the "SJCVC Parties." As a material term of the Forbearance Agreement, which forms the basis of the bargain, Mr. Bloom, as the Managing Member of 1st One Hundred Holdings, and as the Manager of SJCVC, have agreed that SJCVC will execute the "Security Agreement" described herein; and that 1st One Hundred Holdings will acknowledge its consent that SJCVC execute the Security Agreement. which will require 1st One Hundred Holdings and SJCVC to guaranty the obligations of SHAC and SJCVC under this Forbearance

#### **B. The Amended Note and the Events of Default**

1. Obligations Owed from Antos Parties to CBCI. As of August 21, 2017, the Antos Parties are indebted as follows to CBCI: (i) in the amount of \$2,935,001.14 for unpaid principal (the "Principal Balance"); (ii) certain Protection Payments (as defined in Exhibit "B") made by

CBCI prior to the effective date of this Forbearance Agreement in the amount of \$397,872.65 (the "Pre-Forbearance Protection Payments" as defined in Exhibit "B,"(iii) in the amount of \$1,315,105.24 in interest accrued at the rate of 20%; and (iv) in additional amounts for accrued and accruing interest, recoverable costs (including reasonable attorneys' fees), certain indemnities, Post-Forbearance Protection Payments and other "Note Expenses" as described below.

2. The Modified Deed of Trust. As part of the security for satisfaction of the Amended Note, CBCI holds the valid and perfected Modified Deed of Trust. Pursuant to the Modified Deed of Trust, CBCI is entitled to foreclose on the Property.

3. The Antos Parties and the SJCV Parties have no defenses, offsets, counterclaims, or adverse claims of any kind or amount with respect to the Loan Documents, including the Amended Note, the Modified Deed of Trust, and/or other collateral interests held by CBCI as security for satisfaction of the Note.

4. Identified Defaults. The Identified Defaults existing under the Loan Documents; including the Modified Deed of Trust are clearly set forth in the Loan Documents and are incorporated herein by reference.

#### **C. Request for Forbearance.**

1. The Antos Parties and the SJCV Parties have requested that, notwithstanding the existence of the Identified Defaults, CBCI forbear from exercising their rights and remedies with respect to the Identified Defaults through August 31, 2019.

2. Although CBCI is under no obligation to do so, CBCI is willing to agree to forbear pursuant to the terms and conditions of this Forbearance Agreement. The forbearance is being



provided by CBCI to allow SHAC to secure replacement financing to satisfy the amount owed to CBCI pursuant to the Note.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **AGREEMENT**

**1. Accuracy of Recitals.** The Antos Parties and the SJCV parties acknowledge that the Recitals set forth above are true, accurate and correct. The Recitals are incorporated into this Forbearance Agreement without any difference or distinction between the two (2) segments of this Forbearance Agreement.

**2. Reaffirmation of Loans.** Except as modified by this Forbearance Agreement, the Antos Parties and the SJCV Parties reaffirm all obligations due to CBCI under the Amended Note and Modified Deed of Trust.

### **3. INTENTIONALLY LEFT BLANK**

**4. Forbearance.** Provided that the Antos Parties and the SJCV Parties satisfy all the conditions described in Exhibit "B" to this Forbearance Agreement, CBCI agrees to forbear from exercising its rights and remedies with respect to the Identified Defaults from the effective date of the Forbearance Agreement through August 31, 2019 (the "Forbearance Period").

As further consideration for CBCI's agreement, in addition, the forbearance provided by CBCI to the Antos Parties and the SJCV Parties are limited as follows:

**4.1 Forbearance Limited to Identified Defaults.** CBCI's forbearance is limited solely to the suspended exercise of its respective rights and remedies arising under the Amended Note and Modified Deed of Trust as a result of the Identified Defaults, and CBCI shall not be

deemed to have suspended or waived any rights or remedies it may have with respect to any other existing breach, default, or Event of Default under the Loan Documents, including the Amended Note and the Modified Deed of Trust.

**4.2 No New Events of Default.** During the Forbearance Period, there shall occur no new Event of Default or an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default under the Amended Note and Modified Deed of Trust or this Forbearance Agreement, nor shall there be a breach or failure of any warranty, representation or covenant as described in this Forbearance Agreement.

**4.3 Agreement in the Nature of Forbearance Only.** The Antos Parties and SJCV Parties acknowledge that CBCI's obligations under this Forbearance Agreement are in the nature of a conditional forbearance only, and that CBCI has made no agreement or commitment to provide additional forbearance, to modify or to extend the Amended Note and Modified Deed of Trust beyond the Forbearance Period. Antos Parties and the SJCV Parties also acknowledges that the Identified Defaults are not cured as a result of this Forbearance Agreement.

**4.4 Termination of the Forbearance Period.** The Forbearance Period shall end on the first to occur of the following:

4.4.1 Upon the expiration of the Forbearance Period.

4.4.2 A breach by the Antos Parties and the SJCV Parties of any of the covenants, representations, and/or warranties set forth in this Forbearance Agreement.

4.4.3 The occurrence of any new Event of Default under any of the Loan Documents, including the Amended Note and Modified Deed of Trust, or the occurrence of any event which, with the passage of time or giving of notice or both, would constitute an Event of Default thereunder.

4.4.4 The filing of a bankruptcy petition by or against any Obligated Party.

4.4.5 Any Obligated Party makes any assignment for the benefit of its creditors, or a receiver is appointed for any Obligated Party's business.

**4.5 Exercise of Rights and Remedies Upon Termination of Forbearance**

**Period.** If upon termination of the Forbearance Period, the Note has not been satisfied as part of the transactions described in Exhibit "B," CBCI is free to exercise all of its rights and remedies under the Amended Note and Modified Deed of Trust, including but not limited to, the rights and remedies available to CBCI as a result of the Identified Defaults.

**5. Conditions to Forbearance.** In addition to all other conditions set forth in Section 4 above, the forbearance provided by CBCI under this Forbearance Agreement is strictly conditioned upon satisfaction by Antos Parties and the SJCV Parties of the following:

**5.1 No New Defaults.** That during the Forbearance Period, there will occur no new event which would allow CBCI with or without notice to accelerate the Loan Documents, including the Amended Note and Modified Deed of Trust, or to exercise any rights or remedies against any collateral for provided for in the Loan Documents including the Amended Note and Modified Deed of Trust, or an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default under any one or more of the Loan Documents, including the Amended Note and Modified Deed of Trust, or a default occurs under the Forbearance Agreement (collectively, an "Incipient Default"), and there will be no breach or failure of any warranty, representation or covenant contained in this Forbearance Agreement.

**5.2 Forbearance by Other Lenders.** That during the Forbearance Period, no other lender, creditor, or lessor (collectively "Other Lender(s)") undertakes efforts to enforce its rights or remedies relating to any default committed by the Antos Parties or SJCV Parties under

any loan agreement, lease, security agreement, or other financial agreement. If any Other Lender undertakes such efforts, CBCI may immediately terminate this Forbearance Agreement.

**5.3 Delivery of Outstanding Items.** By the time of execution of the Forbearance Agreement, the Antos Parties and the SJCV Parties will have delivered to CBCI any outstanding property, agreements, or other documents relating to the Property, or which are required to be provided pursuant to the Amended Note and Modified Deed of Trust or this Forbearance Agreement, including the agreements described in Exhibit "B" hereto.

**5.4 Delivery of Consents.** As evidenced by its signature below, any Guarantor which has guaranteed the obligations of the Antos Parties and the SJCV Parties, expressly consents to the terms, and conditions of this Forbearance Agreement, and confirms that its guarantee shall remain in full force and effect. This provision shall survive the termination of this Forbearance Agreement.

**5.5 Pursuit of Certain Sales, Financings, and Collection of the Judgment.** Upon execution of the Forbearance Agreement, Antos Parties and the SJCV Parties will undertake efforts to obtain financing to satisfy the Note prior to the termination of the Forbearance Period. Such efforts shall include: (1) efforts to obtain alternative financing; and (2) SJCV's efforts to collect on the Judgment described in Exhibit "B" and to use any monies collected to pay the Amended Note in accordance with the terms of the Judgment/Lien Pledge Agreement described in Exhibit "B."

**5.7 Full Cooperation with Consultants.** During the Forbearance Period, the Antos Parties and the SJCV Parties will cooperate fully with consultants engaged by CBCI to assess and address matters germane to Antos Parties and the SJCV Parties' performance under the Amended Note and Modified Deed of Trust or this Forbearance Agreement.



**5.8 Capital Expenditures.** During the Forbearance Period, and unless otherwise agreed to in writing by CBCI, the Antos Parties and the SJCVC Parties will not incur any liability or expend cash for capital expenditures or improvements over and above the amount of \$125,000 without the prior written approval of CBCI.

**5.9 Additional Collateral.** As additional security for satisfaction of the obligations of their obligations herein, the Antos Parties and SJCVC Parties grant to CBCI the additional collateral described in Exhibit "B" (collectively, the "Additional Collateral").

**5.10 Financial Information/Other Information.** The Antos Parties and the SJCVC parties will comply with reasonable requests made by CBCI to provide information about the Property; including information relating to the Antos Parties and SJCVC Parties efforts to comply with their obligations under section 5.5 of this Forbearance Agreement.

**5.11 Negative Covenants.** During the term of the Forbearance Period:

Except as is otherwise provided in this Forbearance Agreement, the Antos Parties and the SJCVC Parties will not incur any additional debt in excess of \$25,000. Notwithstanding the foregoing, the Antos Parties and the SJCVC Parties may incur debt from affiliated companies, or the principals of the Obligated Companies ("Affiliate Debt") so long as: (i) the Affiliate Debt is on terms acceptable to CBCI; (ii) the Affiliate Debt is subordinated in priority and payment to the Note; and (iii) no payments are made by the Antos Parties and the SJCVC Parties with respect to the Affiliate Debt unless and until all amounts due under the Amended Note are paid in full. In addition, the Antos Parties and the SJCVC Parties will not make any capital contributions, loans, or other advances to any of its affiliated companies outside of the ordinary course of business.

5.11.1 The Antos Parties and the SJCVC Parties will not make any payments of any kind (including principal, interest, or other amounts owed) on any existing or future loans from the principals of the Antos Parties and the SJCVC Parties.

5.11.2 Except for Liens arising under the Amended Note and Modified Deed of Trust, the Antos Parties and the SJCVC Parties will not allow any new liens to be secured by property which is owned or hereafter acquired by Antos Parties and the SJCVC Parties or any of their affiliated companies.

5.11.3 Subordination of other Obligations.

(a) For purposes of this Forbearance Agreement, "Senior Obligations" means (i) all principal, interest, fees, reimbursements, indemnifications, and other amounts, now or hereafter owed by the Antos Parties, or the SJCVC Parties to CBCI under or in connection with this Forbearance Agreement and of the other Agreements that are required to be executed pursuant to the terms of this Forbearance Agreement.

(b) For purposes of this Forbearance Agreement, "Senior Lien" means any and all Liens securing any of the Senior Obligations in favor of CBCI.

(c) For purposes of the Forbearance Agreement, a "Subordinate Creditor" is any party who extends credit to the Antos Parties and the SJCVC parties that is a "Subordinated Debt" as defined in this Forbearance Agreement.

(c) For purposes of this Forbearance Agreement, "Subordinated Debt" means all present and future indebtedness, liabilities, and obligations of any kind owed by the Antos Parties and/or the SJCVC Parties to any Subordinated Creditor.

(d) For purposes of this Forbearance Agreement, "Subordinated Lien" means any lien, secured by property of the Antos Parties and/or the SJCV Parties, that is intended to secure the repayment of all or any portion of the Subordinated Debt.

(e) Unless and until the Senior Obligations shall have been irrevocably paid in full; (i) any Subordinated Debt shall be subordinate to all Senior Debt; and (ii) any Subordinated Lien shall be subordinate to the Senior Lien.

(f) Unless and until the Senior Obligations shall have been irrevocably paid in full, there shall be no payments of any kind, direct or indirect, on the Subordinated Debt, unless expressly agreed to in a writing that is subject to CBCI's approval, which CBCI may withhold in its sole and absolute discretion.

(g) Notwithstanding subsection (f) above, if no Default or Event of Default is continuing or would be caused thereby, the Debtor may make regularly-scheduled payments of interest and principal with respect to a Subordinated Debt (such payments being referred to herein as "Permitted Payments"). The Subordinated Creditor shall consult with the Antos Parties, or SJCV Parties, as necessary, for the purpose of determining that each Permitted Payment to the Subordinated Creditor shall not cause a Default or Event of Default when made and the Subordinated Creditor shall bear the risk that the making of any Permitted Payments to the Subordinated Creditor violates the foregoing restriction. If at any time there shall occur a Default or Event of Default the Antos Parties, and the SJCV Parties, shall not make any payments with respect to any Subordinated Debt until the earlier of (i) the cure of the Default or Event of Default to the satisfaction of CBCI; or (ii) the irrevocable payment in full of the Senior

Obligations. The Antos Parties and the SJCVC Parties shall give any and all Subordinated Creditor(s) prompt notice of any such Default or Event of Default.

(h) If there shall exist an event of default, however denominated, with respect to the Subordinated Debt, the Subordinated Creditor shall not take any action with respect to such event of default until the earlier of (a) the irrevocable payment in full of the Senior Debt; or (b) the receipt of written consent from CBCI to commence Remedial Action.

(j) Upon any distribution to creditors of SHAC, the Antos Parties, or the SJCVC Parties (the "Debtor Parties"), in a liquidation or dissolution of any of the Debtor Parties, or in any Insolvency Proceeding with respect to any of the Debtor Parties, or any of their assets, all amounts due with respect to the Senior Obligations, shall be irrevocably paid in full before the Subordinated Creditor shall be entitled to collect or receive any payment with respect to the Subordinated Debt. Until CBCI has received all amounts due to CBCI, with respect to the Senior Debt in cash, or such payment is duly provided for, any distribution from the Debtor Parties or their assets to which the Subordinated Creditor should otherwise be entitled shall be made to CBCI.

(k) Any payments received by a Subordinated Creditor in violation of this Agreement shall be held by the Subordinated Creditor in trust for the benefit of CBCI and shall be immediately turned over to CBCI in the form received (together with any necessary endorsements) for application to the Senior Obligations, to the extent necessary to pay the Senior Debt in full.

(l) Other than a Subordinated Lien, the Subordinated Creditor will not create, assume, or suffer to exist any lien, security interest, or assignment of collateral securing the repayment of the Subordinated Debt. Any lien, security interest, or assignment existing in



violation of the foregoing and the Subordinated Lien shall be fully subordinate to the Senior Lien. At the request of CBCI, the Subordinated Creditor and the Debtor Parties will take any and all steps necessary to fully effect the release of any such lien, security interest, assignment, or collateral. Any financing statement filed with respect to the Subordinated Lien shall contain the following statement, "The security interest described in this financing statement is fully subordinate to the security interest in favor of CBC Partners I, LLC.

(m) The Subordinated Creditor, the Antos Parties, and the SJCVC Parties agree to execute any and all other documents requested by the Agent to further evidence the subordination of the Subordinated Debt to the Senior Debt and/or the Subordinated Lien to the Senior Lien.

(n) Any Subordinated Creditor will cause all Subordinated Debt to be evidenced by a note, debenture, instrument, or other writing evidencing such Subordinated Debt and will inscribe a statement or legend thereon to the effect that such note, debenture, instrument, or other writing is subordinated to the Senior Obligations in favor of CBCI in the manner and to the extent set forth in this Agreement. The Subordinated Creditor shall inscribe a statement or legend on the Security Agreement to the effect that the security interest created thereby is fully subordinated to the security interest in favor of CBCI.

(o) The Subordinated Creditor shall not assign or otherwise transfer to any other person any interest in the Subordinated Debt unless the Subordinated Creditor causes the assignee or other transferee to execute and deliver to CBCI a subordination agreement acceptable to CBCI or otherwise acknowledges to the reasonable satisfaction of CBCI the subordination of the applicable Subordinated Debt in accordance with this Agreement.

5.11.5 The Antos Parties and the SJCV Parties will not declare or pay any dividends, bonuses, and Antos Parties and the SJCV Parties will not repurchase any of their Membership Interests.

**6. Conditions Precedent.** Before this Forbearance Agreement becomes effective and CBCI becomes obligated under it, and in addition to any other conditions stated in this Forbearance Agreement, all of the following conditions shall have been satisfied at Antos Parties and the SJCV Parties' sole cost and expense in a manner acceptable to CBCI:

**6.1 Receipt of Documents.** CBCI will have received fully executed originals of this Forbearance Agreement, the Additional Guarantees, and any other documents that CBCI may require or request in accordance with this Forbearance Agreement and the Amended Note and Modified Deed of Trust, all in such form as CBCI may require in its reasonable discretion. Without limiting the foregoing, the Antos Parties and SJCV Parties acknowledge and agree that they shall be obligated to deliver to CBCI, duly executed by all parties thereto as applicable and in form and substance satisfactory to CBCI, each of the following: (a) such corporate resolutions, incumbency certificates, trust certifications and other authorizing documentation as CBCI may request and (b) all of the agreements, opinions of counsel and other documentation provided for in Exhibit "B" hereto.

**6.2 Reimbursement of CBCI's Costs and Expenses.** CBCI will receive reimbursement of all reasonable costs and expenses incurred by CBCI relating to this Forbearance Agreement, including charges for legal fees and expenses of CBCI's counsel ("Reimbursable Costs"). Reimbursable Costs may include the allocated costs, incurred to date or in the future, for services for CBCI's counsel and inhouse staffs, such as legal and appraisal, and Reimbursable Costs will be added to the amount due under the CBCI Note.

**8. Antos Parties and the SJCVC Parties' Representations and Warranties.** The Antos Parties and the SJCVC Parties represent and warrant to CBCI as follows:

8.1 Accuracy of Representations in Forbearance Agreement and Amended Note and Modified Deed of Trust. All representations and warranties made and given by Antos Parties and the SJCVC Parties in this Forbearance Agreement and in the Amended Note and Modified Deed of Trust are accurate and correct.

8.2 No Default. Other than the Identified Defaults, no Event of Default has occurred and/or is continuing under the Amended Note and Modified Deed of Trust, and no event has occurred and is continuing which, with notice or the passage of time or both, would be an Event of Default.

8.3 Property. To the extent applicable, the Antos Parties and the SJCVC Parties lawfully possess and hold a 100% ownership interest in the Property and Collateral for this Forbearance Agreement. The Antos Parties and the SJCVC Parties own all the Collateral for the Amended Note and Modified Deed of Trust free and clear of any defects, reservations of title and conditional sales contracts, and free and clear of any Liens, and security interest other than the liens and security interests in favor of CBCI. There is no financing statement affecting any Collateral for the obligations of the Antos Parties and the SJCVC Parties in any public office except for financing statements in favor of CBCI.

8.4 Disclosure with Respect to SJCVC's Judgment Interest. As is described above, SJCVC is a Member of 1<sup>st</sup> 100 Holdings LLC. 1<sup>st</sup> One Hundred Holdings, LLC is responsible for the payment of certain "Collection Attorneys" who may be owed fees relating to the collection of the Judgment. 1<sup>st</sup> 100 Holdings, LLC is obligated to pay the fees of the the Collection Attorneys prior to distribution to SJCVC. 1<sup>st</sup> One Hundred Holdings, also has about \$16,000,000

in obligations to repay from collection of the Judgment prior to distributions to Members, including SJCVC.

8.5 Good Standing. SHAC is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

8.6 Authorization. This Forbearance Agreement, and any instrument or agreement required hereunder, are within Antos Parties and the SJCVC Parties' powers, have been duly authorized, and do not conflict with any of its organizational papers.

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

**9. Antos Parties and the SJCVC Parties Acknowledgments.** The Antos Parties and the SJCVC Parties hereby acknowledge and agree that:

9.1 No Breach By CBCI. CBCI has not breached any duty to the Antos Parties and the SJCVC Parties relating to the Forbearance Agreement or the Amended Note and Modified Deed of Trust, and CBCI has fully performed all obligations it may have had or now has to Antos Parties and the SJCVC Parties.

9.2 Interest, Fees, and Other Charges. All interest, fees, or other charges imposed, accrued, or collected CBCI under the Amended Note and Modified Deed of Trust or this Forbearance Agreement, and the method of computing the interest, fees, or other charges, were



and are reasonable, proper, and agreed to by Antos Parties and the SJCVC Parties and were properly computed and collected.

9.3 No Waiver. By entering into this Forbearance Agreement, CBCI does not waive any existing defaults (including the Identified Defaults) or any defaults hereafter occurring, and CBCI does not become obligated to waive any condition or obligation in any agreement between or among any of the parties hereto.

9.4 No Future Obligations. CBCI have no obligation to make any additional loan or extension of credit to or for the benefit of the Antos Parties and the SJCVC Parties, and CBCI has no obligation to provide additional forbearance or to extend further accommodations to the Antos Parties and the SJCVC Parties.

9.5 No Third-Party Beneficiaries. This Forbearance Agreement is not intended for, and shall not be construed to be for, the benefit of any person not a signatory hereto.

9.6 Loan Balances. The outstanding balances owing on the Note, as described in this Forbearance Agreement, are true and correct.

9.7 Fair Consideration. All payments made and security granted by Antos Parties and the SJCVC Parties to CBCI under the Amended Note and Modified Deed of Trust and this Forbearance Agreement are for fair consideration and reasonably equivalent value.

9.8 Notice of Identified Defaults. The Antos Parties and SJCVC Parties have received or waives all notice required from CBCI under the Amended Note and Modified Deed of Trust with respect to the Identified Defaults; and, subject to the terms this Forbearance Agreement, CBCI is free to exercise all of its rights and remedies under the Note and 3<sup>rd</sup> Mortgage as a result of the Identified Defaults committed by Antos Parties and the SJCVC Parties.

**10. Release of CBCI.** In consideration of the agreements of CBCI set forth in this herein, the Antos Parties and the SJCV Parties, and all their respective heirs, personal representatives, predecessors, successors, and assigns (the "Releasors"), hereby fully release, remise, and forever discharge CBCI, the parents of CBCI and all other affiliates and predecessors of CBCI, and all past and present officers, directors, agents, employees, servants, partners, shareholders, attorneys and managers of CBCI, for, from, and against any and all claims, counterclaims, liens, demands, causes of action, controversies, offsets, obligations, losses, damages and liabilities of every kind and character whatsoever, including, without limitation, any action, omission, misrepresentation or other basis of liability founded either in tort or contract and the duties arising thereunder, that the Releasors, or any one of more of them, has had in the past, or now has, whether known or unknown, whether asserted or unasserted, by reason of any matter, cause, or thing set forth in, relating to or arising out of, of in any way connected with or resulting from, the Amended Note and Modified Deed of Trust, this Forbearance Agreement, and any other agreement executed in connection this Forbearance Agreement.

**11. No Prejudice; Reservation of Rights.** Except for the limited forbearance specifically set forth herein, this Forbearance Agreement shall not prejudice any rights or remedies of CBCI under the Amended Note and Modified Deed of Trust. Except for the limited forbearance specifically set forth herein, CBCI reserves, without limitation, all its rights against any Obligated Party, indemnitor, guarantor, or endorser of any of the Amended Note and Modified Deed of Trust and any other party liable in any way for satisfaction of the Amended Note and Modified Deed of Trust or other losses suffered by CBCI.

**12. No Impairment/Security.** Except as otherwise specifically set forth herein, the Amended Note and Modified Deed of Trust remain unaffected by this Forbearance Agreement; and the Amended Note and Modified Deed of Trust shall remain in full force and effect. The Antos Parties and the SJCV Parties payment and performance of their various obligations to CBCI under the Amended Note and Modified Deed of Trust, including all extensions, amendments, renewals, or replacements thereof, continue to be and shall be secured by any and all liens arising under the Amended Note and Modified Deed of Trust. Nothing contained herein shall be deemed a waiver of any of the rights and remedies that CBCI may have against the Antos Parties and the SJCV Parties, or any other party, or of any of CBCI's rights and remedies arising out of the Amended Note and Modified Deed of Trust.

**13. INTENTIONALLY LEFT BLANK**

**14. Purpose and Effect of CBCI's Approval.** CBCI's approval of any matter in connection with the Amended Note and Modified Deed of Trust shall be for the sole purpose of protecting CBCI's security, rights, and remedies under the Note and Other 3rd Mortgage Documents. No such approval shall result in a waiver of any default of the Antos Parties and the SJCV Parties. In no event shall CBCI's approval be a representation by CBCI regarding the matter being approved.

**15. Integration.** The Amended Note and Modified Deed of Trust and this Forbearance Agreement and its exhibits: (a) integrate all the terms and conditions mentioned in or incidental to the 3<sup>rd</sup> Mortgage Documents; (b) supersede all oral negotiations and prior and other writings with respect to their subject matter; and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. If there is any conflict

between the terms, conditions and provisions of this Forbearance Agreement and the terms, conditions, or provisions of any other agreement or instrument, including any of the other Amended Note and Modified Deed of Trust, the terms, conditions, and provisions of this Forbearance Agreement shall prevail. No modification of this Forbearance Agreement or the Amended Note and Modified Deed of Trust shall be effective unless in writing and signed by the applicable parties to be bound thereby.

**16. Notices.** All notices, reports, and other communications provided for herein (collectively, for purposes of this paragraph 16, "notices") will be in writing and will be delivered: (a) in person; (b) by telecopier, telefax, or other facsimile communication; or (c) by overnight courier, postage prepaid, addressed as follows:

<p>CBC Partners I, LLC 777 108th Ave NE Suite 1895, Bellevue, WA 98004</p> <p>With a copy to:</p> <p>The Law Office of Vernon Nelson 9480 S. Eastern Ave., Suite 252 Las Vegas, NV 89123</p>	<p>Spanish Heights Acquisition Company, LLC c/o Maier Gutierrez &amp; Associates 8816 Spanish Ridge Ave, Las Vegas, NV 89148</p>
<p>Kenneth &amp; Sheila Antos Living Trust</p>	<p>SJC Ventures, LLC c/o Maier Gutierrez &amp; Associates 8816 Spanish Ridge Ave, Las Vegas, NV 89148</p>
<p>Kenneth M. Antos &amp; Sheila M. Neumann- Antos Trust</p>	<p>Sheila Antos</p>
<p>Kenneth Antos</p>	



**17. Counterparts.** This Forbearance Agreement and any attached consents or exhibits requiring signatures may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same agreement.

**18. Invalidity.** If any court of competent jurisdiction determines any provision of this Forbearance Agreement or any of the Amended Note and Modified Deed of Trust to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal, or unenforceable portion had never been a part of the Forbearance Agreement or the Amended Note and Modified Deed of Trust.

**19. Governing Law, Venue, Forbearance of Jury Trial.** To the extent possible, this Forbearance Agreement shall be governed by and construed according to the laws of the State of Washington. The Antos Parties and the SJCV Parties hereby submit to jurisdiction and venue in King County, Washington, and, to the extent possible, agree that any and all pending or future litigation, arbitration, or bankruptcy proceedings relating to the Amended Note and Modified Deed of Trust may be venued and maintained in King County, Washington. The parties recognize that certain proceedings related to the possession of the Property may be required to be conducted in Clark County, Nevada and the parties submit to jurisdiction and venue in Clark County, Nevada. In the event of judicial proceedings relating to disputes arising under this Forbearance Agreement, the Antos Parties and the SJCV Parties agree that all issues (including defenses, cross-claims and counter-claims) shall be resolved by a judge and not a jury; and, therefore, the Antos Parties and the SJCV Parties waive their rights to a jury trial which it otherwise would have had.

**20. Successors and Assigns.** This Forbearance Agreement shall be binding upon and

inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, Antos Parties and the SJCVC Parties may not transfer its rights under the Forbearance Agreement or the Amended Note and Modified Deed of Trust without the prior written consent of CBCI. CBCI may transfer its rights under this Forbearance Agreement or the Amended Note and Modified Deed of Trust to any successor in interest.

**21. Construction.** As used herein, the word "include(s)" means "include(s), without limitation", and the word "including" means "including, but not limited to".

**22. Default.** The failure of Antos Parties and the SJCVC Parties to comply with any provision of this Forbearance Agreement or the failure of Antos Parties and the SJCVC Parties to comply with the terms and conditions of the Amended Note and Modified Deed of Trust (other than the Identified Defaults) shall constitute an Event of Default and shall entitle CBCI to exercise all of its rights and remedies under the Amended Note and Modified Deed of Trust and this Forbearance Agreement.

**23. No Waiver.** No failure to exercise, and no delay in exercising any right, power or remedy under any of the Amended Note and Modified Deed of Trust or under this Forbearance Agreement shall impair any right, power, or remedy that CBCI may have, nor shall such delay be construed to be a waiver of any of such rights, powers or remedies. No waiver of any default or breach of Antos Parties and the SJCVC Parties shall be a waiver of any other default or breach or of any default or breach subsequently occurring. CBCI shall not be deemed to have waived any right, power, or remedy except in writing signed by an officer of CBCI expressly stating that it is a waiver of same right, power or remedy.

**24. No Consent.** Except as specifically provided in this Forbearance Agreement, no

express or implied consent to any further forbearance or modifications involving any of the matters set forth in this Forbearance Agreement or otherwise shall be inferred or implied by CBCI's execution of this Forbearance Agreement or any other action of CBCI. CBCI's execution of this Forbearance Agreement shall not constitute a waiver, either express or implied, of the requirement that any further forbearance or modification of the Amended Note and Modified Deed of Trust shall require the express written approval of CBCI. CBCI must provide any consent required from the CBCI under this Forbearance Agreement.

**25. Cumulative Remedies.** The rights and remedies of CBCI under this Forbearance Agreement and the Amended Note and Modified Deed of Trust are cumulative and not exclusive of any rights or remedies that CBCI would otherwise have, and may be pursued at any time and from time to time and in such order as CBCI shall determine in its sole discretion.

**26. Mutual Agreement.** The parties hereto agree that the terms and provisions of this Forbearance Agreement embody their mutual intent and that such terms and provisions are not to be construed more liberally in favor, or more strictly against, any party. This Forbearance Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if it had been prepared by all of the parties.

**27. Time is of the Essence.** Time is of the essence of this Forbearance Agreement and the Amended Note and Modified Deed of Trust.

**28. Headings.** Section headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Forbearance Agreement.

**29. Further Performance.** The Antos Parties and the SJCV Parties, whenever and as often as shall be requested by CBCI, shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such further instruments and documents and to do any

and all things as may be requested by CBCI in order to carry out the intent and purpose of this Forbearance Agreement and the Amended Note and Modified Deed of Trust.

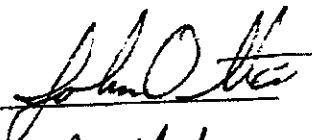
**30. Survival.** The representations, warranties, acknowledgments, and agreements set forth herein shall survive the date of this Forbearance Agreement.

**31. Binding Effect.** This Forbearance Agreement shall be binding upon and inure to the benefit of CBCI, the Antos Parties and SJCVC Parties, and their respective successors and assigns.




IN WITNESS WHEREOF, the parties hereto have caused this Forbearance Agreement to be executed on the dates set forth below to be effective as of the day and year set forth above.

CBC Partners I, LLC

BY:   
Its: President


Print  
Name: John Otter

Kenneth & Sheila Antos Living Trust

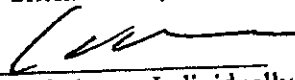
BY:   
Kenneth Antos, Trustee


BY:   
Sheila Antos, Trustee

Kenneth M. Antos & Sheila M. Neumann-  
Antos Trust


BY:   
Kenneth Antos, Trustee

BY:   
Sheila Antos, Trustee

  
Kenneth Antos, Individually

  
Sheila Antos, Individually,

SJC Ventures, LLC

BY:   
Its: Manager

Print  
Name: Jay Blum

**STATE of NEVADA**  
**STATEMENT *and* RESIGNATION of a LISTED MEMBER**  
**A LIMITED LIABILITY COMPANY**

The undersigned, a listed Member of SPANISH HEIGHTS ACQUISITION COMPANY, LLC, who was included as a Member on the originally filed Articles of Organization for the Limited Liability Company, with the Nevada Secretary of State withdraws and resigns as a member of the limited liability company. The only remaining members of the limited liability company are:

Name and Address of each individual member:

SJC VENTURES HOLDINGS, LLC  
5148 SPANISH HEIGHTS DR.  
LAS VEGAS, NV 89148

KENNETH ANTOS AND SHEILA NEUMANN-ANTOS TRUST,  
KENNETH ANTOS AND SHEILA NEUMANN-ANTOS AS TRUSTEES  
4968 MOUNTAIN FOLIAGE DR.  
LAS VEGAS NV 89148

The undersigned, as listed as a Member in the Articles of Organization, is not intended to be a Member of the LLC.

As such, the undersigned does hereby tender its resignation as originally listed Member on the Articles of Organization for the LLC, and from any and all involvement with or authority over the LLC, as a Member thereto, real or perceived, effective on the date of formation of the LLC.

Dated August 9, 2017



CBC PARTNERS LLC  
Alan Hallberg  
Chief Credit Officer

**STATE of NEVADA**  
**STATEMENT *and* RESIGNATION of a LISTED MEMBER**  
**A LIMITED LIABILITY COMPANY**

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Dated August 10, 2017



SJC VENTURES HOLDINGS, LLC  
Jay Bloom  
Manager

# Articles of Organization

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A set of formal documents filed with the Secretary of State to legally document the creation of a new business entity.

Prepared by **incfile.com**

5148SH 000028





BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: www.nvsos.gov



\*050106\*

# Articles of Organization Limited-Liability Company

(PURSUANT TO NRS CHAPTER 86)

Filed in the office of <i>Barbara K. Cegavske</i> Barbara K. Cegavske Secretary of State State of Nevada	Document Number <b>20170336396-50</b> Filing Date and Time <b>08/04/2017 4:32 PM</b> Entity Number <b>E0370732017-7</b>
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USE BLACK INK ONLY - DO NOT HIGHLIGHT

(This document was filed electronically.)

ABOVE SPACE IS FOR OFFICE USE ONLY

<b>1. Name of Limited-Liability Company:</b> (must contain approved limited-liability company wording; see instructions)	<b>SPANISH HEIGHTS ACQUISITION COMPANY LLC</b>		Check box if a Series Limited-Liability Company <input type="checkbox"/>	Check box if a Restricted Limited-Liability Company <input type="checkbox"/>
<b>2. Registered Agent for Service of Process:</b> (check only one box)	<input checked="" type="checkbox"/> Commercial Registered Agent: <b>LEGALINC CORPORATE SERVICES INC.</b> Name <input type="checkbox"/> Noncommercial Registered Agent (name and address below) <b>OR</b> <input type="checkbox"/> Office or Position with Entity (name and address below) Name of Noncommercial Registered Agent <b>OR</b> Name of Title of Office or Other Position with Entity Street Address City Nevada Zip Code Mailing Address (if different from street address) City Nevada Zip Code			
<b>3. Dissolution Date:</b> (optional)	Latest date upon which the company is to dissolve (if existence is not perpetual):			
<b>4. Management:</b> (required)	Company shall be managed by: <input type="checkbox"/> Manager(s) <b>OR</b> <input checked="" type="checkbox"/> Member(s) (check only one box)			
<b>5. Name and Address of each Manager or Managing Member:</b> (attach additional page if more than 3)	1) <b>SJC VENTURES LLC</b> Name <b>5148 SPANISH HEIGHTS DR</b> <b>LAS VEGAS</b> <b>NV</b> <b>89148</b> Street Address City State Zip Code 2) <b>CBC PARTNERS LLC</b> Name <b>777 108TH AVE NE STE 1895</b> <b>BELLEVUE</b> <b>WA</b> <b>98004</b> Street Address City State Zip Code 3) <b>KENNETH &amp; SHEILA ANTOS LIVING TRUST</b> Name <b>11512 BELMONT LAKE DR UNIT 102</b> <b>LAS VEGAS</b> <b>NV</b> <b>89135</b> Street Address City State Zip Code			
<b>6. Name, Address and Signature of Organizer:</b> (attach additional page if more than 1 organizer)	I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State. <b>MARSHA SIHA</b> <input checked="" type="checkbox"/> <b>MARSHA SIHA</b> Name Organizer Signature <b>17350 STATE HWY 249 STE 220</b> <b>HOUSTON</b> <b>TX</b> <b>77064</b> Address City State Zip Code			
<b>7. Certificate of Acceptance of Appointment of Registered Agent:</b>	I hereby accept appointment as Registered Agent for the above named Entity. <input checked="" type="checkbox"/> <b>LEGALINC CORPORATE SERVICES INC.</b> Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity <b>8/4/2017</b> Date			

This form must be accompanied by appropriate fees.

# SECRETARY OF STATE



## LIMITED LIABILITY COMPANY CHARTER

I, Barbara K. Cegavske, the Nevada Secretary of State, do hereby certify that **SPANISH HEIGHTS ACQUISITION COMPANY LLC** did on August 4, 2017, file in this office the Articles of Organization for a Limited Liability Company, that said Articles of Organization are now on file and of record in the office of the Nevada Secretary of State, and further, that said Articles contain all the provisions required by the laws governing Limited Liability Companies in the State of Nevada.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on August 4, 2017.

*Barbara K. Cegavske*

Barbara K. Cegavske  
Secretary of State

Certified By: Electronic Filing  
Certificate Number: C20170804-1838  
You may verify this certificate  
online at <http://www.nvsos.gov/>



BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: [www.nvsos.gov](http://www.nvsos.gov)  
[www.nvsilverflume.gov](http://www.nvsilverflume.gov)

## Instructions for Initial List/Annual List and State Business License Application

**ATTENTION:** You may now file your Initial/Annual List and State Business License online at [www.nvsilverflume.gov](http://www.nvsilverflume.gov)

**IMPORTANT:** READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING FORM.

TYPE or PRINT the following information on the Annual List:

1. The **NAME** and **ENTITY NUMBER** of the entity **EXACTLY** as it is registered with this office.
2. The **FILING PERIOD** is the month and year of filing TO the month and year 12 months from that date. Example: If the entity date was 1/12/99 the filing period would be 1/1999 to 1/2000.
3. The name and addresses as required on the list should be entered in the boxes provided on the form.
4. If qualified for a statutory exemption from the State Business License, enter the applicable code in the area provided. If claiming exemption, a Declaration of Eligibility for State Business License Exemption must accompany annual list. Entities claiming exemption cannot file online.
5. **NRS Chapter 81 – Nonprofit:** Entities which are under Unit-owners' association or Religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c) are excluded from the requirement to obtain a state business license. Please indicate if this entity falls into one of these categories by marking the appropriate box. If the entity does not meet either of these categories please submit \$200.00 for the state business license.
6. The **SIGNATURE**, including signer's title and date signed **MUST** be included in the areas provided at the bottom of the form. Signature may be that of an officer or equivalent or that of another person authorized by the entity to sign the list.
7. Completed **FORM, FEES** and applicable **PENALTIES** must be returned to the Secretary of State. Pursuant to NRS 225.085, all Initial and Annual Lists must be in the care, custody and control of the Secretary of State by the close of the business on the due date. Lists received after the due date will be returned unfiled, and will require any associated fees and penalties as a result of being late. Trackable delivery methods such as Express Mail, Federal Express, UPS Overnight may be acceptable if the package was guaranteed to be delivered on or before the due date yet failed to be timely delivered.

**FILING FEES:** The annual filing fee for corporations will be based on the amount represented by the total number of shares provided for in the articles. See fee schedule or contact our office. Annual lists for nonprofit corporations without shares are \$50.00. Nonprofit corporations and corporations sole are not required to maintain a State Business License or pay the additional fee.

**ADDITIONAL FORMS** may be obtained on our website at [www.nvsos.gov](http://www.nvsos.gov) or by calling 775-684-5708.

**FILE STAMPED COPIES:** To receive one file stamped copy, please mark the appropriate check box on the list. Additional copies require \$2.00 per page and appropriate order instructions.

**CERTIFIED COPIES:** To order a certified copy, enclose an additional \$30.00 and appropriate instructions. A copy fee of \$2.00 per page is required for each copy generated when ordering 2 or more certified copies.

**EXPEDITE FEE:** Filing may be expedited for an additional \$125.00 fee for 24-hour service, \$500.00 for 2-hour service and \$1000.00 for 1-hour service.

Filing may be submitted at the office of the Secretary of State or by mail at the following addresses:

**MAIN OFFICE:**  
*Regular and Expedited Filings*

Secretary of State  
Status Division  
202 North Carson Street  
Carson City NV 89701-4201  
Phone: 775-684-5708  
Fax: 775-684-7123

**SATELLITE OFFICE:**  
*Expedited Filings Only*

Secretary of State – Las Vegas  
Commercial Recordings Division  
555 East Washington Ave, Suite 5200  
Las Vegas NV 89101  
Phone: 702-486-2880  
Fax: 702-486-2888

Nevada Secretary of State List Instructions  
Revised: 10-1-15

5148SH 000031

**INITIAL/ANNUAL LIST OF MANAGERS OR MANAGING MEMBERS AND STATE  
BUSINESS LICENSE APPLICATION OF:**

SPANISH HEIGHTS ACQUISITION COMPANY LLC

FILE NUMBER



E0370732017-7

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF **AUG, 2017** TO **AUG, 2018. Due by Sep 30, 2017**

USE BLACK INK ONLY - DO NOT HIGHLIGHT

**\*\*YOU MAY FILE THIS FORM ONLINE AT [www.nvsilverflume.gov](http://www.nvsilverflume.gov)\*\***



100401

☐ Return one file stamped copy. (If filing not accompanied by order instructions, file stamped copy will be sent to registered agent.)

**IMPORTANT:** Read instructions before completing and returning this form.

1. Print or type names and addresses, either residence or business, for all manager or managing members. A Manager, or if none, a Managing Member of the LLC must sign the form. FORM WILL BE RETURNED IF UNSIGNED.
  2. If there are additional managers or managing members, attach a list of them to this form.
  3. Return completed form with the filing fee of \$150.00. A \$75.00 penalty must be added for failure to file this form by the deadline. An annual list received more than 90 days before its due date shall be deemed an amended list for the previous year.
  4. State business license fee is \$200.00. Effective 2/1/2010, \$100 must be added for failure to file form by deadline.
  5. Make your check payable to the Secretary of State.
  6. **Ordering Copies:** If requested above, one file stamped copy will be returned at no additional charge. To receive a certified copy, enclose an additional \$30.00 per certification. A copy fee of \$2.00 per page is required for each additional copy generated when ordering 2 or more file stamped or certified copies. Appropriate instructions must accompany your order.
  7. Return the completed form to: Secretary of State, 202 North Carson Street, Carson City, Nevada 89701-4201, (775) 684-5708.
  8. Form must be in the possession of the Secretary of State on or before the last day of the first month following the incorporation/initial registration date. (Postmark date is not accepted as receipt date.) Forms received after due date will be returned for additional fees and penalties. Failure to include initial list and business license fees will result in rejection of filing.
- FILING FEE: \$150.00 LATE PENALTY: \$75.00 (if filing late) BUSINESS LICENSE FEE: \$200.00 LATE PENALTY: \$100.00 (if filing late)**

ABOVE SPACE IS FOR OFFICE USE ONLY

**CHECK ONLY IF APPLICABLE AND ENTER EXEMPTION CODE IN BOX BELOW**

**NRS 76.020 Exemption Codes**

☐ Pursuant to NRS Chapter 76, this entity is exempt from the business license fee. Exemption code:

001 - Governmental Entity  
006 - NRS 680B.020 Insurance Co.

**NOTE:** If claiming an exemption, a notarized Declaration of Eligibility form must be attached. Failure to attach the Declaration of Eligibility will result in rejection.

NAME

**MANAGER OR MANAGING MEMBER**

ADDRESS

CITY

STATE

ZIP CODE

NAME

**MANAGER OR MANAGING MEMBER**

ADDRESS

CITY

STATE

ZIP CODE

NAME

**MANAGER OR MANAGING MEMBER**

ADDRESS

CITY

STATE

ZIP CODE

NAME

**MANAGER OR MANAGING MEMBER**

ADDRESS

CITY

STATE

ZIP CODE

None of the managers or managing members identified in the list of managers and managing members has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of a manager or managing member in furtherance of any unlawful conduct.

I declare, to the best of my knowledge under penalty of perjury, that the information contained herein is correct and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing in the Office of the Secretary of State.

**X**

Title

Date

**Signature of Manager, Managing Member or  
Other Authorized Signature**

Nevada Secretary of State Initial List ManOrMem

Revised 7-1-15  
**5148SH 000032**





BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: www.nvsos.gov

ATTACH FORM ONLY IF CLAIMING A  
STATE BUSINESS LICENSE EXEMPTION



\*270104\*

## Declaration of Eligibility for State Business License Exemption

(This form must be notarized)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

This form must accompany the List of Officers only if claiming exemption from the State Business License. Please provide the information requested only for the exemption for which you claim eligibility. Failure to provide the requested information or to notarize this document will result in a rejected filing, which could result in late fees.

Entity Name:

NV Business  
I.D. Number:

### 001 - Governmental Entity

- ☐ This entity is an incorporated or unincorporated agency or instrumentality of the United States government or any state government; a corporation wholly owned by the United States government; or county, city, district, or other political subdivision of a state.

### 002 - 501(c) Nonprofit Entity

- ☐ This entity is qualified as a 501(c) Nonprofit Entity pursuant to Title 26 U.S.C. Section 501(c). Please provide the Internal Revenue Service (IRS) issued Federal Employer Identification Number (FEIN)

### 006 - NRS 680B.020 Insurance Company

Are the activities of this entity regulated through a license or certificate of authority granted by the Division of Insurance pursuant to NRS Title 57?

☐ Yes ☐ No

If yes, provide license or certificate of authority number

I declare under penalty of perjury, as a representative authorized by statute to file on behalf of the above named entity, that the declarations indicated above are true and correct.

X

Signature

Title

Date

State of \_\_\_\_\_ County of \_\_\_\_\_

Subscribed and sworn to before me the \_\_\_\_\_ 20\_\_\_\_

by \_\_\_\_\_  
(Print name of Signer)

Notary Signature \_\_\_\_\_

# **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)(1).

(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 1<sup>st</sup> 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 1<sup>st</sup> and 2<sup>nd</sup> 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 1<sup>st</sup> or 2<sup>nd</sup> 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)

By: \_\_\_\_\_

Name:

Title:

SJC Ventures Holdings, LLC (Investor Member)

By: \_\_\_\_\_

Name:

Title:

**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**

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

<b>Name and Address of Member</b>	<b>Commitment</b>	<b>% Membership Interest</b>	
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%	



## Ken Antos

---

**From:** Alan Hallberg <alan@cbcpartnersllc.com>  
**Sent:** Monday, September 25, 2017 1:07 PM  
**To:** Ken Antos  
**Cc:** Jay Bloom; Vernon Nelson  
**Subject:** Docs for Your Signature  
**Attachments:** Articles of Organization (002).pdf; Deed of Sale - 5148 Spanish Heights Dr.pdf; dv\_packet 5148 Spanish Heights Dr (002).pdf; Spanish Heights Acquisition Company Operating Agreement Final 9 15 17.doc; vn-919-Final-CBC Forbearance Agreement922.docx; vn-919-Final-CBC Forbearance Agreement-Exhibit B922.docx; vn919-Personal-Guarantee-Agreement-Ken-922.docx; vn919-Personal-Guarantee-Agreement-KS Living Trust-922.docx; vn919-Personal-Guarantee-Agreement-KSN Trust-922.docx; vn-919-Personal-Guarantee-Agreement-Sheila-922.docx; vn919Final-Pledge\_Agreement\_LLC-922.doc; vn-919-FinalLease Agreement with Consent922.docx

Hi Ken – I'm forwarding these to you in Vernon's absence today; I hope I've captured everything that needs your signature as well as Sheila's.

Best,

Alan

ALAN HALLBERG  
Chief Credit Officer



T (425) 688-7951  
M (206) 890-2899  
777 108<sup>TH</sup> AVE NE, SUITE 1895  
BELLEVUE WA 98004

Amendments thereto) and the Operating Agreement to be executed by the parties are attached to the Forbearance Agreement as Exhibits "A-1" and "A-2" respectively. Notwithstanding the foregoing, the parties acknowledge that as a condition of this Agreement, SHAC will agree to certain restrictions imposed upon the Articles of Organization and the Operating Agreement pursuant to the Membership Pledge Agreement that is attached hereto as Exhibit B-4.

**b. Conveyance of Property from the Antos Trust to SHAC.** Prior to the execution of the Forbearance Agreement, the Antos Trust shall deliver to CBCI a Deed of Sale (the "Deed") conveying the Property to SHAC; which will be recorded with the Clark County Recorder prior to the execution of Forbearance Agreement. The Deed will convey the Property to SHAC from the Antos Trust (a true copy of the Deed is attached hereto as Exhibit "B-3"). The Antos Trust and SHAC shall also deliver to CBCI a completed Declaration of Value Form to be delivered to the Clark County Recorder.

**c. SHAC's Obligation to Maintain Property After Conveyance to SHAC.**

1. SHAC will make certain repairs and improvements to the Property to bring it to top quality standard. SHAC estimates the cost of such repairs and improvements to cost approximately \$100,000.00. SHAC estimates that such repairs and improvements will be completed within 90 days after delivery of the Deed to SHAC. SHAC and CBCI agree that SHAC will not spend more than \$125,000 for such repairs without the prior consent of CBCI.

2. SHAC will be responsible for maintenance of the Property. Thus, SHAC will pay all costs for the on-going maintenance of the Property. Such maintenance costs shall include the payment of reasonable landscaping costs, the payment of reasonable pool maintenance costs, payment for all repairs to Property that arise after delivery of the Deed to SHAC. SHAC will also pay the cost of all utilities that service the Property.

Upon receipt of the Balloon Payment, CBCI will provide a lien release and a Deed of Reconveyance, to Spanish Heights Acquisition Company, LLC that releases CBCI's secured interest in the Property. CBCI's release of its secured interest in the Property shall in no way limit CBCI's rights to collect any other amounts owed under the Amended Note; from Preferred Restaurant Brands, Inc., KCI Investments, LLC, or any other third party that is not a party to this Forbearance Agreement.

**5. SHAC to Lease Property to SJCVC.** Upon the execution of the Forbearance Agreement, and the delivery of the Deed to SHAC; SHAC will enter a lease agreement (the "Lease Agreement") with SJCVC that conforms with the draft lease agreement identified as Exhibit B-5. SJCVC shall pay SHAC rent in accordance with the terms of the Lease Agreement.

**6. Additional Security to Be Provided by SHAC, SJCVC, and Other Parties.** SHAC and SJCVC shall provide additional collateral/security to CBCI as follows:

a. SJCVC and the Antos Trust shall pledge their Membership Interests in SHAC to CBCI per the terms of the Membership Interest Pledge Agreement identified as Exhibit B-4.

b. SHAC shall assign all rents payable from SJCVC to CBCI per the terms of the Assignment of Rents Agreement attached hereto as Exhibit B-6.

c. Prior to the execution of the Forbearance Agreement, SHAC will deposit \$150,000 into an account with Bank of America. Concurrent with the execution of the Forbearance Agreement, SHAC shall execute the Account Control Agreement attached hereto as Exhibit B-7. Prior to September 1, 2018, SHAC will deposit any additional amount required to replenish the account so that on September 1, 2018 the account balance will be \$150,000.00.

d. SJCVC represents that First 100, LLC and 1<sup>st</sup> One Hundred Holdings, LLC, obtained a Judgment (the "Judgment") in the amount of \$2,221,039,718.46 against Raymond

Ngan and other Defendants in the matter styled *First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No. A-17-753459-C in the 8<sup>th</sup> Judicial District Court for Clark County, Nevada (the "Judgment"). SJCVC represents that it owns a 24.912% interest in 1<sup>st</sup> 100 Holdings, LLC ("SJCVC's Judgment Interest"). SJCVC represents it is a Member of 1<sup>st</sup> One Hundred Holdings, LLC. SJCVC represents that SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC have agreed to secure the obligations of the Antos Parties and the SJCVC Parties under the Forbearance Agreement, and pursuant to the terms of the Security Agreement attached as Exhibit B-8. 1<sup>st</sup> One Hundred Holdings, LLC's agreement to secure the obligation is limited to SJCVC's beneficial interest in the proceeds realized under collection efforts against the judgment and subject to distribution to SJCVC. The Security Agreement provides that, apart collection professionals engaged to collect the Judgment, that CBCI has first-priority to receive any amounts collected in relation to the Judgment ("CBCI's First Priority Position"). As part of the SJCVC's Judgment Interest, counsel for SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC will provide an opinion of counsel, dated as of the effective date of the Forbearance Agreement, to CBCI, in form and substance reasonably satisfactory to CBCI, to the effect that this Security Agreement: (i) constitutes valid and binding obligation of SJCVC and SHAC in accordance with its terms; (ii) properly evidences CBCI's Judgment Interest, First Priority Position and that no other party, apart from the Collection Professionals has priority over CBCI to receive payments in relation to the SJCVC's Judgment Interest, (iii) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or SHAC is required for the consummation of the transactions set forth therein; and (iv) any other matters incident to the matters herein contemplated as CBCI may reasonably request.



e. Several Judgment Liens have attached to the Property. SJCVC has represented that many of the Judgment Liens are improper clouds on the title to the Property. SJCVC has represented to CBCI it anticipates that many of the Judgment Liens will be subject to removal pursuant to a Quiet Title Action and that SJCVC will commence a Quiet Title Action to remove these liens as clouds upon the title. SJCVC agrees to provide an opinion of counsel to CBCI, in form and substance reasonably satisfactory to CBCI, to the effect that the Judgment Liens on the Property can be removed by means of a Quiet Title Action. SJCVC will commence the Quiet Title Action within 120 days of the execution of the Forbearance.

f. CBCI shall have received from counsel to SHAC and SJCVC an opinion dated as of the effective date of the Forbearance Agreement to CBCI, in form and substance reasonably satisfactory to CBCI, to the effect that: (i) SHAC is a limited liability company duly organized, validly existing and of active status under the laws of the State of Nevada and SJCVC is a limited liability company duly organized, validly existing and of active status under the laws of the State of Delaware ; (ii) Each party has full power and authority to make, execute, deliver and perform the Forbearance Agreement and each of the agreements contemplated hereby, and all corporate or other proceedings required to be taken by SHAC and SJCVC to authorize the execution, delivery, and performance of this Agreement and each of the agreements contemplated hereby by SHAC and SJCVC, and to purchase and receive the Property as herein contemplated, have all been duly and properly taken; (iii) the Forbearance Agreement and the other agreements and instruments delivered hereunder by SJCVC and SHAC constitute the valid and binding obligation of SJCVC and SHAC in accordance with their respective terms,; and (iv) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or SHAC is required for the consummation of the transactions

set forth herein. Such opinion shall include any other matters incident to the matters herein contemplated as CBCI may reasonably request. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon representations of officers of SHAC and SJC.V.

g. Guarantees of the following individuals and entities identified as Exhibits B-9 through B-10.

Exhibit B-9: Kenneth Antos and Sheila Antos

Exhibit B-10: 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

SIGNATURE PAGE TO FOLLOW

The terms and conditions of the Exhibit "B" are agreed to and accepted by:

CBC Partners I, LLC

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

Kenneth & Sheila Antos Living Trust

BY: \_\_\_\_\_  
Kenneth Antos, Trustee

BY: \_\_\_\_\_  
Sheila Antos, Trustee

Kenneth M. Antos & Sheila M. Neumann-  
Antos Trust

BY: \_\_\_\_\_  
Kenneth Antos, Trustee

BY: \_\_\_\_\_  
Sheila Antos, Trustee

\_\_\_\_\_  
Kenneth Antos, Individually

\_\_\_\_\_  
Sheila Antos, Individually,

SJC Ventures, LLC

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

## Ken Antos

---

**From:** Alan Hallberg <alan@cbcpartnersllc.com>  
**Sent:** Monday, September 25, 2017 1:07 PM  
**To:** Ken Antos  
**Cc:** Jay Bloom; Vernon Nelson  
**Subject:** Docs for Your Signature  
**Attachments:** Articles of Organization (002).pdf; Deed of Sale - 5148 Spanish Heights Dr.pdf; dv\_packet 5148 Spanish Heights Dr (002).pdf; Spanish Heights Acquisition Company Operating Agreement Final 9 15 17.doc; vn-919-Final-CBC Forbearance Agreement922.docx; vn-919-Final-CBC Forbearance Agreement-Exhibit B922.docx; vn919-Personal-Guarantee-Agreement-Ken-922.docx; vn919-Personal-Guarantee-Agreement-KS Living Trust-922.docx; vn919-Personal-Guarantee-Agreement-KSN Trust-922.docx; vn-919-Personal-Guarantee-Agreement-Sheila-922.docx; vn919Final-Pledge\_Agreement\_LLC-922.doc; vn-919-FinalLease Agreement with Consent922.docx

Hi Ken – I'm forwarding these to you in Vernon's absence today; I hope I've captured everything that needs your signature as well as Sheila's.

Best,

Alan

**ALAN HALLBERG**  
Chief Credit Officer



T (425) 688-7951  
M (206) 890-2899  
777 108<sup>TH</sup> AVE NE, SUITE 1895  
BELLEVUE WA 98004



APN: 163-29-615-007

Return document and mail tax statements to:

SPANISH HEIGHTS ACQUISITION COMPANY, LLC  
5148 Spanish Heights Dr.  
Las Vegas NV 89148

## DEED OF SALE

THIS INDENTURE WITNESSETH: That first party

**ANTOS, KENNETH & SHEILA LIV TR, KENNETH M ANTOS SHEILA M. NEUMANN-ANTOS TRS**

for valuable consideration, the receipt of which is hereby acknowledged, does hereby convey without warranty, express or implied, to:

**SPANISH HEIGHTS ACQUISITION COMPANY, LLC**

the real property situated in the County of Clark, State of Nevada, described as follows:

LOT SEVEN (7) IN BLOCK FIVE (5) OF SPANISH HILLS ESTATES UNIT 5A, AS SHOWN  
BY MAP THEREOF ON FILE IN BOOK 107, OF PLATS, PAGE 58, IN THE OFFICE OF THE  
COUNTY RECORDER OF CLARK COUNTY, NEVADA

and commonly known as 5148 SPANISH HEIGHTS DR., LAS VEGAS NV 89148.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining.

- Subject to:
1. Property taxes.
  2. Conditions, covenants, restrictions, reservations, rights, rights of way, and easements now of record, if any.
  3. Liens, deeds of trust, and other encumbrances now in force, if any.

Grantor: ANTOS, KENNETH & SHEILA LIV TR

By:   
Kenneth Antos, Trustee

By:   
Sheila Neuman-Antos, Trustee

STATE OF NEVADA       )  
COUNTY OF CLARK     )

STATE OF NEVADA       )  
COUNTY OF CLARK     )

This instrument was executed before me on September 27, 2017, by

This instrument was executed before me on September 27, 2017, by

(print name)

Donna Zamora

(print name)

Donna Zamora

NOTARY PUBLIC

Donna Zamora

Notary Public

State of Nevada

My Comm. Expires: 05/08/2019

Certificate No: 03-80797-1

NOTARY PUBLIC



Donna Zamora

Notary Public

State of Nevada

My Comm. Expires: 05/08/2019

Certificate No: 03-80797-1

5148SH 000077

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

- a. 163-29-615-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

- a. ☐ Vacant Land      b. ☒ Single Fam. Res.  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
☐ Other

**FOR RECORDERS OPTIONAL USE ONLY**  
Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

**3.a. Total Value/Sales Price of Property**

\$ 0.00

b. Deed in Lieu of Foreclosure Only (value of property ( \_\_\_\_\_ )

c. Transfer Tax Value:

\$ 0.00

d. Real Property Transfer Tax Due

\$ 0.00

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: Transfer to related entity

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor/Seller

Signature Sheila Antos Capacity: Grantor/Seller

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

Print Name: Antos, Kenneth and Sheila LT  
Address: 5148 Spanish Heights, Dr  
City: Las Vegas  
State: NV Zip: 89148

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: Spanish Heights Acq. Co, LLC  
Address: 5148 Spanish Heights Dr  
City: Las Vegas  
State: MV Zip: 89148

**COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)**

Print Name: \_\_\_\_\_ Escrow # \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

5148SH 000078

## EXHIBIT B

### TO FORBEARANCE AGREEMENT

This Exhibit "B" is incorporated into the Forbearance Agreement dated as of the 27<sup>th</sup> day of September 2017 (the "Forbearance Agreement") by and among CBCI Partners, 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 ("SJCv")

### RECITALS

WHEREAS, Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust, dated April 26, 2007, and any amendments thereto (the "Antos Trust") is the Owner of the property commonly known as 5148 Spanish Heights Drive, Las Vegas, NV (the "Property").

WHEREAS, as is set forth in more detail in the Forbearance Agreement:  
The Property was pledged as collateral for the Amended Note. The Antos Trust, Kenneth Antos, and Sheila Antos have executed personal guarantees with respect to the Amended Note.

WHEREAS, the Property is encumbered by the Modified Deed of Trust; which is described in the Forbearance Agreement.

WHEREAS, several Events of Default (the "Identified Defaults") exist under the Amended Note, the Modified Deed of Trust, and the other Loan Documents described in the Forbearance Agreement.

WHEREAS, CBCI is concerned that if it were to foreclose on the Property, there would not be sufficient proceeds to satisfy the Amended Note and Modified Deed of Trust.

WHEREAS, to prevent the foreclosure of the Property and the potential extinguishment of the Modified Deed of Trust, CBCI has been making certain payments to the first mortgagee, the second mortgagee and other parties as described below (the "CBCI Protection Payments").

WHEREAS, SJCV desires to occupy the Property as soon as possible pursuant to certain Lease Agreement. SJCV also desires to satisfy the Amended Note and Modified Deed of Trust as part of its plan to acquire ownership of the Property.

WHEREAS, the Property is encumbered by certain judgment liens that have been recorded against the Property. The Anton Trust and SJCV dispute the validity of these liens and desire to commence a Quiet Title action to remove these clouds on the title the Property.

WHEREAS, SJCV and the Anton Trust have organized SHAC for the purposes of acquiring ownership of the Property. The Anton Trust desires to convey the Property to SHAC.

WHEREAS, as part of SHAC's efforts to acquire ownership of the Property, SHAC has requested that CBCI consent to the sale of the Property and agree to enter the Forbearance Agreement (the "Proposed Sale Transaction"). CBCI has agreed to consent to the Proposed Sale Transaction pursuant to terms of the Forbearance Agreement; which include the specific conditions described in this Exhibit "B" ("CBCI's Conditional Consent").

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CBCI hereby sets forth the conditions upon which it grants CBCI's Conditional Consent to the Proposed Sale Transaction.

## **AGREEMENT**

**1. Accuracy of Recitals.** The Anton Parties and the SJCVC Parties (as defined in the Forbearance Agreement) expressly acknowledge that the Recitals set forth above are true, accurate and correct. CBCI has relied on the Anton Parties and the SJCVC Parties express acknowledgement of these Recitals. Accordingly, these Recitals are incorporated into Forbearance Agreement pursuant to this Exhibit "B" and these recitals are material provisions of the Forbearance Agreement.

**2. Obligations to Be Performed by CBCI.** Prior to the execution of this Forbearance Agreement, CBCI made certain payments to the first mortgagee and the second mortgagee to prevent the default of the 1st Mortgage and the 2nd Mortgage. (the "Pre-Forbearance Protection Payments. During the Forbearance Period, CBCI shall continue to make payments to the first mortgagee and the second mortgagee to prevent the default of the 1st Mortgage and the 2nd Mortgage (the "Post-Forbearance Protection Payments"); subject to the provisions of Section 4(b) below.

**3. Payment of Property Taxes by the First Mortgagee.** The parties have agreed to enter this Forbearance Agreement based upon the parties' assumption that the first mortgagee will pay the real property taxes owed to Clark County during the term of this Forbearance Agreement. If the first mortgagee does not pay the real property taxes, the parties agree to negotiate, in good faith, additional provisions that will provide for the payment of real property taxes by parties.

### **3. Anton Parties and the SJCVC Parties Duties to Convey and Maintain the Property**

**a. Formation of SHAC.** SJCVC and the Anton Parties have organized SHAC as Nevada limited-liability company. True copies of SHAC's Articles of Organization and



Operating Agreement are attached to the Forbearance Agreement as Exhibits "A-1" and "A-2" respectively. Notwithstanding the foregoing, the parties acknowledge that as a condition of this Agreement, SHAC will agree to certain restrictions imposed upon the Articles of Organization and the Operating Agreement pursuant to the Membership Pledge Agreement that is attached hereto as Exhibit B-4.

**b. Conveyance of Property from the Anton Trust to SHAC.** Prior to the execution of the Forbearance Agreement, the Anton Trust shall deliver to CBCI a Grant, Bargain, and Sale Deed (the "Deed") conveying the Property to SHAC; which will be recorded with the Clark County Recorder prior to the execution of Forbearance Agreement. The Deed will convey the Property to SHAC from the Anton Trust (a true copy of the Deed is attached hereto as Exhibit "B-3"). The Anton Trust and SHAC shall also deliver to CBCI a completed Declaration of Value Form to be delivered to the Clark County Recorder.

**c. SHAC's Obligation to Maintain Property After Conveyance to SHAC.**

1. SHAC will make certain repairs and improvements to the Property to bring it to top quality standard. SHAC estimates the cost of such repairs and improvements to cost approximately \$100,000.00. SHAC estimates that such repairs and improvements will be completed within 90 days after delivery of the Deed to SHAC. SHAC and CBCI agree that SHAC will not spend more than \$125,000 for such repairs without the prior consent of CBCI.

2. SHAC will be responsible for maintenance of the Property. Thus, SHAC will pay all costs for the on-going maintenance of the Property. Such maintenance costs shall include the payment of reasonable landscaping costs, the payment of reasonable pool maintenance costs, payment for all repairs to Property that arise after delivery of the Deed to SHAC. SHAC will also pay the cost of all utilities that service the Property.

3. SHAC will pay for certain items, which are important to maintaining SHAC's ownership interest and protecting CBCI's Amended Note and Modified Deed of Trust.

- i. Customary homeowner's insurance coverage for the Property.
- ii. The payment of all Homeowner's Association dues.

**4. Payments to Be Made By SHAC.** SHAC will be required to make the following payments to CBCI:

**a. Monthly Interest-Only Payments-** Commencing 90 days after delivery of the Deed to SHAC (the "Monthly Payment Commencement Date"). SHAC will make Monthly Interest-Only Payments to CBCI in the amount of \$8,560.42 for a period of 24 months after the Monthly Payment Commencement Date (the "Monthly Payment Period").

**b. The Balloon Payment.** After SHAC has paid 24 Monthly Interest-Only payments, SHAC will be required to make a Balloon Payment that CBCI agrees will satisfy the Amended Note and Modified Deed of Trust. The amount of the Balloon Payment shall be equal to the sum of the following amounts:

- 1. The Principal Balance of the Note; and
- 2. (ii) the Pre-Forbearance Protection Payments in the amount of \$397,872.65; and
- 3. An amount equal to the sum of all the Post -Forbearance Protection Payments made by CBCI during the Monthly Payment Period.

Upon receipt of the Balloon Payment, CBCI will provide a lien release, to Spanish Heights Acquisition Company, LLC, stating that Amended Note and Modified Deed of Trust are paid in full and discharged.

**5. SHAC to Lease Property to SJCVC.** Upon the execution of the Forbearance Agreement, and the delivery of the Deed to SHAC; SHAC will enter a lease agreement (the

"Lease Agreement") with SJCVC that conforms with the draft lease agreement identified as Exhibit B-5. SJCVC shall pay SHAC rent in accordance with the terms of the Lease Agreement.

**6. Additional Security to Be Provided by SHAC, SJCVC, and Other Parties.** SHAC and SJCVC shall provide additional collateral/security to CBCI as follows:

a. SJCVC and the Anton Trust shall pledge their Membership Interests in SHAC to CBCI per the terms of the Membership Interest Pledge Agreement identified as Exhibit B-4.

b. SHAC shall assign all rents payable from SJCVC to CBCI per the terms of the Assignment of Rents Agreement attached hereto as Exhibit B-6.

c. Prior to the execution of the Forbearance Agreement, SHAC will deposit \$150,000 into an account with Bank of America. Concurrent with the execution of the Forbearance Agreement, SHAC shall execute the Account Control Agreement attached hereto as Exhibit B-7. Prior to September 1, 2018, SHAC will deposit any additional amount required to replenish the account so that on September 1, 2018 the account balance will be \$150,000.00.

d. SJCVC represents that First 100, LLC and 1<sup>st</sup> One Hundred Holdings, LLC, obtained a Judgment (the "Judgment") in the amount of \$2,221,039,718.46 against Raymond Ngan and other Defendants in the matter styled *First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No. A-17-753459-C in the 8<sup>th</sup> Judicial District Court for Clark County, Nevada (the "Judgment"). SJCVC represents that it owns a 24.912% interest in 1<sup>st</sup> 100 Holdings, LLC ("SJCVC's Judgment Interest"). SJCVC represents it is a Member of 1<sup>st</sup> One Hundred Holdings, LLC. SJCVC represents that SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC have agreed to secure the obligations of the Anton Parties and the SJCVC Parties under the Forbearance Agreement, and pursuant to the terms of the Security Agreement attached as Exhibit B-8. 1<sup>st</sup> One Hundred Holdings, LLC's agreement to secure the obligation is limited to SJCVC's beneficial

interest in the proceeds realized under collection efforts against the judgment and subject to distribution to SJCVC. The Security Agreement provides that, apart collection professionals engaged to collect the Judgment, that CBCI has first-priority to receive any amounts collected in relation to the Judgment ("CBCI's First Priority Position"). As part of the SJCVC's Judgment Interest, counsel for SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC will provide an opinion of counsel, dated as of the effective date of the Forbearance Agreement, to CBCI, in form and substance reasonably satisfactory to CBCI, to the effect that this Security Agreement: (i) constitutes valid and binding obligation of SJCVC and SHAC in accordance with its terms; (ii) properly evidences CBCI's Judgment Interest, First Priority Position and that no other party, apart from the Collection Professionals has priority over CBCI to receive payments in relation to the SJCVC's Judgment Interest, (iii) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or SHAC is required for the consummation of the transactions set forth therein; and (iv) any other matters incident to the matters herein contemplated as CBCI may reasonably request.

e. Several Judgment Liens have attached to the Property. SJCVC has represented that many of the Judgment Liens are improper clouds on the title to the Property. SJCVC has represented to CBCI it anticipates that many of the Judgment Liens will be subject to removal pursuant to a Quiet Title Action and that SJCVC will commence a Quiet Title Action to remove these liens as clouds upon the title. SJCVC agrees to provide an opinion of counsel to CBCI, in form and substance reasonably satisfactory to CBCI, to the effect that the Judgment Liens on the Property can be removed by means of a Quiet Title Action. SJCVC will commence the Quiet Title Action within 120 days of the execution of the Forbearance.

f. CBCI shall have received from counsel to SHAC and SJCVC an opinion dated as of the effective date of the Forbearance Agreement to CBCI, in form and substance reasonably satisfactory to CBCI, to the effect that: (i) SHAC is a limited liability company duly organized, validly existing and of active status under the laws of the State of Nevada and SJCVC is a limited liability company duly organized, validly existing and of active status under the laws of the State of Delaware ; (ii) Each party has full power and authority to make, execute, deliver and perform the Forbearance Agreement and each of the agreements contemplated hereby, and all corporate or other proceedings required to be taken by SHAC and SJCVC to authorize the execution, delivery, and performance of this Agreement and each of the agreements contemplated hereby by SHAC and SJCVC, and to purchase and receive the Property as herein contemplated, have all been duly and properly taken; (iii) the Forbearance Agreement and the other agreements and instruments delivered hereunder by SJCVC and SHAC constitute the valid and binding obligation of SJCVC and SHAC in accordance with their respective terms,, and (iv) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or SHAC is required for the consummation of the transactions set forth herein. Such opinion shall include any other matters incident to the matters herein contemplated as CBCI may reasonably request. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon representations of officers of SHAC and SJCVC.

g. Guarantees of the following individuals and entities identified as Exhibits B-9 through B-11.

Exhibit B-9: Kenneth Antos and Sheila Antos

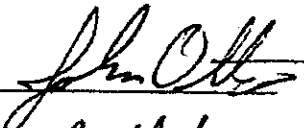


Exhibit B-10: Kenneth & Sheila Antos Living Trust (the "Living Trust"), Kenneth M. Antos & Sheila M. Neumann-Antos Trust (the "K & S Trust"), Kenneth Antos and Sheila Neumann-Antos, as Trustees of the Living Trust and the K & S Trust

SIGNATURE LINE TO FOLLOW


The terms and conditions of the Exhibit "B" are agreed to and accepted by:

CBC Partners I, LLC

BY:   
Its: President


Print  
Name: John Otter

Kenneth & Sheila Antos Living Trust


BY:   
Kenneth Antos, Trustee

BY:   
Sheila Antos, Trustee

Kenneth M. Antos & Sheila M. Neumann-  
Antos Trust


BY:   
Kenneth Antos, Trustee

BY:   
Sheila Antos, Trustee

  
Kenneth Antos, Individually

  
Sheila Antos, Individually,

SJC Ventures, LLC

BY:   
Its: Manager

Print  
Name: Jay Blum

## PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT dated 27<sup>th</sup> (this "Agreement") is made by Kenneth & Sheila Antos Living Trust (the "Antos Trust"), SJC Ventures, LLC ("SJC") (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 27<sup>th</sup> 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 ("SJC").

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 SJC 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

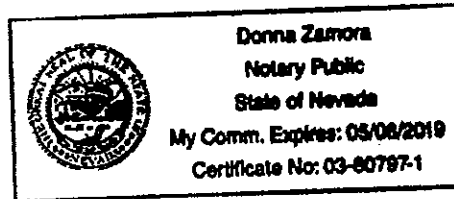
By: [Signature]  
Sheila Antos, Trustee

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.

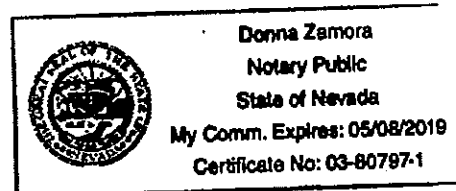
[Signature]  
Notary Public



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



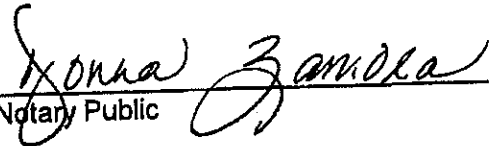


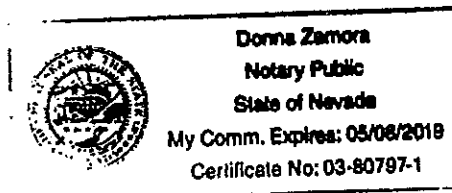
SPANISH HEIGHTS ACQUISITION COMPANY, LLC

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



## ASSIGNMENT OF RENTS

THIS ASSIGNMENT is made this 27<sup>th</sup> day of September by and between Spanish Heights Acquisition Company, LLC ("Assignor") and CBC Partners I, LLC ("Assignee").

WHEREAS, Assignor has executed and delivered to Assignee that certain Forbearance Agreement dated as of the 27<sup>th</sup> day of September 2017 (the "Forbearance Agreement") 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, as amended (as is defined in the Forbearance Agreement as the "Amended Note"), Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJC") dated Sept 27<sup>th</sup>, 2017; and

WHEREAS, Assignor is entitled to receive periodic rental payments (the "Rental Payments") under that certain Real Property Lease made as of August 15, 2017, by and between Spanish Heights Acquisition Company, LLC, a Nevada limited liability company, and SJC Ventures, LLC, a Delaware limited liability company, in which Assignor is the Landlord and SJC Ventures, LLC is the Tenant (the "Tenant"), which lease concerns the following real property commonly known as 5148 Spanish Heights Drive (the "Lease"); and

WHEREAS, Assignor desires to assign to Assignee the Rental Payments for application to the unpaid balance of the Amended Note described in the Forbearance Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor shall to Assignee all Assignor's right, title, and interest in the Rental Payments; Assignor hereby grants to Assignee the right to enforce, at the sole discretion of Assignee, all Assignor's rights under the Lease, including the right to sue for and collect unpaid Rental Payments. In the event Assignee elects not to enforce Assignor's rights under the Lease, Assignor agrees to enforce promptly all of such rights.

2. On or before the first banking day after Assignee receives each Rental Payment, Assignee will apply said Rental Payment to reduce the unpaid balance due under the Forbearance Agreement and/or any agreement related thereto. If Tenant makes the Rental Payment by check, Assignee will provisionally apply such payment until there is a final payment of Tenant's check. When there is a final payment of Tenant's check, the provisional application will become a final

payment. In the event the Tenant's check is not finally paid, the provisional application of such payment shall be reversed. It is expressly agreed that the amounts owed shall not be reduced or credited until such time as Assignee receives each final Rental Payment. If Tenant fails or refuses to make a Rental Payment, Assignee shall have no obligation to reduce the unpaid balance of the Amended Note described in the Forbearance Agreement. Assignor's duties to Assignee under the Amended Note described in the Forbearance Agreement shall not be excused or modified if Tenant (a) fails or refuses to make Rental Payments, or (b) is delinquent in making any Rental Payment(s).

3. Nothing herein shall constitute or be construed as a delegation to Assignee of Assignor's duties under the Lease. Assignor shall have the option, but not the duty, to enforce Tenant's obligation to pay Rental Payments. Further, Assignee shall have no obligation to Tenant whatsoever other than to accept each Rental Payment.

4. After payment of the unpaid balance of the Amended Note described in the Forbearance Agreement, Assignee agrees to assign back to Assignor all Assignee's rights created hereby within ten (10) days of the receipt by Assignee from Assignor of such a written request.

5. In the event Tenant breaches the Lease, and Assignee exercises its option hereunder to sue to enforce the Lease, Assignor agrees to reimburse Assignee for all Assignee's costs and reasonable attorney's fees incurred in connection with enforcing the Lease. Such costs and reasonable attorneys' fees may be paid by Assignee from the Rental Payments.

5. If so instructed by Assignee, Assignor agrees to instruct Tenant to pay the Rental Payments directly to Assignee.

6. This Assignment shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, heirs and personal representatives.

7. Assignee's consent to allowing Tenant to make one or more Rental Payments to Assignor is not and shall not be deemed to be a waiver of Assignee's right to directly receive all other Rental Payments.

SIGNATURE PAGE TO FOLLOW

ASSIGNOR

Spanish Heights Acquisition  
Company, LLC

By: 

Jay Bloom, Manager

ASSIGNEE

CBC Partners I, LLC

By: 

Print

Name: John Otter

Its: President

## SECURITY AGREEMENT

This Security Agreement is made by and between SJC Ventures, LLC ("SJC") (the "Debtor") to CBC Partners I, LLC, a Washington limited-liability company ("Secured Party" or "CBCI").

WITN ESSETH:

WHEREAS, Debtor, other creditors, and Secured Party are parties to a certain Forbearance Agreement (the "Forbearance Agreement") dated as of the 27<sup>th</sup> 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 ("SJC").

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.

WHEREAS, one of the conditions of the Forbearance Agreement requires SJC to execute a Security Agreement with respect to the "Creditors Judgment Interest" described below (the "Collateral") in favor of CBCI.

WHEREAS, subject to the terms of this Security Agreement, the SJC agree to grant CBCI a Security Interest in the Collateral described below to secure the obligations of all parties to the Forbearance Agreement.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, SJC ("Debtor") and CBCI ("Secured Party") hereby agrees as follows:

1. *Grant of security interest.* In consideration of the Forbearance Agreement, the Debtor and Secured Party hereby grants to the Secured Party a security interest in the Collateral defined below as security for the prompt payment, performance, and observance by the Debtor, and all other parties to the Forbearance Agreement (the "Obligations").

2. *Collateral.*

(a) The term "Collateral" shall include that portion of Debtors current, or after-acquired, beneficial interest in the "Judgment" described below necessary to secure the Secured Party's Interest (the "Creditor's Judgment Interest"), regardless of whether the Creditor's Judgment Interest is the Judgment is considered "rights to cash or non-cash proceeds", accounts, contract rights, accounts receivable instruments, documents, chattel paper, securities, deposits, credits, "claims and demands," general intangibles, payment intangibles; and all ledger sheets, files, records, documents, and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) evidencing any interest in or relating to the above described Collateral. The locations of the office where the records concerning rights are kept is set forth at the bottom of this Agreement. Debtor's address above stated against the Secured Party, and all proceeds, products, returns, additions, accessions and substitutions of and to any of the foregoing.

(b) All terms used herein which are defined in the Uniform Commercial Code of the State of Nevada shall have the meanings therein stated.



(c) The Creditor's Judgment Interest is described as follows:

SJCV represents that First 100, LLC and 1<sup>st</sup> One Hundred Holdings, LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against Raymond Ngan and other Defendants in the matter styled *First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No. A-17-753459-C in the 8<sup>th</sup> Judicial District Court for Clark County, Nevada (the "Judgment"). SJCV represents it holds a 24.912% Membership Interest in 1<sup>st</sup> One Hundred Holdings, LLC. SJCV represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment, have a priority to receive net judgment proceeds attributable to SJCV before SJCV; and that SJCV shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment. 1<sup>st</sup> One Hundred Holdings, LLC represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment and certain other creditors of 1<sup>st</sup> One Hundred Holdings, have a priority to receive net judgment proceeds prior to distributions to 1<sup>st</sup> One Hundred Holdings Members; and that SJCV shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment.

3. *Warranties and agreements.* The Debtor warrants and agrees that:

(a) *Collateral location and use.* The Debtor's chief places of business, its financial books and records relating to the Collateral, and the Collateral, are located at the address set forth at the bottom of this agreement. The Debtor will not move any of the Collateral from said location without the prior written consent of the Secured Party.

(b) *Existing liens, security interests, and encumbrances.* Except for the security interest granted herein, and except for the liens of certain "Collection Professionals," as set forth on the schedule annexed hereto as Schedule C and initialed by the Secured Party and the Debtor, the Debtor owns and will keep the Collateral free and clear of liens, security interests, or encumbrances, and will not assign, sell, mortgage, lease, transfer, pledge, grant a security interest in, encumber or otherwise dispose of or abandon any part or all of the Collateral without the prior written consent of the Secured Party. Accordingly, Debtor Any default by any party to the Forbearance Agreement, or any of the agreements related thereto shall constitute an event of default under this Security Agreement.

(c) *Inspection.* The Secured Party shall at all times have free access to and the right of inspection of any part or all of the Collateral and any records of the Debtor (and the right to make extracts from such records), and the Debtor shall deliver to the Secured Party the originals or true copies of such papers and instruments relating to any or all of the Collateral as the Secured Party may request at any time.

(d) *Collateral to remain personal property.* The Collateral is now and shall be and remain personal property, notwithstanding the manner in which the Collateral or any part thereof shall be now or hereafter affixed, attached or annexed to real estate. Debtor authorizes the Secured Party to enter upon any premises of the Debtor at any time to remove the Collateral.

(e) *Maintain security interests, reports.* In addition to all other provisions hereof, the Debtor will from time to time at its expense, perform any and all steps requested by the Secured Party at any time to perfect and maintain the Secured Party's security interest in the Collateral, including (but not limited to) transferring any part or all of the Collateral to the Secured Party or any nominee of the Secured Party, including placing and maintaining signs, executing and filing financing statements and notices of lien, delivering to the Secured Party documents of title representing the Collateral or evidencing the Secured Party's security interest in any other manner acceptable to and requested by the Secured Party.

If at any time any part or all of the Collateral is in the possession or control of any of the Debtor's bailees, agents, or processors, the Debtor will notify such persons of the Secured Party's security interest therein. Upon the Secured Party's request, the Debtor will instruct such persons to hold all such Collateral for the Secured Party's account and subject to the Secured Party's instructions and the Debtor will obtain and deliver to the Secured Party such instrument(s) requested by the Secured Party pursuant to which such persons consent to the security interest

granted herein, disclaim any interest in the Collateral, waive in favor of the Secured Party all liens upon and claims to the Collateral or any part thereof, and authorize the Secured Party at any time to enter upon and remove the Collateral from any premises upon which the same may be located.

(f) *Further documentation.* The Debtor shall, at its expense, upon the Secured Party's request, at any time and from time to time, execute and deliver to the Secured Party one or more financing statements pursuant to the Uniform Commercial Code, and all other papers, documents or instruments required by the Secured Party in connection herewith; including an Assignment of Judgment Interest in a form acceptable to Secured Party. The Debtor hereby authorizes the Secured Party to execute and file, at any time and from time to time, on behalf of the Debtor, one or more financing statements with respect to all or any part of the Collateral, the filing of which is advisable, in the sole judgment of the Secured Party, pursuant to the law of the State of Nevada, although the same may have been executed only by the Secured Party as secured party. The Debtor also irrevocably appoints the Secured Party, its agents, representatives and designees, as the Debtor's agent and attorney-in-fact, to execute and file, from time to time, on behalf of the Debtor, one or more financing statements with respect to all or any part of the Collateral.

(g) *Collection of accounts.* The Debtor is authorized, at its expense, to collect the proceeds of the Collateral for the Secured Party. In the event of default, the Debtor shall promptly turn over to the Secured Party the proceeds of accounts, up to the amount secured, and in no event in any amount greater than such amount secured, whether consisting of cash, commercial paper, or any other instrument, in precisely the form received, except for the Debtor's endorsement when required. Until so turned over, the proceeds up to the amount secured, shall be deemed to be held in trust by the Debtor for and as the property of the Secured Party. All remittances are received subject to collection. The Secured Party may endorse the name of the Debtor on all notes, checks, drafts, bills of exchange, money orders, commercial paper of any kind whatsoever, and any other document received in payment of or in connection with the Collateral or otherwise.

(h) *Settlement of Accounts.* The Debtor is not authorized or empowered to compromise or extend the time for payment of any of the Collateral, without the prior written consent of the Secured Party.

(i) *Payment of debtor's obligations, reimbursement.* The Secured Party may in its discretion, for the account and expense of the Debtor: (i) pay any amount or do any act which is required by the Debtor under this Security Agreement and which the Debtor fails to do or pay as herein required, and (ii) pay or discharge any lien, security interest or encumbrance in favor of anyone other than the Secured Party which covers or affects the Collateral or any part thereof. The Debtor will promptly reimburse and pay the Secured Party for any and all sums, costs and expenses which the Secured Party may pay or incur by reason of defending, protecting or enforcing the security interest herein granted or the priority thereof or in enforcing payment of the Obligations or in discharging any lien or claim against the Collateral or any part thereof or in the exchange, collection, compromise or settlement of any of the Collateral or receipt of the proceeds thereof or for the care of the Collateral, by litigation or otherwise, and with respect to either the Debtor, account debtors, guarantors of the Debtor and other persons, including but not limited to all court costs, collection charges, travel, and reasonable attorneys' fees, and all reasonable expenses (including reasonable counsel fees) incident to the enforcement of payment of any obligations of the Debtor by any action or participation in, or in connection with, a case or proceeding under the Bankruptcy Code, or any successor statute thereto. All sums paid and all costs, expenses and liabilities incurred by the Secured Party pursuant to the foregoing provisions, together with interest thereon at the rate of 12 percent per annum, shall be added to and become part of the Obligations secured hereby.

4. *Transfer of collateral.* The right is expressly granted to the Secured Party, at its discretion, to exchange any or all of the Collateral in the possession of the Secured Party for other property upon the reorganization, recapitalization or other readjustment of the Debtor and in connection therewith to deposit any or all of such Collateral with any committee or depository upon such terms as the Secured Party may determine; At its discretion the Secured Party may, whether or not any of the Obligations are due, in its name or in the name of the Debtor or otherwise, notify any

account debtor or the obligor on any instrument, agreement, or consent order to make payment to the Secured Party, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for, or make any compromise or settlement deemed desirable by the Secured Party with respect to, any of the Collateral, but shall be under no obligation to do so, and/or the Secured Party may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release any of the Collateral, without thereby incurring responsibility to, or discharging or otherwise affecting any liability of, the Debtor. At any time, the Secured Party may assign, transfer and/or deliver to any transferee of any of the Obligations any or all of the Collateral, and thereafter the Secured Party shall be fully discharged from all responsibility with respect to the Collateral so assigned, transferred and/or delivered. Such transferee shall be vested with all the powers and rights of the Secured Party hereunder, with respect to such Collateral, but the Secured Party shall retain all rights and powers hereby given with respect to any of the Collateral not so assigned, transferred or delivered.

5. *Defaults.* The occurrence of any one or more of the following events shall constitute an event of default by the Debtor under this Security Agreement: if at any time the Secured Party, in its discretion, reasonably considers the Collateral or any part thereof unsatisfactory or insufficient, and the Debtor does not on demand furnish other Collateral or make payment on account, satisfactory to the Secured Party; if the Debtor or any obligor, maker, endorser, acceptor, surety or guarantor of, or any other party to any of the Obligations or the Collateral (the same, including the Debtor, being collectively referred to herein as "Obligors") defaults in the punctual payment of any sum payable with respect to, or in the performance of any of the terms and conditions of, any of the Obligations (or of any instruments evidencing the same) or of any terms or conditions of this Security Agreement or the Collateral; if any warranty, representation or statement of fact made herein or furnished to the Secured Party at any time by or on behalf of the Debtor proves to have been false in any material respect when made or furnished; in the event of loss, theft, substantial damage or destruction of any of the Collateral, or the making of any levy on, seizure or attachment of any of the Collateral; if the Debtor executes or files a certificate or other instrument evidencing the legal change of name of the Debtor without furnishing the Secured Party at least 10 days' prior written notice thereof; if any of the Obligors are dissolved; if any of the Obligors are party to a merger or consolidation without the prior written consent of the Secured Party; if any of the Obligors fail to maintain its corporate existence in good standing; if any of the Obligors default in the observance or performance of any term, covenant or agreement contained herein or in any instrument or document delivered pursuant hereto; if any of the Obligors become insolvent (however such insolvency may be defined or evidenced), or make or send notice of an intended bulk transfer, or fail, after demand, to furnish any financial information or to permit the inspection of books or records of account; if there is filed by or against any of the Obligors any petition for any relief under the bankruptcy laws of the United States as now or hereafter in effect or under any insolvency, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect (and whether any such action or proceeding is at law, in equity or under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute); if any of the Obligors suspend the transaction of its usual business, if any petition or application to any court or tribunal, at law or in equity, is filed by or against any of the Obligors for the appointment of any receiver or any trustee for any of the Obligors; if any governmental authority or any court or other tribunal takes possession or jurisdiction of any substantial part of the property of, or assumes control over the affairs or operations of, or a receiver is appointed of, any substantial part of the property of any of the Obligors; or if a meeting of the creditors or principal creditors of any of the Obligors is convened.

6. *Remedies on default.* If any one or more of the above events of default shall occur, the Secured Party may, at any time thereafter, declare any or all of the Debtor's Obligations immediately due and payable, after notice to or demand upon the Debtor and the provision of a 30-day cure period. In such event, the Secured Party shall have the following rights and remedies, all of which shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies of a secured party under the Uniform Commercial Code or other applicable statute or rule in any jurisdiction in which enforcement is sought:

(a) *Collateral.* The Secured Party may, at any time and from time to time, Upon no less than 24 hours' notice, enter upon any premises in which all or any part of the Collateral is located and to the extent practicable, take possession of the Collateral, without the Debtor's resistance or interference; dispose of all or any part of the Collateral on any premises of the Debtor; require the Debtor to assemble and make available to the Secured Party all or any part of the Collateral at any place and time designated by the Secured Party which is reasonably convenient to the Secured Party and the Debtor; remove all or any part of the Collateral from any premises on which any part thereof is located for the purpose of effecting sale or other disposition thereof; sell, resell, lease, assign and deliver, or otherwise dispose of, the Collateral or any part thereof in its existing condition or following any commercially reasonable preparation or processing, at public or private proceedings, in one or more parcels at the same or different times with or without having the Collateral at the place of sale or other disposition, for cash, upon credit or for future delivery, and in connection therewith the Secured Party may grant options, at such place or places and time or times and to such persons, firms or corporations as the Secured Party deems best, and without demand for performance or any notice or advertisement whatsoever, except that where an applicable statute requires reasonable notice of sale or other disposition the Debtor hereby agrees that five days' notice by ordinary mail, postage prepaid, to any address of the Debtor set forth at the foot of this Security Agreement, of the place and time of any public sale or of the place and time after which any private sale or other disposition may be made, shall be deemed reasonable notice of such sale or other disposition; and liquidate or dispose of the Collateral or any part thereof in any other commercially reasonable manner.

If the Secured Party sells any of the Collateral upon credit or for future delivery, it shall not be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, the Secured Party may resell such Collateral. The Debtor hereby waives all equity and right of redemption. The Secured Party may buy any part or all of the Collateral at any public sale and if any part of all of the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the Secured Party may buy at private sale, all free from any equity or right of redemption which is hereby waived and released by the Debtor, and the Secured Party may make payment therefor (by endorsement without recourse) in notes of the Debtor to the order of the Secured Party in lieu of cash to the amount then due thereon which the Debtor hereby agrees to accept.

The Secured Party may apply the cash proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling, leasing and the like, to reasonable attorney's fees if this Security Agreement or any of the Obligations is referred to an attorney for enforcement, to all legal expenses, court costs, collection charges, travel and other expenses which may be incurred by the Secured Party in attempting to collect the Obligations or to enforce this Security Agreement and realize upon the Collateral, or in the prosecution or defense of any action or proceeding related to the subject matter of this Security Agreement; and then to the Obligations in such order and as to principal or interest as the Secured Party may desire; and the Debtor shall at all times be and remain liable and, after crediting the net proceeds of sale or other disposition as aforesaid, will pay the Secured Party on demand any deficiency remaining, including interest thereon and the balance of any expenses at any time unpaid, with any surplus to be paid to the Debtor, subject to any duty of the Secured Party imposed by law to the holder of any subordinate security interest in the Collateral known to the Secured Party.

The Debtor recognizes that the Secured Party may be unable to effect a public sale of all or a part of the Collateral, but may be compelled to resort to one or more private sales. The Debtor agrees that private sales so made may be at prices and other terms less favorable to the seller than sales were made at public sales, and that the Secured Party has no obligation to delay sale of all or any part of the Collateral. The Debtor agrees that private sales made under the foregoing circumstances shall be deemed to have been made in a commercially reasonable manner.

(b) *Secured Party deposits, balances, etc.* The Secured Party may appropriate, set off and apply for the payment of any or all of the Obligations, any and all balances, sums, property, claims, credits, deposits, accounts, reserves, collections, drafts, notes, or other items or proceeds of the Collateral in or coming into the possession of the Secured



Party or its agents and belonging or owing to the Debtor, without notice to the Debtor, and in such manner as the Secured Party may in its discretion determine.

(c) *Proceeds.* Any of the proceeds of the Collateral received by the Debtor shall not be commingled with other property of the Debtor, but shall be segregated, held by the Debtor in trust for the Secured Party as the exclusive property of the Secured Party, and the Debtor will immediately deliver to the Secured Party the identical checks, moneys or other proceeds of Collateral received, and the Secured Party shall have the right to endorse the name of the Debtor on any and all checks, or other forms of remittance received, where such endorsement is required to effect collection. The Debtor hereby designates, constitutes and appoints the Secured Party and any designee or agent of the Secured Party as attorney-in-fact of the Debtor, irrevocably and with power of substitution, with authority to receive, open and dispose of all mail addressed to the under signed, to notify the Post Office authorities to change the address for delivery of mail addressed to the Debtor, to such address as the Secured Party may designate; to endorse the name of the Debtor on any notes, acceptances, checks, drafts, money orders or other evidences of payment or proceeds of the Collateral that may come into the Secured Party's possession; to sign the name of the Debtor on any invoices, documents, drafts against account debtors of the Debtor, assignments, requests for verification of accounts and notices to debtors of the Debtor; to execute any endorsements, assignments, or other instruments of conveyance or transfer; and to do all other acts and things necessary and advisable in the sole discretion of the Secured Party to carry out and enforce this Security Agreement. All acts of said attorney or designee are hereby ratified and approved and said attorney or designee shall not be liable for any acts of commission or omission nor for any error of judgment or mistake of fact or law. This power of attorney being coupled with an interest is irrevocable while any of the Obligations shall remain unpaid.

7. *Liability disclaimer.* Under no circumstances whatsoever shall the Secured Party be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Collateral, of any nature or kind whatsoever, or any matter or proceedings arising out of or relating thereto. The Secured Party shall not be required to take any action of any kind to collect or protect any interest in the Collateral, including but not limited to any action necessary to preserve its or the Debtor's rights against prior parties to any of the Collateral. The Secured Party shall not be liable or responsible in any way for the safekeeping, care or custody of any of the Collateral, or for any loss or damage thereto, or for any diminution in the value thereof, or for any act or default of any agent or bailee of the Secured Party or the Debtor, or of any carrier, forwarding agency or other person whomsoever, or for the collection of any proceeds, but the same shall be at the Debtor's sole risk at all times. The Debtor hereby releases the Secured Party from any claims, causes of action and demands at any time arising out of or with respect to this Security Agreement or the Obligations, and any actions taken or omitted to be taken by the Secured Party with respect thereto, and the Debtor hereby agrees to hold the Secured Party harmless from and with respect to any and all such claims, causes of action and demands. The Secured Party's prior recourse to any part of all of the Collateral shall not constitute a condition of any demand for payment of the Obligations or of any suit or other proceeding for the collection of the Obligations.

8. *Nonwaiver.* No failure or delay on the part of the Secured Party in exercising any of its rights and remedies hereunder or otherwise shall constitute a waiver thereof, and no single or partial waiver by the Secured Party of any default or other right or remedy which it may have shall operate as a waiver of any other default, right or remedy or of the same default, right or remedy on a future occasion.

9. *Waivers by debtor.* The Debtor hereby waives presentment, notice of dishonor and protest of all instruments included in or evidencing any of the Obligations or the Collateral and any and all other notices and demands whatsoever (except as expressly provided herein) whether or not relating to such instruments. In the event of any litigation at any time arising with respect to any matter connected with this Security Agreement or the Obligations, the Debtor hereby waives the right to a trial by jury and the Debtor hereby waives any and all defenses, rights of setoff and rights to interpose counterclaims of any nature.



10. *Modification.* No provision hereof shall be modified, altered or limited except by an instrument expressly referring to this Security Agreement and to the provision so modified or limited, and executed by the party to be charged.

11. *Authorization.* The execution and delivery of this Security Agreement has been authorized by the Members and/or Manager(s) Boards of Directors of the Debtor and by any necessary vote or consent of Member(s) of the Debtor. The Debtor shall provide the Secured Party with certified copy of a proper resolution of the Member(s) and/or Managers of the Debtor, in a form reasonably acceptable to Secured Party.

12. *Binding effect.* This Security Agreement and all Obligations of the Debtor hereunder shall be binding upon the Debtor's successors and assigns and shall, together with the rights and remedies of the Secured Party hereunder, inure to the benefit of the Secured Party and its successors, endorsees and assigns.

13. *Headings.* Headings in this Agreement are only for convenience and shall not be used to interpret or construe its provisions.

14. *Governing law.* Any and all matters of dispute between the parties to this Agreement, whether arising from the agreement itself or arising from alleged extracontractual matters occurring prior to, during, or subsequent to the formation of the Agreement, including, without limitation, fraud, misrepresentation, negligence, or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the state of Nevada, regardless of the legal theory upon which such matter is asserted.

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

16. *Severability.* If any term of this Security Agreement is held to be invalid, illegal or unenforceable, such determination shall not affect the validity of the remaining terms.

17. *Merger.* The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement with respect to this Security Agreement. The parties also intend that this complete, exclusive, and fully integrated statement of their agreement with respect to this Security Agreement. This Security Agreement may not be supplemented or explained (interpreted) by any evidence of trade usage or course of dealing.

In witness whereof the Parties have executed or caused this Security Agreement to be executed this 22<sup>nd</sup> day of September, 2017.

SJC Ventures, LLC.

By: \_\_\_\_\_

Jay Bloom, Manager

CBC Partners I, LLC

BY: \_\_\_\_\_

1<sup>st</sup> 100 Holdings, LLC  
c/o MAIER GUTIERREZ AND ASSOCIATES  
8816 SPANISH RIDGE AVE  
LAS VEGAS, NV 89148

and

SJC Ventures, LLC  
c/o MAIER GUTIERREZ AND ASSOCIATES  
8816 SPANISH RIDGE AVE  
LAS VEGAS, NV 89148

September 27, 2017

MAIER GUTIERREZ AND ASSOCIATES, PLLC  
8816 SPANISH RIDGE AVE  
LAS VEGAS, NV 89148

Re: PAYMENT DIRECTION LETTER

Ladies and Gentlemen:

SJC Ventures I, LLC ("SJVC") and CBC Partners I, LLC (CBCI) are parties to a certain FORBEARANCE AGREEMENT (the "Forbearance Agreement") that is made and dated as of the 27 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"). To secure the parties obligations under the Forbearance Agreement, CBCI and SJCVC are also parties to a certain Security Agreement (the "SECURITY AGREEMENT"), dated as of September 27 , by and among SJCVC and CBCI.

Pursuant to the Security Agreement, SJCVC has represented it holds a 24.912% Membership Interest in 1st One Hundred Holdings, LLC and that 1<sup>st</sup> 100 Holdings LLC is the holder of a certain “Judgment” described in the Security Agreement. Further, SJCVC pledged as collateral that portion of SJCVC’s current, or after-acquired, beneficial interest in the “Creditor’s Judgment Interest” (as defined in the Security Agreement<sup>1</sup>) necessary to secure the parties obligations under the Forbearance Agreement.

As a material term of the Security Agreement, 1st 100 Holdings, LLC has represented and warranted that SJCVC holds a 24.912% Membership Interest in 1st 100 Holdings, LLC; and that 1st 100 Holdings LLC is the holder of a certain “Judgment” described in the Security Agreement. 1<sup>st</sup> 100 Holdings, LLC has also represented that SJCVC is the holder of the Creditor’s Judgment Interest. Further, 1<sup>st</sup> 100 Holdings, LLC represented: *that no party, other than the Collection Professionals (“Collection Professionals”) engaged to collect the Judgment and certain other creditors of 1st One Hundred Holdings (the “1<sup>st</sup> 100 Priority Creditors”), have a priority to receive net judgment proceeds prior to distributions to 1st One Hundred Holdings Members; and that SJCVC shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment.*

Finally, SJCVC and 1st 100 have represented and warranted that any funds that are

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<sup>1</sup> The “Creditor’s Judgment Interest” is defined in the Security Agreement as follows:

*SJCVC represents that First 100, LLC and 1st One Hundred Holdings, LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against Raymond Ngan and other Defendants in the matter styled First 100, LLC, Plaintiff(s) vs. Raymond Ngan, Defendant(s), Case No. A-17-753459-C in the 8th Judicial District Court for Clark County, Nevada (the “Judgment”). SJCVC represents it holds a 24.912% Membership Interest in 1st One Hundred Holdings, LLC. SJCVC represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment, have a priority to receive net judgment proceeds attributable to SJCVC before SJCVC; and that SJCVC shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment. 1st One Hundred Holdings, LLC represents and warrant that no party, other than the Collection Professionals engaged to collect the Judgment and certain other creditors of 1st One Hundred Holdings, have a priority to receive net judgment proceeds prior to distributions to 1st One Hundred Holdings Members; and that SJCVC shall receive its interest at a minimum in pari passu with other parties who hold interests in the Judgment.*

received in connection with the collection of the Judgment (“Judgment Funds”) will be paid to, and held in escrow, by MAIER GUTIERREZ AND ASSOCIATES, PLLC. Further, MAIER GUTIERREZ AND ASSOCIATES, PLLC shall be responsible for distribution of the Judgment Funds to the Collection Professionals, the 1<sup>st</sup> 100 Priority Creditors, and the Members of 1<sup>st</sup> 100; including the distribution of the Creditor’s Judgment Interest.

To provide for the orderly performance of the parties rights and obligations pursuant to the Security Agreement, the parties hereto wish to memorialize the transfer of funds related thereto and acknowledge that this “Payment Direction Letter” hereby instructs MAIER GUTIERREZ AND ASSOCIATES, PLLC to transfer funds pursuant to the terms of this PAYMENT DIRECTION LETTER

In consideration of the foregoing and for other good and valuable consideration, the parties hereto hereby agree as follows:

1. Each of the parties hereto agrees to the transfers of funds, subject to the conditions set forth below.

2. SJCVC and 1<sup>st</sup> 100 Holdings, LLC hereby instruct MAIER GUTIERREZ AND ASSOCIATES, PLLC to transfer to CIBC, on 1<sup>st</sup> 100 Holdings, LLC’s behalf, the amounts payable to SJCVC pursuant to the “Creditor’s Judgment Interest; ”

3. Upon receipt of any Judgment Funds, MAIER GUTIERREZ AND ASSOCIATES, PLLC shall contemporaneously notify CIBC that MAIER GUTIERREZ AND ASSOCIATES, PLLC has received Judgment Funds.

4. MAIER GUTIERREZ AND ASSOCIATES, PLLC shall contemporaneously provide CIBC with an accounting of how MAIER GUTIERREZ AND ASSOCIATES, PLLC intends to

distribute the Judgment Funds amongst the Collection Professionals, the 1st 100 Priority Creditors, and the Members of 1st 100; including the distribution of the “Creditor’s Judgment Interest.”

4. MAIER GUTIERREZ AND ASSOCIATES, PLLC shall contemporaneously transfer any funds due to SJCVC directly to CBCI as follows:

NEED PAYMENT INSTRUCTIONS

5. Once all amounts payable to the Collection Professionals and the 1st 100 Priority Creditors have been satisfied or otherwise waived, MAIER GUTIERREZ AND ASSOCIATES, PLLC is irrevocably authorized to initiate, and MAIER GUTIERREZ AND ASSOCIATES, PLLC hereby agrees to initiate, the transfers set forth herein.

6. Each of the parties hereto hereby agrees to take such action and execute, acknowledge and deliver, such agreements, instruments or other documents as the other parties hereto may reasonably require from time to time to carry out the purposes of this Payment Direction Letter.


7. This Payment Direction Letter shall be construed under and governed by the laws of the State of Washington and may be executed in any number of counterparts and by different parties on separate counterparts. Each of such counterparts shall be deemed to be an original, and all of such counterparts, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this Payment Direction Letter by facsimile or electronic mail shall be equally as effective as delivery of a manually executed counterpart.

[SIGNATURES ON FOLLOWING PAGE]




IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

SJC Ventures, LLC.

By:   
Jay Bloom, Manager

1<sup>st</sup> 100 Holdings, LLC

By:   
Print  
Name: Jay Bloom  
Its: Manager

## PERSONAL GUARANTY AGREEMENT

This Guaranty is given this \_\_\_\_\_ day of September 27, 2017 by Ken Antos ("Guarantor") who is a party to that Forbearance Agreement dated as of the \_\_\_\_\_ day of August 2017 (the "Forbearance Agreement") by and among CBCI Partners, 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 therein, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJC"). This Guaranty is given in consideration of CBCI's agreement to forbear from exercising its rights and remedies with respect to certain Identified Defaults from the effective date of the Forbearance Agreement through August 31, 2019 (the "Forbearance Period"). Effective as of the execution of the Forbearance Agreement, Guarantor hereby agrees as follows:

1. **OBLIGATIONS GUARANTEED.** Guarantor irrevocably, absolutely, and unconditionally guaranties to CBCI the full and punctual performance of all of the obligations described in the Forbearance Agreement and any related agreements (the "Obligations").
2. **WAIVER AND CONSENT.** Guarantor waives diligence, presentment, protest, notice of dishonor, notice of default by CBCI, demand for payment, extension of time for payment, notice of acceptance of this Guaranty, and indulgences and notices of every kind. Guarantor waives any rights of subrogation, indemnity, reimbursement, and contribution which would otherwise be acquired by Guarantor by reason of its payment of any part of the Obligations. CBCI may do the following from time to time without notice to, or consent of, Guarantor and without affecting Guarantor's liability under this Guaranty:
  - a. Change the terms of the Obligations or of any Obligation(s) or liabilities of Guarantor to CBCI.
  - b. Release, settle, or compromise any Obligation(s) or liabilities of Guarantor.
  - c. Exchange, modify, release, impair, or fail to perfect a security interest in, any collateral securing the Obligations.
  - d. Guarantor shall remain liable until all terms of the Obligations are fully performed by Guarantor, notwithstanding any event that would, in the absence of these provisions, result in the discharge of Guarantor.
3. **ENFORCEMENT.** This is a continuing guaranty of payment and performance, not a guaranty of collection. CBCI may enforce this Guaranty without first proceeding against Guarantor, any other guarantor, any other person or any security or collateral, and without first pursuing any other right or remedy. This Guaranty remains enforceable regardless of any defenses that any party may assert on the Obligations, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, CBCI liability, accord and satisfaction, and usury. If foreclosure or other remedy is pursued, only the net proceeds, after deduction of all charges and expenses, shall be applied to the amount due on the Obligations. CBCI may purchase all or part of the collateral or security at

any foreclosure or other sale for its own account and may apply the amount bid against the amount due on the Obligations.

4. **EXPENSES OF ENFORCEMENT.** If this Guaranty is given to an attorney for enforcement, Guarantor will reimburse CBCI for all expenses incurred in connection with enforcement including without limitation reasonable attorneys' fees.
5. **ALTERATION OF OBLIGATIONS.** No provision of this Guaranty shall be construed to amend the Obligations or to relieve Guarantor of any obligations thereunder.
6. **OBLIGATION OF GUARANTOR.** If more than one person or party executes a Guaranty as Guarantor of Guarantor's Obligations, this Guaranty and the related guaranties by other parties shall bind all such persons and parties jointly and severally. Guarantor acknowledges that Guarantor has adequate means to obtain from the Guarantor on a continuing basis, information on the financial condition of the Guarantor and that Guarantor is not relying on CBCI to provide this information, now or in the future. The liability of Guarantor shall be reinstated to the extent CBCI is required at any time to return any amount then previously received in payment of the Obligations for any reason including without limitation amounts recovered pursuant to avoidance claims in bankruptcy proceedings of the Guarantor.
7. **REPRESENTATIONS OF GUARANTOR AND OTHER REQUIREMENTS OF GUARANTY.**
  - (a) The Guarantor agrees not to pledge, hypothecate, mortgage, sell or otherwise transfer any of the Guarantor's assets without the prior written consent of CBCI.
  - (b) CBCI may grant extensions of time or other indulgences and otherwise deal with the Obligation(s) or and with other parties and securities as CBCI may see fit without in any way limiting or lessening the liability of the Guarantor under this Agreement.
  - (c) Any impairment of the security, which CBCI may from time to time hold as security for the Obligation(s), will in no way operate to discharge the Guarantor in whole or in part, it being specifically agreed that CBCI is not required to exercise diligence to enforce its rights against the Guarantor
  - (d) CBCI may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the Obligations to CBCI, and may also settle or compromise any claim of CBCI against the Guarantor against any other person or corporation whose obligation is held by CBCI as collateral security for any of the Obligations.
  - (e) This Guaranty is for the use and benefit of CBCI, and will also be for the use and benefit of any party to whom CBCI may assign this Guaranty.
  - (f) The liability of the Guarantor will continue until all of the Obligations are fully paid and satisfied.
  - (g) Upon any default by the Guarantor under the Agreement, all present and future indebtedness owed to the Guarantor is hereby assigned to CBCI. Any monies thereafter received by the Guarantor with respect to such indebtedness will be received in trust for CBCI and upon receipt are to be paid over to CBCI until such time as the Obligations have been fully paid and satisfied.

(h) The Guarantor represents that at the time of the execution and delivery of this Guaranty nothing exists to impair the effectiveness of this Guaranty.

8. **MISCELLANEOUS.** All rights and remedies of CBCI under this Guaranty are cumulative and are in addition to other rights and remedies CBCI may have. This writing is a complete and exclusive statement of the guaranty agreement between the parties. No course of dealing, course of performance, trade usage, or parol evidence shall be used to modify its terms. This Guaranty shall inure to the benefit of and may be enforced by CBCI and any subsequent holder of the Obligations and shall be binding upon and enforceable against Guarantor and the legal representatives, heirs, successors and assigns of Guarantor. This Guaranty shall be governed by the laws of the State of Washington, and Guarantor consents to the jurisdiction of the Courts of the State of Washington to adjudicate any disputes arising hereunder.

State of Nevada )

Dated: \_\_\_\_\_

County of Clark )

This Guaranty was acknowledged before me  
This 27 day of September, 2017, by

**GUARANTOR:**

Donna Zamora  
WITNESS my hand and official seal affixed  
hereto the day and year first above written.

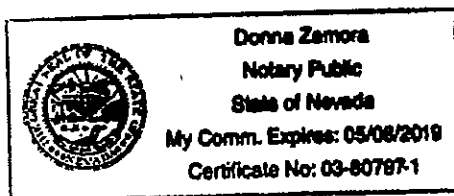
[Signature]

Donna Zamora  
Notary Public for the State of

Kenneth ANTOS  
Print name

Commission Expires: 5/8/2019

4968 Wtn. Foliage Dr.  
LV, NV 89148  
Address



## PERSONAL GUARANTY AGREEMENT

This Guaranty is given this 27 day of September, 2017 by Sheila Antos ("Guarantor") who is a party to that Forbearance Agreement dated as of the \_\_\_\_\_ day of August 2017 (the "Forbearance Agreement") by and among CBCI Partners, 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 therein, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJCVC"). This Guaranty is given in consideration of CBCI's agreement to forbear from exercising its rights and remedies with respect to certain Identified Defaults from the effective date of the Forbearance Agreement through August 31, 2019 (the "Forbearance Period"). Effective as of the execution of the Forbearance Agreement, Guarantor hereby agrees as follows:

1. **OBLIGATIONS GUARANTEED.** Guarantor irrevocably, absolutely, and unconditionally guaranties to CBCI the full and punctual performance of all of the obligations described in the Forbearance Agreement and any related agreements (the "Obligations").
2. **WAIVER AND CONSENT.** Guarantor waives diligence, presentment, protest, notice of dishonor, notice of default by CBCI, demand for payment, extension of time for payment, notice of acceptance of this Guaranty, and indulgences and notices of every kind. Guarantor waives any rights of subrogation, indemnity, reimbursement, and contribution which would otherwise be acquired by Guarantor by reason of its payment of any part of the Obligations. CBCI may do the following from time to time without notice to, or consent of, Guarantor and without affecting Guarantor's liability under this Guaranty:
  - a. Change the terms of the Obligations or of any Obligation(s) or liabilities of Guarantor to CBCI.
  - b. Release, settle, or compromise any Obligation(s) or liabilities of Guarantor.
  - c. Exchange, modify, release, impair, or fail to perfect a security interest in, any collateral securing the Obligations.
  - d. Guarantor shall remain liable until all terms of the Obligations are fully performed by Guarantor, notwithstanding any event that would, in the absence of these provisions, result in the discharge of Guarantor.
3. **ENFORCEMENT.** This is a continuing guaranty of payment and performance, not a guaranty of collection. CBCI may enforce this Guaranty without first proceeding against Guarantor, any other guarantor, any other person or any security or collateral, and without first pursuing any other right or remedy. This Guaranty remains enforceable regardless of any defenses that any party may assert on the Obligations, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, CBCI liability, accord and satisfaction, and usury. If foreclosure or other remedy is pursued, only the net proceeds, after deduction of all charges and expenses, shall be applied to the amount due on the Obligations. CBCI may purchase all or part of the collateral or security at



any foreclosure or other sale for its own account and may apply the amount bid against the amount due on the Obligations.

4. **EXPENSES OF ENFORCEMENT.** If this Guaranty is given to an attorney for enforcement, Guarantor will reimburse CBCI for all expenses incurred in connection with enforcement including without limitation reasonable attorneys' fees.

5. **ALTERATION OF OBLIGATIONS.** No provision of this Guaranty shall be construed to amend the Obligations or to relieve Guarantor of any obligations thereunder.

6. **OBLIGATION OF GUARANTOR.** If more than one person or party executes a Guaranty as Guarantor of Guarantor's Obligations, this Guaranty and the related guaranties by other parties shall bind all such persons and parties jointly and severally. Guarantor acknowledges that Guarantor has adequate means to obtain from the Guarantor on a continuing basis, information on the financial condition of the Guarantor and that Guarantor is not relying on CBCI to provide this information, now or in the future. The liability of Guarantor shall be reinstated to the extent CBCI is required at any time to return any amount then previously received in payment of the Obligations for any reason including without limitation amounts recovered pursuant to avoidance claims in bankruptcy proceedings of the Guarantor.

7. **REPRESENTATIONS OF GUARANTOR AND OTHER REQUIREMENTS OF GUARANTY.**

(a) The Guarantor agrees not to pledge, hypothecate, mortgage, sell or otherwise transfer any of the Guarantor's assets without the prior written consent of CBCI.

(b) CBCI may grant extensions of time or other indulgences and otherwise deal with the Obligation(s) or and with other parties and securities as CBCI may see fit without in any way limiting or lessening the liability of the Guarantor under this Agreement.

(c) Any impairment of the security, which CBCI may from time to time hold as security for the Obligation(s), will in no way operate to discharge the Guarantor in whole or in part, it being specifically agreed that CBCI is not required to exercise diligence to enforce its rights against the Guarantor

(d) CBCI may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the Obligations to CBCI, and may also settle or compromise any claim of CBCI against the Guarantor against any other person or corporation whose obligation is held by CBCI as collateral security for any of the Obligations.

(e) This Guaranty is for the use and benefit of CBCI, and will also be for the use and benefit of any party to whom CBCI may assign this Guaranty.

(f) The liability of the Guarantor will continue until all of the Obligations are fully paid and satisfied.

(g) Upon any default by the Guarantor under the Agreement, all present and future indebtedness owed to the Guarantor is hereby assigned to CBCI. Any monies thereafter received by the Guarantor with respect to such indebtedness will be received in trust for CBCI and upon receipt are to be paid over to CBCI until such time as the Obligations have been fully paid and satisfied.

(h) The Guarantor represents that at the time of the execution and delivery of this Guaranty nothing exists to impair the effectiveness of this Guaranty.

8. **MISCELLANEOUS.** All rights and remedies of CBCI under this Guaranty are cumulative and are in addition to other rights and remedies CBCI may have. This writing is a complete and exclusive statement of the guaranty agreement between the parties. No course of dealing, course of performance, trade usage, or parol evidence shall be used to modify its terms. This Guaranty shall inure to the benefit of and may be enforced by CBCI and any subsequent holder of the Obligations and shall be binding upon and enforceable against Guarantor and the legal representatives, heirs, successors and assigns of Guarantor. This Guaranty shall be governed by the laws of the State of Washington, and Guarantor consents to the jurisdiction of the Courts of the State of Washington to adjudicate any disputes arising hereunder.

State of Nevada )

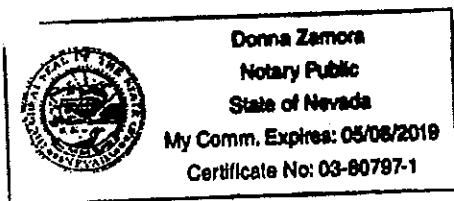
County of Clark )

This Guaranty was acknowledged before me  
This 27 day of September, 2017, by

Donna Zamora  
WITNESS my hand and official seal affixed  
hereto the day and year first above written.

Donna Zamora  
Notary Public for the State of

Commission Expires: 5/8/2019



Dated: \_\_\_\_\_

**GUARANTOR:**

Sheila Antos  
[Signature]

Sheila NEWMANN-ANTOS  
Print name

4968 Mtn. Foliage Dr.  
LV, NV 89148  
Address

## PERSONAL GUARANTY AGREEMENT

This Guaranty is given this 27 day of September, 2017 by the Kenneth M. Antos & Sheila M. Neumann-Antos Trust ("Guarantor") who is a party to that Forbearance Agreement dated as of the 27 day of ~~August~~ 2017 (the "Forbearance Agreement") by and among CBCI Partners, 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 therein, Spanish Heights Acquisition Company, LLC ("SHAC"), and SJC Ventures, LLC ("SJCVC"). This Guaranty is given in consideration of CBCI's agreement to forbear from exercising its rights and remedies with respect to certain Identified Defaults from the effective date of the Forbearance Agreement through August 31, 2019 (the "Forbearance Period"). Effective as of the execution of the Forbearance Agreement, Guarantor hereby agrees as follows:

1. **OBLIGATIONS GUARANTEED.** Guarantor irrevocably, absolutely, and unconditionally guaranties to CBCI the full and punctual performance of all of the obligations described in the Forbearance Agreement and any related agreements (the "Obligations").
2. **WAIVER AND CONSENT.** Guarantor waives diligence, presentment, protest, notice of dishonor, notice of default by CBCI, demand for payment, extension of time for payment, notice of acceptance of this Guaranty, and indulgences and notices of every kind. Guarantor waives any rights of subrogation, indemnity, reimbursement, and contribution which would otherwise be acquired by Guarantor by reason of its payment of any part of the Obligations. CBCI may do the following from time to time without notice to, or consent of, Guarantor and without affecting Guarantor's liability under this Guaranty:
  - a. Change the terms of the Obligations or of any Obligation(s) or liabilities of Guarantor to CBCI.
  - b. Release, settle, or compromise any Obligation(s) or liabilities of Guarantor.
  - c. Exchange, modify, release, impair, or fail to perfect a security interest in, any collateral securing the Obligations.
  - d. Guarantor shall remain liable until all terms of the Obligations are fully performed by Guarantor, notwithstanding any event that would, in the absence of these provisions, result in the discharge of Guarantor.
3. **ENFORCEMENT.** This is a continuing guaranty of payment and performance, not a guaranty of collection. CBCI may enforce this Guaranty without first proceeding against Guarantor, any other guarantor, any other person or any security or collateral, and without first pursuing any other right or remedy. This Guaranty remains enforceable regardless of any defenses that any party may assert on the Obligations, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, CBCI liability, accord and satisfaction, and usury. If foreclosure or other remedy is pursued, only the net proceeds, after deduction of all charges and expenses, shall be applied to the amount due on the Obligations. CBCI may purchase all or part of the collateral or security at

any foreclosure or other sale for its own account and may apply the amount bid against the amount due on the Obligations.

4. **EXPENSES OF ENFORCEMENT.** If this Guaranty is given to an attorney for enforcement, Guarantor will reimburse CBCI for all expenses incurred in connection with enforcement including without limitation reasonable attorneys' fees.

5. **ALTERATION OF OBLIGATIONS.** No provision of this Guaranty shall be construed to amend the Obligations or to relieve Guarantor of any obligations thereunder.

6. **OBLIGATION OF GUARANTOR.** If more than one person or party executes a Guaranty as Guarantor of Guarantor's Obligations, this Guaranty and the related guaranties by other parties shall bind all such persons and parties jointly and severally. Guarantor acknowledges that Guarantor has adequate means to obtain from the Guarantor on a continuing basis, information on the financial condition of the Guarantor and that Guarantor is not relying on CBCI to provide this information, now or in the future. The liability of Guarantor shall be reinstated to the extent CBCI is required at any time to return any amount then previously received in payment of the Obligations for any reason including without limitation amounts recovered pursuant to avoidance claims in bankruptcy proceedings of the Guarantor.

7. **REPRESENTATIONS OF GUARANTOR AND OTHER REQUIREMENTS OF GUARANTY.**

(a) The Guarantor agrees not to pledge, hypothecate, mortgage, sell or otherwise transfer any of the Guarantor's assets without the prior written consent of CBCI.

(b) CBCI may grant extensions of time or other indulgences and otherwise deal with the Obligation(s) or and with other parties and securities as CBCI may see fit without in any way limiting or lessening the liability of the Guarantor under this Agreement.

(c) Any impairment of the security, which CBCI may from time to time hold as security for the Obligation(s), will in no way operate to discharge the Guarantor in whole or in part, it being specifically agreed that CBCI is not required to exercise diligence to enforce its rights against the Guarantor

(d) CBCI may release, surrender, exchange, modify, impair or extend the periods of duration or the time for performance or payment of any collateral securing the Obligations to CBCI, and may also settle or compromise any claim of CBCI against the Guarantor against any other person or corporation whose obligation is held by CBCI as collateral security for any of the Obligations.

(e) This Guaranty is for the use and benefit of CBCI, and will also be for the use and benefit of any party to whom CBCI may assign this Guaranty.

(f) The liability of the Guarantor will continue until all of the Obligations are fully paid and satisfied.

(g) Upon any default by the Guarantor under the Agreement, all present and future indebtedness owed to the Guarantor is hereby assigned to CBCI. Any monies thereafter received by the Guarantor with respect to such indebtedness will be received in trust for CBCI and upon receipt are to be paid over to CBCI until such time as the Obligations have been fully paid and satisfied.

(h) The Guarantor represents that at the time of the execution and delivery of this Guaranty nothing exists to impair the effectiveness of this Guaranty.

8. **MISCELLANEOUS.** All rights and remedies of CBCI under this Guaranty are cumulative and are in addition to other rights and remedies CBCI may have. This writing is a complete and exclusive statement of the guaranty agreement between the parties. No course of dealing, course of performance, trade usage, or parol evidence shall be used to modify its terms. This Guaranty shall inure to the benefit of and may be enforced by CBCI and any subsequent holder of the Obligations and shall be binding upon and enforceable against Guarantor and the legal representatives, heirs, successors and assigns of Guarantor. This Guaranty shall be governed by the laws of the State of Washington, and Guarantor consents to the jurisdiction of the Courts of the State of Washington to adjudicate any disputes arising hereunder.

State of Nevada )

Dated: \_\_\_\_\_

County of Clark )

This Guaranty was acknowledged before me  
This 27 day of September, 2017, by

Donna Zamora  
WITNESS my hand and official seal affixed  
hereto the day and year first above written.

Donna Zamora  
Notary Public for the State of

Commission Expires: 5/8/2019

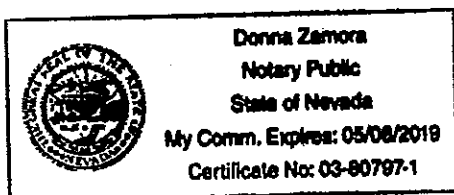
**GUARANTOR:**

[Signature]

Trustee

Kenneth ANTON  
Print Name of Trustee

4968 Mt. Foliage Dr.  
LV NV 89148  
Address





# EXHIBIT “H”

**AMENDMENT TO FORBEARANCE AGREEMENT  
AND RELATED AGREEMENTS**

THIS AMENDMENT TO FORBEARANCE AGREEMENT AND RELATED AGREEMENTS (the "Amendment") is made and dated as of the 1st day of December 2019 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 ("SJC") (collectively the "Parties").

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").

WHEREAS, pursuant to the terms of the Forbearance Agreement and the Related Agreements, the Forbearance Period expired on or about August 31, 2019.

WHEREAS, subject to the terms of this Extension, the parties desire to extend the Forbearance Period until March 31<sup>st</sup>, 2020.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## AMENDMENT

**1. Extension of Forbearance Period.** By way of Amendment to Section 4 of the Forbearance Agreement, the parties agree the Forbearance Period shall be extended to March 31<sup>st</sup>, 2020 (the "Extended Forbearance Period"). CBCI's agreement to extend the Forbearance Period is subject to the following conditions:

**A. Conditions to Extension.** The parties shall adhere to their commitments and obligations under the Forbearance Agreement and the Related Agreements. Thus, the parties agree, without limitation, as follows:

1. The Forbearance Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Forbearance Agreement.

2. 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 (collectively the "Antos Parties"), SHAC, and SJCVC represent and warrant they are not in default of the Forbearance Agreement or any of the Related Agreements.

3. SHAC and SJCVC continue to be limited liability companies, organized under the laws of the State of Nevada, and are duly authorized to execute this Amendment.

4. The Antos Parties and the SJCVC Parties represent that they have no knowledge of any Other Lenders having undertaken efforts to enforce any rights related to the Property.

5. The Membership Pledge Agreement executed by SJCVC 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.

X 6. SHAC will provide CBCI with evidence of homeowner's insurance coverage that is effective through March 31<sup>st</sup>, 2020.

7. The payment of the Balloon Payment described in Exhibit "B" to the Forbearance Agreement shall be due on March 31<sup>st</sup>, 2020.

8. The parties acknowledge the extension of the Lease Agreement and such Agreement shall continue to govern the lease of the premises.

9. The Membership Pledge Agreement executed by SJCVC 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.

10. The Assignment of Rents Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Assignment of Rents Agreement.

11. The Account Control Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Account Control Agreement.

12. The Security Agreement shall remain in effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Security Agreement. In addition, SJCVC agrees to obtain from counsel for SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC, dated as of the effective date of this Amendment, in form and substance reasonably satisfactory to CBCI, to the effect that the Judgment/Lien Pledge Agreement: (i) constitutes valid and binding obligation of SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC in accordance with its terms; (ii) properly evidences CBCI's First Priority Position and that no other party, apart from the Collection Professionals has priority over CBCI to receive payments in relation to the Judgment, and (iii) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or 1<sup>st</sup> One Hundred Holdings is

required for the consummation of the transactions set forth therein. CBCI may require that the opinion of counsel address any other matters incident to the matters herein contemplated as CBCI may reasonably request.

13. SJCVC shall provide representations for SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC, dated as of the effective date of this Amendment, in form and substance reasonably satisfactory to CBCI, to the effect that: (i) both SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC are limited liability companies continue to be duly organized, validly existing and of active status under the laws of the State of Nevada; (ii) each party continues to have full power and authority to make, execute, deliver and perform the their obligations under the Security Agreement, and all corporate or other proceedings required to be taken by SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC to authorize the execution, delivery, and performance of this Security Agreement have all been duly and properly taken; (iii) the Security Agreement continues to constitute a valid and binding obligation of SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC in accordance with their respective terms;; and (iv) no ungiven notice to or obtained consent, authorization, approval or order of any court or governmental agency or body required to be obtained by SJCVC or 1<sup>st</sup> One Hundred Holdings, LLC is required for the consummation of the transactions of the Security Agreement and the Amendment. Such opinion shall include any other matters incident to the matters herein contemplated as CBCI may reasonably request. In rendering such opinion, such counsel may rely upon certificates of governmental officials and may place reasonable reliance upon certificates of officers of SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC.

14. SJCVC and 1<sup>st</sup> One Hundred Holdings, LLC have provided CBCI with a representation that: (1) identifies any parties that may be liable to SJCVC and/or 1<sup>st</sup> One Hundred Holdings, LLC for the any portion of the Judgment; (2) provides an assessment of the current



status of efforts to collect amounts owed under the Judgment; (3) states whether any parties have undertaken legal action to oppose efforts to collect the Judgment; and (4) provides an evaluation of the likelihood of a favorable outcome before the end of the Extended Forbearance Period.

15. The Guarantees identified in Section 6 Security Agreement shall remain in Section 6(g) effect and the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Guarantees.

16. The Antos Parties and the SJCV Parties represent that they have not incurred any liability or expended cash for any capital expenditures or improvements over and above \$350,000. The SJCV Parties and the Antos Parties shall provide CBCI with a statement that identifies all capital expenditures and/or capital improvement that have been made for the benefit of the Property.

17. The Antos Parties and the SJCV Parties represent and warrant:

- a. They have not incurred additional debt against the property from September 27, 2017 to present;
- b. They have not made payments of any kind (including principal, interest, or other amounts owed) on any existing or future loans related to the property from the principals of the Antos Parties and the SJCV Parties;
- c. They have not allowed any new liens to be secured by property which is owned or hereafter acquired by Antos Parties and the SJCV Parties or any of their affiliated companies;
- d. The Antos Parties and the SJCV Parties have not entered into any agreements for a party to acquire the Property; will not enter into any acquisitions without the prior approval of CBCI;

e. The Antos Parties have not declared or paid any dividends, bonuses, and Antos Parties and the SJCVC Parties did not repurchase any of their Membership Interests.

f. The Antos Parties and the SJCVC Parties represent SHAC, and SJCVC represent that the warranties and representations contained in Forbearance Agreement, the Related Agreements, and this Amendment are accurate and correct.

g. The Antos Parties and the SJCVC Parties represent they continue to lawfully possess and hold 100% of the ownership interest in the Property.

h. The Antos Parties and the SJCVC Parties represent they continue to acknowledge that the Amended Note, Modified Deed of Trust, and the Forbearance Agreement are legal, valid and binding agreements of the Antos Parties and the SJCVC Parties.

i. The Antos Parties and the SJCVC Parties represent they continue to acknowledge that CBCI has not breached any duty to the Antos Parties and the SJCVC Parties in connection with the Forbearance Agreement or the Amended Note and Modified Deed of Trust. The Antos Parties and the SJCVC Parties agree that CBCI has fully performed all obligations it may have had or now has to Antos Parties and the SJCVC Parties.

18. The Antos Parties and the SJCVC Parties represent they have not withdrawn funds in violation of the Account Control Agreement.

19. The Antos Parties and the SJCVC Parties represent they continue to acknowledge that they continue to pledge their stock in SHAC as collateral for the Forbearance Agreement. The Antos Parties and the SJCVC Parties represent and warrant they have not issued any new shares of stock that are not collateral for their obligation under the Forbearance Agreement.

**B. Acknowledgements and Conditions Applicable to Lease Agreement.**

**1. Options to Extend Have Terminated.**

The Lease Agreement between SHAC and SJCVC afforded SJCVC, the option to exercise two additional consecutive lease extensions consisting of a two-years term for each of the two extensions (the "SJCVC Options"). The SJCVC Options were subject to certain conditions, which included: (1) that SJCVC provide written notice of its intent to exercise the SJCVC Options, and (2) that SJCVC not be in default of the Lease Agreement. The parties acknowledge that the conditions to which the SJCVC Options were subject have been satisfied and that the SJCVC Options have been exercised.

**2. Extension of Lease Agreement**

The parties agree the Lease Agreement shall remain in effect and all terms and conditions thereunder shall continue in full force and effect:

**C. Acknowledgements and Conditions Applicable to Refinancing.**

1. If the Antos Parties and the SJCVC Parties have not paid the amounts due under the Amended Note and the Modified Deed of Trust by the end of the Extend Forbearance Period, then the SJCVC Parties shall undertake good faith efforts to obtain new mortgages as part of the SJCVC Parties efforts to refinance the various loans secured by the Property (the "Refinancing Efforts"). Specifically, the SJCVC Parties shall undertake the Refinancing Efforts with the intention of obtaining new loans that provide SJCVC with the amounts necessary to pay to CBCI the amounts that are due under the Amended Note and the Modified Deed of Trust.

2. In connection with its obligations above, SJCVC will provide CBCI with written evidence, in a form reasonably satisfactory to CBCI, that SJCVC has filed applications for mortgages to refinance the Property.

**2. Conflict or Inconsistency.** All provisions of the Forbearance Agreement and the Related Agreements that are not modified by this Amendment shall remain in full force and effect. In the event of any conflict or inconsistency of any term or provision set forth in this Amendment and the Forbearance Agreement, or the Related Agreements, this Amendment shall control.

**3. Complete Agreement.** This Amendment, the Forbearance Agreement, and the Related Agreements represent the full and complete agreement and understanding of the parties with respect to the subject matter hereof (the "Complete Agreement"). The Complete Agreement supersedes and replaces all prior and contemporaneous understandings or agreements, whether oral, written or otherwise, regarding such subject matter. Any amendment thereof must be in writing and executed by the parties hereto.

**4. Multiple Counterparts.** This Amendment may be executed in multiple counterparts, each of which will be considered an original and all of which together will constitute one agreement. This Amendment may be executed by the attachment of signature pages which have been previously executed.

IN WITNESS WHEREOF, the Parties have executed this Amendment this 1<sup>st</sup> day of December 2019.

CBC Partners I, LLC ("CBCI")

BY: 

Its: President

Print  
Name

John Otter

**Kenneth & Sheila Antos Living Trust (the "Living Trust")**

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

**K&S Trust**

BY: \_\_\_\_\_

Its: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

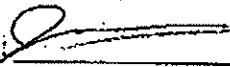
**Kenneth Antos**

\_\_\_\_\_  
Kenneth Antos, an Individual

**Sheila Neumann-Antos**

\_\_\_\_\_  
Sheila Neumann-Antos, an Individual

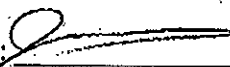
**Spanish Heights Acquisition Company ("SHAC")**

BY:  \_\_\_\_\_

Its: Manager \_\_\_\_\_

Print  
Name: Jay Bloom \_\_\_\_\_

**SJC Ventures, LLC ("SJCVC")**

BY:  \_\_\_\_\_

Its: Manager \_\_\_\_\_

Print  
Name: Jay Bloom \_\_\_\_\_





# EXHIBIT “I”

# 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

Via Certified Mail  
& USPS

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

Via Certified Mail  
& USPS

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

Via Certified Mail  
& USPS

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

Reference: Clark County Nevada APN 163-29-615-007  
5148 Spanish Heights Drive

**THIS NOTICE IS SENT FOR THE PURPOSE OF COLLECTING A DEBT. YOUR LOAN IS NOW DUE AND PAYABLE; AND REMAINS UNPAID AS OF THE ABOVE DATE.**

Dear Borrower:

READ THIS LETTER CAREFULLY. Your loan with CBC Partners I, LLC is in default. Because of this, CBC Partners I, LLC, at its option, without further demand, may evoke the power of sale and any other remedies permitted by Nevada Law.

This is your notice your default. It has been established that the beneficiary and/or mortgage servicer of the deed of trust may cause a trustee to exercise the power of sale pursuant to NRS 107.080, commence a civil action for the recovery of any debt, or to enforce any right under a mortgage loan that is not barred by NRS. 40.430.

You are in default by failing to make the final balloon payment on March 31, 2020. Failure to cure the default may result the sale of said property.

The undersigned, as attorney for the Beneficiary for the above referenced loan, does

5148SH 000878

April 1, 2020

Page 2

Re: APN: 163-29-615-007

hereby notify you that a Notice of Default and Election to sell will be recorded on the referenced property due to non-payment.

As a borrower, you have a right to discuss foreclosure prevention alternatives and subject to qualification criteria.

The following information is required to be provided to you under Nevada statute:

1. The amount of the payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the underlying obligation or debt existing before the deficiency in performance or payment, as of the date of this statement:
2. The amount in default: \$5,578,459.15
3. The current unpaid principal amount of the obligation or debt secured by the deed of trust: \$2,935,001.14
4. The amount of accrued interest and late charges: \$1,315,105.24
5. The amount in advances paid on your behalf: \$1,326,744.55
6. Interest accrual (at 20% pursuant to the Forbearance Agreement dated September 27, 2017) in the amount of \$1,608.22 per day from April 1, 2020 until paid in full.
7. A good faith estimate of all fees imposed in connection with the exercise of the power of sale is between \$9,000.00 and \$25,000.00, an amount that will be added in and which you may ultimately be responsible for.
8. Contact information and telephone number for obtaining the most current amounts due:

Michael R. Mushkin  
6070 S. Eastern Avenue, Suite 270  
Las Vegas, NV 89119  
Telephone: (702) 454-3333

To discuss the matter with a housing counseling agency approved by the United States Department of Housing and Urban Development, here is their telephone number in order to find such a housing counseling agency: 1-888-995-HOPE (4673). Additional contact information of one or more Counseling Agencies or Programs approved by the United States Department of Housing:

5148SH 000879

April 1, 2020

Page 3

Re: APN: 163-29-615-007

1. Community Services of Nevada  
730 W. Cheyenne Avenue #10  
North Las Vegas, Nevada 89030  
702-307-1710
2. Financial Guidance Center  
2650 S. Jones Blvd.  
Las Vegas, Nevada 89146  
702-364-0344

If you are a service member or a dependent of a service member, you may be entitled to certain protections under the federal Service members Civil Relief Act 50 U.S.C. Appx. 501 et seq., regarding the service member's interest rate and the risk of foreclosure, and counseling for covered service members that is available from Military OneSource and the United States Armed Forces Legal Assistance or any other similar agency. The telephone number for Military OneSource is 1-800-342-9647

As a borrower, you may request:

1. A copy of your note and forbearance agreements
2. A copy of the recorded deed of trust
3. A copy of the recorded assignment, if applicable

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

5148SH 000880



# EXHIBIT “J”

## NOTE PURCHASE AND SALE AGREEMENT

This Note Purchase and Sale Agreement (the "Agreement") is entered into as of April 1, 2020, by and between 5148 Spanish Heights, LLC ("Buyer") and CBC Partners I, LLC, a Washington limited liability company ("Seller") with reference to the following:

### RECITALS

A. KCI Investments, LLC, a Nevada limited liability company ("KCI") and Preferred Restaurant Brands, Inc., a Florida corporation ("PRB") previously entered into a Loan Agreement with Seller dated June 22, 2012 (the "Loan Agreement").

B. In connection with the Loan Agreement, Borrower executed that certain Secured Promissory Note dated June 22, 2012 and ten subsequent modifications (excluding that certain Severed Note in the amount of \$15,000, collectively the "Amended Promissory Note").

C. In connection with the Loan Agreement and Amended Promissory Note, Borrower executed certain Security Agreements, Subsidiary Guarantees, and Intercreditor Agreements, Deeds of Trust, Assignment of Rents, and Fixture Filings, and Kenneth M. Antos and Sheila M. Neumann-Antos ("Guarantors") executed that certain Guaranty dated June 22, 2012 (the "Antos Guaranty," and together with all other agreements and documents referenced herein, (collectively, the "Security Agreements").

D. In connection with the Loan Agreement and Amended Promissory Note, the Guarantors' Guaranty of the obligations owing under the Amended Promissory Note is secured by a certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing made as of December 17, 2014, by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, ("Antos Trust") as Trustor for the benefit of Seller and subsequently, the 2014 Deed of Trust was modified by a certain First Modification to Deed of Trust, Assignment of Rents, Security Agreement and Fixture filing made effective November 30, 2016 by Trustor for the benefit of Seller (collectively, the "Modified Deed of Trust") that encumbers the property commonly known as 5148 Spanish Heights Drive, Las Vegas, NV (the "Property") owned by Antos Trust.

E. In connection with the Loan Agreement and Amended Promissory Note the Antos Trust executed that certain Forbearance Agreement dated September 27, 2017, along with Exhibit B to the Forbearance Agreement, the Antos Trust conveyed the Property to Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC") Antos Trust and SJC Ventures, LLC ("SJCVC" and together with Antos Trust, each "Borrower" and collectively "Borrowers") as members of SHAC with the Antos Trust and SJCVC granted to Seller Additional Collateral described in Exhibit B to the Forbearance Agreement.

F. In connection with the Loan Agreement and Amended Promissory Note, the Antos Trust, SHAC, and SJCVC entered into an Amendment to Forbearance Agreement and Related Agreements dated December 1, 2017; wherein Seller would extend the Forbearance Period upon certain conditions being met by the Antos Trust, SHAC, and SJCVC.

G. In connection with the Loan Agreement and Amended Promissory Note, UCC-1 financing statements have been filed or are in the process of being filed to perfect the Security Interest in Nevada (the "Security Documents").

H. Buyer wishes to purchase the Loan Agreement, the Promissory Note, the Antos Guaranty and the Modified Deed of Trust from Seller and Seller wishes to sell its rights under

the Loan Agreement, Promissory Note, Antos Guaranty, Pledge Agreement and the Modified Deed of Trust to Buyer, as-is, where-is, with no representations or warranties of any kind except those expressly provided herein.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

## **AGREEMENT**

### **1. LOAN**

Subject to the terms and conditions stated in this Agreement, Seller agrees to sell, assign and transfer to Buyer, as-is, where-is, without recourse, representation, warranty or retained liability of any kind, and Buyer agrees to purchase from Seller on or before April 3, 2020 (the "Closing Date"), all of Seller's right, title and interest in and to the Loan Agreement, the Promissory Note, the Modified Deed of Trust, the Pledge Agreement and the Security Agreements together with all of Seller's rights relating thereto. Buyer hereby agrees, for its own account and risk, to accept the assignment of the Loan Agreement, the Promissory Note, the Modified Deed of Trust, and the Security Agreements, as-is, where-is, without recourse, representation, or warranty of any kind, and to assume, comply with and perform as of and after the Closing Date, all of Seller's duties, liabilities, obligations and responsibilities of every type or nature whatsoever and howsoever arising under or as a result of the Loan Agreement, the Promissory Note, the Modified Deed of Trust, and the Security Agreements. This Assignment to Buyer upon the Closing Date is made without recourse to Seller.

### **2. PAYMENT**

Buyer shall pay to Seller, upon delivery of the original Secured Promissory Note and any amendments or modifications, the sum of Three Million Five Hundred Fifty Thousand Dollars (\$3,550,000.00) (the "Purchase Price") on or before the Closing Date. If such amount is received on or before the Closing Date, Seller shall deliver to Buyer the following documents:

A. The original Loan Agreement and Promissory Note, together with an Allonge in the form attached hereto as Exhibit A, duly executed and endorsed by Seller to the order of Buyer;

B. An Assignment and Assumption Agreement in the form attached hereto as Exhibit B duly executed by Seller.

### **3. WARRANTY**

Buyer further acknowledges and agrees, and specifically acknowledges Seller's express reliance hereon, that except as set forth below,

A. Seller has made no warranties or representations of any type or nature to Buyer or any agent of Buyer, including, without limitation, any warranties or representations with respect to:

i. the collateral or the condition or value of the collateral; the Amended Promissory Note, the loan agreement, Antos Guaranty, Security Agreements, Modified Deed of Trust, or any or all of the security therefor;

ii. any of the other loan documents or instruments relating to or securing the promissory note;

iii. the collectability or enforceability of the obligations evidenced by the

promissory note; or

iv. the borrower or the financial condition or creditworthiness of Borrower, Guarantors, Antos Trust, or any other credit party;

v. Seller shall remain responsible for any and all costs associated with enforcement of Exhibit B4 of the Forbearance Agreement if and only if the entity error in the execution of the document is at issue (see page 9 to Membership Pledge Agreement).

B. Buyer has conducted and will continue to conduct its own examination and investigation of the collateral and the condition of the collateral, the Amended Promissory Note, the loan agreement, Antos Guaranty, Security Agreements, Modified Deed of Trust, and the loan agreement, and Buyer is not relying and will not rely upon Seller in any manner or to any extent with respect to Buyer's purchase of the Amended Promissory Note and the other loan documents; and

C. Seller's sale of the Amended Promissory Note and other loan documents to Buyer is and shall be as-is, where-is, without recourse to Seller and without any representations or warranties, whether express or implied. Buyer shall rely exclusively upon its own attorneys, accountants, consultants, and other professions for any legal, tax, collateral condition, due diligence or other expert.

#### **4. ADDITIONAL REPRESENTATIONS**

A. Buyer acknowledges and agrees that Seller remains the owner of the Loan Agreement, the Amended Promissory Note, Antos Guaranty, Modified Deed of Trust and Security Agreements until Buyer has satisfied all terms and conditions under this Agreement, including without limitation, the indefeasible payment in full to Seller of the Purchase Price.

B. Buyer acknowledges that all risk of loss in connection with the Loan Agreement, the Amended Promissory Note, Antos Guaranty, Modified Deed of Trust, Security Agreements, other loan documents and Property shall be borne by Buyer upon Closing including, without limitation, any casualty involving the Property or other collateral, provided, that any casualty insurance proceeds paid to Seller on account of a loss which occurs after the Closing Date shall be assigned to Buyer and forwarded to Buyer immediately upon receipt thereof by Seller.

C. Seller hereby represents and warrants to Buyer that:

i. Seller is currently the owner of the Amended Promissory Note, and the Modified Deed of Trust;

ii. Seller has obtained all necessary authorization and/or consents to consummate the transactions contemplated hereby; and

iii. Seller has not previously transferred the Amended Promissory Note, Antos Guaranty, and the Modified Deed of Trust.

D. Buyer hereby represents and warrants to Seller that:

i. Buyer is familiar with Borrower and all other matters regarding the Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, other loan documents, and the Property;

ii. Buyer is a sophisticated investor with knowledge and experience in financial and business matters sufficient to evaluate the merits and risks of the transaction contemplated by this Agreement and has conducted an independent

investigation of the Borrower with respect to the Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, other loan documents, and the Property and has reviewed such documents and matters and is not relying on Seller (except as to the accuracy of Seller's express representations herein);

iii. Buyer has conducted its own review and analysis in making the decision to purchase the Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, other loan documents, and the Property;

iv. Buyer has made such decision without any advice or encouragement from Seller.

E. Buyer is not relying on any representations, warranties or other statements made at any time by Seller or any of the Seller's present or former employees, agents or representatives ("Representatives") except for those representations and warranties expressly stated in this Agreement. Buyer is voluntarily undertaking its obligations under this Agreement with full awareness of the significance and risks; and

F. When executed and delivered by Buyer, this Agreement shall constitute a legal, valid and binding agreement of Buyer, enforceable in accordance with its express terms. The person executing this Agreement on behalf of Buyer has full power and authority to bind Buyer to this Agreement.

G. By its respective execution and delivery of this Agreement, each of Buyer and Seller respectively represent and warrant that the execution, delivery and performance of this Agreement has been duly authorized, as applicable, by all necessary corporate action.

5. Seller shall have no duty or obligation to notify the Borrower or any third party regarding the sale and transfer to Buyer or the assignment of the Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, other loan documents.

6. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Nevada. This Agreement may be executed in one or more counterparts, each and all of which shall constitute but one agreement. Each of the parties hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this agreement.

7. **Default.** In the event this transaction is not consummated by reason of Buyer's default hereunder then Seller, in addition to any other rights and remedies available to it at law or in equity, may retain all deposits paid and terminate this agreement by notifying Buyer thereof. Buyer acknowledges and agrees that no technical or non-material default by Seller under this agreement shall in any way affect any rights or remedies of Seller against Buyer hereunder. Notwithstanding anything to the contrary contained in this section, if Buyer brings an action against Seller for an alleged breach or default by Seller of its obligations under this agreement, and, in connection with that action, enjoins or restricts Seller's ability to sell or transfer the promissory note, loan agreement or security interest ("Buyer's action"), Seller shall not be restricted by the provisions of this section from seeking expungement or relief from that injunction or the restraint, and recovering damages, costs or expenses (including attorneys' fees) which Seller may suffer or incur as a result of Buyer's action. Furthermore, in no event shall this section have any application to or limit Seller's rights against Buyer in connection with any of the following: (i) any duty or obligation of Buyer to indemnify Seller as provided in this agreement, or (ii) any misrepresentations by Buyer.

8. Buyer shall not institute or prosecute (but will cooperate fully) any action, suit, hearing or other proceeding of any kind, nature or character at law, admiralty or in equity against Seller



in order to collect, enforce, declare, assert, establish or otherwise raise any defense, claim, cause of action, contract, liability, indebtedness or obligation related to the Promissory Note, Loan Agreement or Security Interest, or which arises out of any fact, contract, condition, claim, cause of action, indebtedness, liability, obligation, event, action, omission, circumstance, or other matter or reason of any kind which is the basis for any such defense, claim, cause of action, liability, indebtedness or obligation under Promissory Note, Loan Agreement or Security Interest.

9. **Releases.** Except for the breach of any agreements of Seller hereunder, Buyer does hereby fully, forever and irrevocably release, discharge and acquit Seller and its respective past and present parent, subsidiary, and affiliate corporations, and the respective past and present officers, directors, shareholders, agents, attorneys and employees of each and all of the foregoing entities, and its and their respective successors, heirs, assigns and any other person or entity now, previously, or hereafter affiliated with the same (Seller, together with each and all said parent, subsidiary and affiliated corporations, officers, directors, shareholders, agents, attorneys and employees, shall be collectively referred to hereinbelow as the "Released Parties" and each such reference shall refer jointly and severally to each and all of Seller and such other persons and entities), of and from any and all rights, claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty of any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, debts, sums of money, accounts, compensations, contracts, controversies, promises, damages, costs, losses and expenses of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, or that could, might, or may be claimed to exist, of whatever kind or name, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, or other legal or equitable theory of recovery, each as though fully set forth herein at length ("Released Claims") including, but not limited to those that in any way arise from or out of, are connected with, or relate to the Amended Promissory Note, Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, other loan documents. In consideration of Seller entering into this Agreement, this general release shall be effective as of the date of this Agreement. In addition, it is Buyer's intentions that upon the occurrence of the Closing, this general release shall include all Released Claims up to the date of the Closing. In the event the Closing does not occur, for any reason, Buyer understands and agrees that Buyer's general release of the Released Parties, as of the date of this Agreement, shall remain in full force and effect.

10. **Indemnification.** Buyer hereby agrees to and hereby does indemnify, defend and hold harmless Seller and its directors, officers, agents, attorneys and employees (collectively, the "Seller") of, for, from and against (a) any and all claims, demands, actions and causes of action that are asserted against Seller by any person or entity (other than the Seller) if the claim, demand, action or cause of action directly or indirectly relates to a claim, demand, action or cause of action that such person or entity has or asserts against Buyer or any officer, director or shareholder of Buyer; (b) any and all claims, demands, actions and causes of action that are asserted against Seller if the claim, demand, action or cause of action directly or indirectly relates to the relationship between Buyer and the Seller under this Agreement, the Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, other loan documents, or Property, or to the transactions contemplated hereby or thereby; (c) any administrative or investigative proceeding by any governmental authority directly or indirectly related to a claim, demand, action or cause of action described in clauses (a) or (b) above; (d) any and all claims, demands, actions and causes of action that are asserted against Seller by Borrower; and (e) any and all liabilities, losses, costs and expenses (including attorneys' fees,

any disbursements and other professional services) that the Seller suffers or incurs as a result of the assertion of any of the foregoing. The Seller is authorized to employ counsel of its own choosing in enforcing its rights hereunder and in defending against any claim, demand, action, cause of action or administrative or investigative proceeding covered by this section. Any obligation or liability of Buyer to the Seller under this section shall survive the expiration or termination of this Agreement and the repayment of the amounts covered by the Amended Promissory Note, Modified Deed of Trust, Security Agreements, Antos Guaranty, and Related Loan Documents. All amounts covered under this indemnity shall be due and payable to the Seller from Buyer immediately upon demand by the Seller.

## **11. MISCELLANEOUS**

A. Non-Assignability. Seller may not assign its rights and/or obligations under this Agreement. Buyer may freely assign all of its rights and obligations under this Agreement and the note attached as Exhibit A.

B. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of Buyer, Seller, and their respective successors, assigns (to the extent assignees are otherwise permitted under this Agreement), devisees, and beneficiaries.

C. Modification. This Agreement may not be modified except in writing signed by Buyer and Seller.

D. Time of Essence. Time is of the essence with regard to each and every term, condition and obligation of this Agreement.

E. Applicable Venue. Sole and exclusive jurisdiction and venue of any dispute or claim related to this Agreement shall be in the State or Federal courts in Las Vegas, Nevada.

F. Severability. If at any time any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected and such remaining provisions will remain in full force and effect.

G. Attorneys' Fees. The prevailing party in any litigation, arbitration, or other proceedings arising out of this Agreement shall be reimbursed by the other party for all costs and expenses incurred in such proceedings, including reasonable attorneys' fees.

H. Notice. Any and all notices required under this Agreement shall be sent by certified mail, return receipt requested, addressed to the party at the address set forth herein or at such other address as the party may designate to the other party in accordance with this paragraph. A notice shall be deemed effective two (2) days after the date on which the notice is mailed.

I. Exclusion of Other Notes. This Agreement solely pertains to the sale and assignment of the Amended Promissory Note, and does not extend to any other promissory notes executed by Borrower or its related entities.

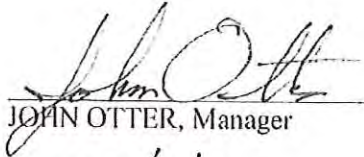
J. Merger. This Agreement sets out the entire agreement of the parties.

[Signatures to Follow]

In witness hereof, the parties have executed this Agreement:

SELLER:

CBC PARTNERS I, LLC,  
a Washington limited liability company

  
JOHN OTTER, Manager

Dated: 4/3/2020

BUYER:

5148 SPANISH HEIGHTS, LLC,  
a Nevada limited liability company

  
MICHAEL R. MUSHKIN, Manager

Dated: 4/3/2020

Attachments

Exhibit A: Allonge

Exhibit B: Assignment and Assumption Agreement

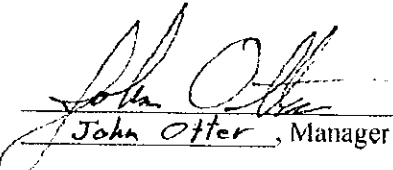
**EXHIBIT A**  
**ALLONGE**

Pay to the order of 5148 Spanish Heights, LLC, a Nevada limited liability company  
**WITHOUT RECOURSE TO THE UNDERSIGNED AND WITHOUT REPRESENTA-  
TION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, BY THE  
UNDERSIGNED.**

DATED: 4/3/2020

CBC PARTNERS I, LLC,

a Washington limited liability company

  
\_\_\_\_\_  
John Otter, Manager

This Allonge is to be attached to a form a part of that certain Promissory Note dated as of June 22, 2012 and all related Modifications, Forbearance Agreements, and Amendments to Forbearance Agreements in the original maximum principal amount of \$300,000.00, executed by KCI Investments, LLC, a Nevada limited liability company.



**EXHIBIT B**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of the 1 day of April, 2020, is executed by and between CBC Partners I, LLC, a Washington limited liability company ("Assignor"), and 5148 Spanish Heights, LLC, a Nevada limited liability company ("Assignee").

1. Assignment. Assignor hereby grants, sells, assigns and transfers WITHOUT RECOURSE AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED all of Assignor's right, title and interest in, to and arising under that certain Promissory Note dated as of June 22, 2012, in the original maximum principal amount of \$300,000.00, executed by KCI Investments, LLC, a Nevada limited liability company (the "Borrower") in favor of Assignor (the "Note"), and the Loan Agreement, Security Interest and all other related documents (as defined in that certain Note Purchase and Sale Agreement dated on or about the date hereof between Assignor and Assignee).

2. Assumption. Assignee hereby assumes and promises to perform in accordance with the terms thereof each and all of the duties and obligations of the Assignor arising from, in connection with, in respect of or under the Loan Agreement, Promissory Note and Security Interest. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any and all liability for performance or nonperformance of such duties and obligations and any and all claims, actions, suits, costs, demands and causes of action which may be asserted against Assignor in respect of, in connection with or otherwise relating to or arising under the Loan Agreement, Promissory Note and Security Interest.

3. Further Assurances. Each party agrees that from time to time it will execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the other party may request, in order to perfect and confirm the Assignment effected by this Assignment and Assumption Agreement.

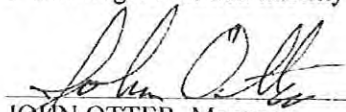
4. Governing Law. This Assignment and Assumption Agreement shall be governed by and interpreted in accordance with the laws of the State of Nevada and shall be binding upon and shall inure to the benefit of the parties and their successors and assigns.

5. Conflict. In the event of a conflict between this Assignment and Assumption Agreement, the terms of that certain Note Purchase and Sale Agreement dated April 1, 2020, shall control.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement and Assumption Agreement as of the date first set forth above.

ASSIGNOR:

CBC PARTNERS I, LLC,  
a Washington limited liability company

  
JOHN OTTER, Manager

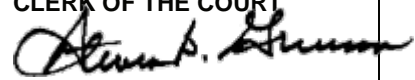
ASSIGNEE:

5148 SPANISH HEIGHTS, LLC,  
a Nevada limited liability company

  
MICHAEL R. MUSHKIN, Manager



# EXHIBIT “K”



**STIP**

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](mailto:jag@mgalaw.com)  
[djb@mgalaw.com](mailto: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.: 11

**STIPULATION REGARDING LEGAL  
ISSUES TO BE DECIDED BY THE COURT  
AT BIFURCATED TRIAL COMMENCING  
FEBRUARY 1, 2021**

As requested by the Court, in preparation for the bifurcated trial commencing on February 1,  
2021, Plaintiffs/Counterdefendants and Defendants/Counterclaimants, by and through their respective

attorneys of record, hereby stipulate that the following unresolved legal issues should be adjudicated by the Court at the bifurcated trial:

- 1) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between CBC Partners I, LLC and KCI Investments, LLC and all modifications thereto;
- 2) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust;
- 3) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance Agreement and all associated documents/contracts;
- 4) Whether the Doctrine of Merger applies to the claims at issue; and
- 5) Whether the One Action Rule applies to the claims at issue.

Dated this 11<sup>th</sup> day of January, 2021.

Dated this 11<sup>th</sup> day of January, 2021.

Respectfully submitted,

Approved as to form and content:

**MAIER GUTIERREZ & ASSOCIATES**

**MUSHKIN & COPPEDGE**

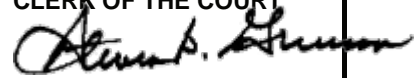
/s/ Danielle J. Barraza

/s/ Michael R. Mushkin

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# EXHIBIT “L”



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SPANISH HEIGHTS ACQUISITION )  
COMPANY LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CBC PARTNERS I LLC, )  
 )  
 )  
Defendant. )  
 )  
AND RELATED PARTIES )

CASE NO. A-20-813439-B  
DEPT NO. XI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE  
TUESDAY, FEBRUARY 2, 2021

**PRELIMINARY INJUNCTION HEARING AND TRIAL - DAY 2**

APPEARANCES:

FOR THE PLAINTIFFS: JOSEPH A. GUTIERREZ, ESQ.

FOR CBC PARTNERS I: MICHAEL R. MUSHKIN, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.



**I N D E X**

**W I T N E S S E S**

**WITNESSES FOR THE PLAINTIFF:**

JAY BLOOM

Direct Examination by Mr. Gutierrez

5

**WITNESSES FOR THE DEFENSE:**

JAY BLOOM

Direct Examination by Mr. Mushkin

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 2, 2021, 9:59 A.M.**

2 \* \* \* \* \*

3 THE COURT: And we are missing Mr. Coppedge today,  
4 but we have quite capable help.

5 Don't take it off.

6 MR. MUSHKIN: I'm just switching masks.

7 THE COURT: Okay. You're putting on the one we can  
8 actually hear you through.

9 MR. MUSHKIN: Yes, ma'am.

10 THE COURT: Okay.

11 MR. MUSHKIN: And may I take my coat off again?

12 THE COURT: You may take your coat off any time you'd  
13 like. You don't even have to ask permission.

14 Mr. Bloom, if at any time --

15 Oh, I like your mask. That's nice.

16 THE WITNESS: Thank you.

17 THE COURT: If at any time you need to take a break,  
18 you just let us know. Okay?

19 THE WITNESS: Thank you. I'm feeling much better  
20 than yesterday.

21 THE COURT: All right. Well, sometimes when you get  
22 the vaccine it's the second or third day that it hits is what I  
23 heard.

24 Okay. Raise your right hand.

25 **JAY BLOOM**

1 [having been called as a witness and being first duly sworn,  
2 testified as follows:]

3 THE CLERK: Thank you. Please seated. Please state  
4 and spell your name for the record.

5 THE WITNESS: Jay Bloom. J-a-y, B-l-o-o-m.

6 MR. GUTIERREZ: Your Honor, I'm just looking for our  
7 second binder for him.

8 MR. MUSHKIN: Your Honor, if I may, more of an  
9 administrative matter, as you recall, in my opening statement I  
10 was concerned about the parol evidence rule.

11 THE COURT: Uh-huh.

12 MR. MUSHKIN: I want to lodge my objection now. I'll  
13 try and make it throughout the course of the testimony, but any  
14 time --

15 THE COURT: Luckily, I'm the fact finder. So I can  
16 sift through all that stuff.

17 MR. MUSHKIN: I understand, Your Honor.

18 THE COURT: Okay.

19 MR. MUSHKIN: With that said, to the extent that  
20 Mr. Bloom attempts to contradict the terms of the contract, I  
21 would object under the parol evidence rule.

22 THE COURT: I certainly understand that, but I would  
23 encourage you to make that objection orally so that it can be  
24 part of the record, and I will take that into the calculus that  
25 is in the back of my mind on how I'm evaluating things.

1 MR. MUSHKIN: I will do so, Your Honor. Thank you.

2 THE COURT: Thank you.

3 THE COURT RECORDER: Mr. Bloom.

4 THE WITNESS: Yes.

5 THE COURT RECORDER: You're going to have to scoot up  
6 closer. I know that the chair is stuck on that thing, but once  
7 you get over it, you'll be all right.

8 THE WITNESS: Okay. Is that better?

9 THE COURT RECORDER: Yeah.

10 THE WITNESS: Okay. The mask doesn't help.

11 THE COURT: Believe me, we know.

12 MR. GUTIERREZ: Okay. Are you ready, Your Honor?

13 THE COURT: I've been ready.

14 MR. GUTIERREZ: Okay.

15 THE COURT: I've been here since 9:00 o'clock  
16 working. I've been sitting in the same place.

17 DIRECT EXAMINATION

18 BY MR. GUTIERREZ:

19 Q Good morning, Mr. Bloom. Can you tell us where you  
20 currently live.

21 A 5148 Spanish Heights Drive, Las Vegas, Nevada.

22 Q And we've been calling the 5148 Spanish Heights Drive  
23 property the property or Spanish Heights property for purposes  
24 of this case. Are you okay using those definitions going  
25 forward?

1 A Yes.

2 Q And who do you live at the Spanish Heights property  
3 with?

4 A I live with my wife, my son and my wife has recently  
5 brought my mother-in-law and her husband in to live with us as  
6 well.

7 Q Okay. And how long have you lived at the Spanish  
8 Heights property?

9 A A little over three years I believe.

10 Q And is the Spanish Heights property your primary  
11 family residence?

12 A Yes.

13 Q And at some point did you purchase the Spanish  
14 Heights property?

15 A Yes.

16 Q And can you tell us about the circumstances for  
17 having bought the Spanish Heights property.

18 MR. MUSHKIN: Objection to the form of the question.  
19 Vague and ambiguous as to "you."

20 THE COURT: Overruled.

21 THE WITNESS: I -- my wife actually found it through  
22 a Realtor online. It had been listed for quite a period of  
23 time. We contacted the Realtor. The Realtor put us in touch  
24 with a representative Alan Hallberg for CBC Partners, and there  
25 were extended negotiations and discussions which ultimately



1 lead to the purchase of the real property.

2 Q And did you purchase the Spanish Heights property in  
3 your own name personally or through a company that you control?

4 A I purchased it into a special purpose entity created  
5 for that purpose.

6 Q And what's the name of that company?

7 A Spanish Heights Acquisition Company.

8 Q And at the time of the purchase, who was the  
9 owners -- who owned Spanish Heights Acquisition Company?

10 A It was originally formed to be owned one third by  
11 CBC, one third by SJC, which is my entity, and one third by the  
12 Antos Trust, which was the seller.

13 Mr. Hallberg came back and said after speaking with  
14 lawyers he can't hold ownership or that CBC can't hold  
15 ownership of the property.

16 MR. MUSHKIN: Objection. Hearsay, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: And therefore he resigned CBC's  
19 membership interest in Spanish Heights Acquisition Company.  
20 And we redid -- we redid -- and SJC resigned its interest as  
21 well. And then after the transaction where the Antos Trust  
22 transferred the property to Spanish Heights, it was the Antos  
23 Trust transferred 50 percent of the interest in Spanish Heights  
24 Acquisition Company to SJC -- actually, 51 percent.

25 MR. GUTIERREZ: Okay.

1 THE WITNESS: And retained 49 percent interest for  
2 itself.

3 BY MR. GUTIERREZ:

4 Q And what is SJC Ventures?

5 A SJC Ventures is an entity that -- that holds a number  
6 of different -- it's a holding company. It holds a number of  
7 different projects that I'm involved in.

8 Q And who manages SJC Ventures?

9 A I'm the manager of SJC Ventures.

10 Q Okay. And as part of this transaction, Mr. Bloom,  
11 did SJC Ventures pledge a part of its beneficial interest in a  
12 judgment that First 100, LLC has?

13 A Yes.

14 Q And can you explain that portion of the transaction.

15 A Yes. The original proposal was a pledge of -- by the  
16 Antoses of their 49 percent interest in the property, and SJC  
17 would pledge 51 percent of its 51 percent interest in the  
18 property.

19 Subsequent negotiations resulted in the culmination  
20 of, as CBC Partners was looking for their money back and not  
21 the property, the discussions led to a proposal where in lieu  
22 of the interest in the -- membership interest in SJC -- in  
23 SHAC, Spanish Heights Acquisition Company --

24 I'll stay away from SHAC for the Court.

25 THE COURT: Thanks.

1 THE WITNESS: -- it would -- it would instead secure  
2 its obligation through an assignment of a portion of its  
3 beneficial interest and proceeds collection -- realized through  
4 collection efforts on the judgment.

5 BY MR. GUTIERREZ:

6 Q How did you know that CBC wanted -- or tell us the  
7 basis of your understanding that CBC wanted to get paid money  
8 versus acquire the property.

9 A In my conversations, it was -- it was very clear to  
10 me through direct representations that there's no -- there's no  
11 interest in the property. They just want to get their money  
12 back.

13 Q When you say they, are you talking about CBC?

14 A CBC.

15 Q Okay. Now, who owned the property when you were  
16 thinking about purchasing it in 2017?

17 A The Antos Trust.

18 Q And was it your understanding that the Spanish  
19 Heights property was the Antoses' primary residence when they  
20 bought the property?

21 A Yes.

22 Q Okay. And can you tell us about the discussions you  
23 had with Ken Antos when you were deciding whether or not to  
24 purchase the property?

25 A At the time we were discussing purchasing the

1 property, it was -- discussions were primarily with CBC. I  
2 didn't speak to the Antoses very often. They had pretty much  
3 thrown up their hands with regard to the property.

4 Q Well, who did you speak with at CBC during this first  
5 transaction?

6 A Mr. Hallberg.

7 Q Okay. Were you ever told during this time frame, and  
8 we're talking about 2017 before Spanish Heights Acquisition  
9 Company bought the property, were you ever told during this  
10 time frame that the original note for the Antos' debt was for a  
11 commercial restaurant loan for a company called KCI  
12 Investments?

13 A No.

14 Q And when you were introduced to -- well, let's back  
15 up.

16 What kind of due diligence did you do when you were  
17 going to purchase the Spanish Heights property?

18 A There really wasn't a lot of due diligence. A lot of  
19 it was reliance on representations. So there's a warranties  
20 and representations section, I believe, and there were  
21 representations made in the conversations which gave us the  
22 basis for moving forward in the transaction.

23 Q And during this time frame, what was your  
24 understanding as to the relationship between the Antos Trust  
25 and CBC?

1           A     I understood the Antos Trust held or the Antos Trust  
2 had a third mortgage that was held by CBC.

3           Q     Did Mr. Antos or CBC ever provide you with the  
4 underlying note or guarantees that memorialized the loan  
5 between CBC and the Antoses?

6           A     Not prior to the culmination of the transaction.

7           Q     And what representations --

8                 MR. MUSHKIN: Your Honor, I will object as under the  
9 parol evidence rule as this reflects the clear reps and  
10 warranties within the document.

11                THE COURT: Overruled.

12                BY MR. GUTIERREZ:

13           Q     Mr. Bloom, what representations were made to you  
14 about the third position deed of trust on the property?

15           A     The representations were that it related to a third  
16 mortgage. You know, yeah. It just -- it was always a third  
17 mortgage throughout the entire negotiations.

18           Q     Okay. Now, the deed of trust mentions for good and  
19 valuable consideration on it. Did Ken Antos ever explain to  
20 you what the consideration for the Antos Trust was for pledging  
21 the deed of trust on the property?

22           A     No. Consistent with his testimony here and in his  
23 deposition -- he testified in his deposition that there was no  
24 consideration. He testified here in live testimony that there  
25 was no consideration, and I'm not aware of any consideration



1 that the Antos Trust was provided --

2 MR. MUSHKIN: Same objection, Your Honor.

3 THE WITNESS: -- from Ken Antos.

4 THE COURT: Overruled.

5 BY MR. GUTIERREZ:

6 Q Mr. Bloom, since this case, this litigation has begun  
7 last year, did you have a chance -- have you now had a chance  
8 to review the underlying promissory note?

9 A I have.

10 Q To KCI?

11 A I have, yes.

12 Q Where did you learn about the -- in your review of  
13 the underlying note.

14 A I learned that it was originally a commercial loan to  
15 a restaurant in which Mr. Antos had an interest and that it was  
16 guaranteed by Mr. Antos and Mrs. Antos individually. I learned  
17 that there were 10 subsequent modifications. I learned that  
18 there was a deed of trust issued by the Antos Trust in 2014, I  
19 believe that, although the Antos Trust was not a guarantor or a  
20 borrower under the note. So my -- you know, what I've learned  
21 is that the deed of trust doesn't create the obligation. It  
22 secures an obligation under another document.

23 And in this instance, in 2014, the Antos Trust is  
24 neither a borrower nor a guarantor or had any obligation for  
25 which a 2014 deed of trust could secure.

1 Q So going to the --

2 MR. MUSHKIN: Your Honor, same objection. His  
3 testimony conflicts the clear written terms of the note.

4 THE COURT: The objection is overruled.

5 BY MR. GUTIERREZ:

6 Q Mr. Bloom, and now I want to talk about that timeline  
7 with the third deed of trust and then the amended deed of trust  
8 on the property. You're familiar with both of those documents;  
9 correct?

10 A Correct.

11 Q Now, tell us your understanding of what the deed of  
12 trust was -- that was issued in 2014, what obligation it was  
13 securing.

14 A Well, so the deed of trust was supposed to secure the  
15 guarantee of the Antos Trust, but there was no guarantee of the  
16 Antos Trust. So there was nothing for the deed of trust to  
17 secure.

18 So if you look at the chronology of the documents  
19 that we've received for the first time through discovery in  
20 this matter, there's a 2014 deed of trust against a commercial  
21 restaurant loan which has no nexus to the Antos Trust, the  
22 owner of the property. So there's nothing in 2014 for the deed  
23 of trust to secure.

24 In 2016, there's a reaffirmation, but again there's,  
25 at that point, after, I don't know, 10 note modifications or

1 amendments, there was never an amendment that added the Antos  
2 Trust as a guarantor or a borrower.

3 Now, I did see a modification that added Preferred  
4 Restaurant Brands as a borrower later on through the course of  
5 additional advances to the restaurant.

6 But in 2016 there's a reaffirmation of a nonexisting  
7 guarantee and an amendment to the deed of trust.

8 We also learned through this litigation that there's  
9 a 2017 guarantee that the Antos Trust, but no subsequent deed  
10 of trust issued once there finally was a guarantee.

11 So I think the Antos Trust guaranteed it but never  
12 pledge the property before selling the property to Spanish  
13 Heights Acquisition Company.

14 Q Now I want to turn your attention, Mr. Bloom, to  
15 Exhibit 1, which is the 2017 forbearance agreement.

16 Do you have that in front of you?

17 A (No audible response.)

18 Q Do you have that in front of you, Mr. Bloom?

19 A I do.

20 Q Okay. Mr. Bloom, what's your understanding of what  
21 this forbearance agreement was to document?

22 A So in the course of our discussions, while I was  
23 under the understanding that there was a third mortgage, there  
24 was an action by -- or there was the potential of an action by  
25 CBC to foreclose under their, what I thought was a third

1 mortgage. And, in fact -- and this document was for them to  
2 forbear taking any actions against the third mortgage against  
3 the property that I was interested in buying.

4 Q And, Mr. Bloom, if you could turn to Exhibit 7, which  
5 is Exhibit B to the forbearance agreement.

6 Are you familiar with this document?

7 A Yes, I believe so.

8 Q Okay. And if you can turn to page 81 under this  
9 exhibit.

10 Can you tell us what the obligations were by CBC  
11 under this forbearance agreement.

12 A CBC was to make payments on the first and second  
13 mortgage to prevent the default of the first and second  
14 mortgage.

15 Q Did CBC continue to make payments under the first and  
16 second mortgage during the forbearance period?

17 A For January, February and March of 2020, they did  
18 not.

19 MR. MUSHKIN: I'm sorry, Your Honor. I didn't hear  
20 that answer.

21 THE COURT: Could you repeat yourself, sir.

22 THE WITNESS: For January, February and March  
23 of 2020, during the forbearance period, CBC did not make  
24 payments to the first or the second.

25 / / /

1 BY MR. GUTIERREZ:

2 Q And after the forbearance agreement was executed, did  
3 the Antos Trust provide you with a deed of trust on the  
4 property that was recorded?

5 A Not until this litigation, no.

6 Q Now, Mr. Bloom, I want to turn your attention to the  
7 pledge agreement, which is Exhibit 10. I'm sorry. I believe  
8 it's Exhibit 8, yeah, Exhibit 8.

9 Now, can you tell us what the purpose was for this  
10 pledge agreement?

11 MR. MUSHKIN: Objection to the question to the extent  
12 it contradicts the clear meaning of the document, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: So this was the pledge of the Antos'  
15 49 percent interest in Spanish Heights Acquisition Company as  
16 signed by Kenneth and Sheila Antos living trust as pledgors.

17 BY MR. GUTIERREZ:

18 Q And if you turn to page 97 in this document, it's  
19 exhibit -- is that your signature on behalf of Spanish Heights  
20 Acquisition Company?

21 A It is.

22 Q Okay. And there's been references about potentially  
23 SJC pledging its interest in SHAC to CBC, but is SJC a signer  
24 on this document at any point?

25 A No. The SJC signature block was removed for



1 execution.

2 Q Okay. And tell us why it was removed.

3 A It was removed in favor of a security agreement by  
4 offering a position in SJC's beneficial interest in any  
5 proceeds realized by SJC's collection under a First 100  
6 judgment.

7 Q And if you turn to Exhibit 10, is that the security  
8 agreement that you're discussing?

9 A Yes, it is.

10 Q Okay. And if you turn to Exhibit 11, can you tell us  
11 what this document is.

12 A This is a payment direction letter where First 100  
13 and SJC authorize Maier Gutierrez & Associates as attorneys for  
14 First 100 to direct payment to CBC directly upon collection of  
15 proceeds from the judgment.

16 Q Okay. And this is consistent with the security  
17 agreement we saw in Exhibit 10; is that correct?

18 A Correct.

19 Q Okay. And who is the manager of Spanish Heights  
20 Acquisition Company?

21 A I am the sole, exclusive and irrevocable manager.

22 Q When you say you, are you talking about you  
23 individually, or SJC Ventures?

24 A SJC Ventures and me as the manager of SJC.

25 Q Okay.

1           Now, Mr. Bloom, what was the condition of the Spanish  
2 Heights property when you purchased it in 2017?

3           A     Cosmetically it was in decent shape. Mechanically it  
4 had some problems with HVAC and some of the systems, home  
5 automation and pool, that kind of thing.

6           Q     Did you make improvements to the property after you  
7 bought it?

8           A     Yes.

9           Q     And how much money did you put in improvements to the  
10 property?

11          A     In excess of a hundred thousand dollars.

12          Q     Were you required in any document to make over a  
13 hundred thousand dollars in improvements?

14          A     My recollection is that we had agreed to do a hundred  
15 thousand. I think the document said I may do a hundred  
16 thousand, but, no, more than 125,000. So I stayed within the  
17 parameters of the documents.

18          Q     And, Mr. Bloom, if you can go back to Exhibit 7,  
19 which is Exhibit B to the forbearance agreement, and go to  
20 page 82.

21          A     I'm sorry. Page 82?

22          Q     Yes, under Exhibit 7.

23          A     Okay.

24          Q     And Section C discusses SHAC's obligation to maintain  
25 property after conveyance to SHAC. Do you see that?

1 A Yes.

2 Q And does that refresh your recollection as far as the  
3 obligations for SHAC for improvements on the property?

4 A Yeah. So SHAC made certain repairs and improvements,  
5 and the estimate was to be about a hundred thousand, and that  
6 SHAC will not spend more than -- or Spanish Heights Acquisition  
7 Corp., will not spend more than 125,000 for such repairs  
8 without consent.

9 Q Okay. And is there a lease on the Spanish Heights  
10 property?

11 A Yes.

12 Q And who is the tenant?

13 A SJC Ventures.

14 Q And what's the term of the lease?

15 A I'm sorry?

16 Q What is the term of the lease?

17 A It was two years with two successive two-year  
18 extensions at the option of the tenant.

19 Q And if you turn to Exhibit 15, is that the lease for  
20 the property?

21 A Yes, it is.

22 Q Okay. And if you turn to Exhibit 16, I want to talk  
23 to you about the amendment to the forbearance agreement that  
24 stated December 1st, 2019. Let me know when you have that in  
25 front of you.

1           A     I have it in front of me.

2           Q     Okay. And then tell us the purpose of the amended  
3 forbearance agreement.

4           A     So this was to serve several purposes. It extended  
5 the CBC agreement to forbear from any collection activity  
6 against what I understood at the time was a third mortgage. It  
7 also acknowledged the extension of the lease and the exercise  
8 of the two extensions to continue the lease for the two  
9 successive two-year terms.

10          Q     And if you turn to page 160 under this exhibit, is  
11 that the acknowledgment of the lease extension?

12          A     Yes. And B1, the last sentence, The parties  
13 acknowledge that the conditions to which SJC options were  
14 subject have been satisfied and that the SJC options have been  
15 exercised.

16          Q     And the next page, is that the -- and this was signed  
17 off by CBC Partners; is that correct?

18          A     By John Otter, the president of CBC.

19          Q     Okay. Now, Mr. Bloom, did CBC follow all of its  
20 obligations under the amended forbearance agreement?

21          A     To the best of my knowledge it did with the exception  
22 of the balloon payment, which we discovered was not really an  
23 obligation of the Antos Trust when we bought the property.

24          Q     I'm sorry. I was asking about CBC. Did CBC comply  
25 with its obligations?

1 A Oh, did CBC. I'm sorry.

2 Q Yeah.

3 A No. CBC didn't, as I mentioned before, did not make  
4 the January, February and March 2020 payments under their  
5 obligations under the forbearance agreement.

6 Q And has Spanish Heights Acquisition Company been  
7 servicing the first and second mortgages on the property?

8 A Yes, for almost a year now.

9 Q And has Spanish Heights also been paying the HOA dues  
10 and insurance on the property?

11 A Yes.

12 Q Okay. Now, one of the allegations that's been made  
13 in this case by CBC, Mr. Bloom, is that you failed to set up a  
14 funding account, as stated in the agreements. What is your  
15 position on that claim?

16 A So this is again a chronology issue that Mr. Mushkin  
17 seems to have --

18 THE COURT: Sir, don't give me any personal attacks,  
19 please. Just answer the question.

20 THE WITNESS: There was originally, at the beginning  
21 of the discussions, the initial conversation was that Spanish  
22 Heights Acquisition Company would establish a security account  
23 to assure payments under -- payment obligations that arise  
24 under the -- under the agreement. I went to Bank of America.  
25 They could not provide the kind of account that CBC was asking



1 for. I told CBC and offered instead to just prepay the  
2 expenses negating the need for a security account. CBC agreed.  
3 There was a prepayment of the expenses, and there was no  
4 requirement for a security account at that point because its  
5 function was mooted with the prepayment.

6 Q Did CBC ever contact you after 2017 to discuss not  
7 setting up that account?

8 A No. And we did the same thing on the extension as  
9 well -- well, for the second year of the lease term, the  
10 initial lease term.

11 Q Now, CBC has claimed that SHAC defaulted by not  
12 making the balloon payment under the forbearance agreement.  
13 What's your response to that claim?

14 A So the default -- there is a default on the note.  
15 The note though is a commercial loan to a restaurant with  
16 personal guarantees by the Antoses. So CBC does have a  
17 defaulted note, or I guess their successor has a defaulted  
18 commercial loan to a restaurant with personal guarantees by the  
19 Antoses.

20 Q Mr. Bloom, I'm going to turn to discussion of the  
21 doctrine of merger. You testified earlier about Spanish  
22 Heights Acquisition Company originally being a third, a third  
23 ownership; is that correct?

24 A Right. Correct.

25 Q And in 2017, what was the ownership after CBC

1 rescinded its ownership in Spanish Heights Acquisition Company?

2 A The ownership was 51 percent SJC and 49 percent Antos  
3 Trust.

4 Q Now, at some point in 2020, did you become aware that  
5 CBC was attempting or acquired the ownership interest from the  
6 Antos Trust in Spanish Heights Acquisition Company?

7 A Yes. CBC I acquired the interest from the Antoses,  
8 almost in the form of a deed in lieu of foreclosure type  
9 structure where the Antoses signed over their 49 percent  
10 interest --

11 MR. MUSHKIN: Objection to the form of the  
12 question --

13 THE WITNESS: -- in the real property.

14 MR. MUSHKIN: -- your Honor.

15 THE COURT: Overruled.

16 MR. MUSHKIN: Directly contradicts the documents.

17 THE WITNESS: The Antoses --

18 THE COURT: Overruled.

19 THE WITNESS: The Antoses signed over their  
20 49 percent interest, and the only consideration the Antoses  
21 would've gotten for that was the satisfaction of the  
22 obligation.

23 BY MR. GUTIERREZ:

24 Q And were you sent a letter from -- well, from Mushkin  
25 and Coppedge on behalf of CBC where they informed you of the

1 Antos Trust transferring the interest to CBC Partners I?

2 A Yes.

3 Q Okay. I want to show you what's been admitted as  
4 Exhibit 74.

5 THE COURT: No, you can't approach. Use the Elmo.

6 MR. GUTIERREZ: Okay. I'm going to need help on the  
7 Elmo, Your Honor. I haven't used this in a while. Maybe  
8 Ramsey can help us out.

9 THE COURT: I can't let you approach anymore. I'm  
10 really sorry.

11 MR. GUTIERREZ: I'm going to need Ramsey to approach  
12 me to help me with the Elmo.

13 THE COURT: Ramsey is going to turn on the Elmo for  
14 you.

15 (Pause in the proceedings.)

16 THE COURT: And I know this document is admitted  
17 because it's not one of the two or three that aren't. So...

18 MR. GUTIERREZ: Yes, Judge. This is admitted  
19 Document 74.

20 THE COURT: Can you blow it up a little bit so people  
21 can see. Do you know how to use it?

22 MR. GUTIERREZ: No, Judge. I am --

23 THE COURT: Really?

24 MR. GUTIERREZ: I've seen it used a few times, but  
25 I've never really used it.

1 THE COURT: Boy, you're young.

2 (Pause in the proceedings.)

3 BY MR. GUTIERREZ:

4 Q Mr. Bloom, do you see this letter on your monitor?

5 A I do.

6 Q It's an April 1st, 2020, letter from the law firm  
7 Mushkin & Coppedge, and it's Exhibit 74, Bates stamp  
8 5148SH 000887. Do you see the Bates stamp, Mr. Bloom?

9 A Yes. Yes, I do.

10 Q Do you recall receiving this letter?

11 A I do.

12 Q And what did this letter tell you as the manager of  
13 Spanish Heights Acquisition Company?

14 A That the interest of the Antos Trust for 49 percent  
15 in Spanish Heights Acquisition Company has transferred to CBC  
16 Partners I, the lender, under the pledge agreement.

17 Q Okay. So was it your understanding that as of April  
18 1st, 2020, Spanish Heights Acquisition Company was owned a  
19 51 percent by SJC and 49 percent by CBC Partners I?

20 A Correct.

21 Q Did you ever sign an assignment of interest document  
22 on behalf of SJC's 51 percent interest in SHAC over to anybody?

23 A No, I did not.

24 Q Okay. So as you sit here today, SJC remains a  
25 51 percent owner in Spanish Heights Acquisition Company?

1 A Yes. That's correct.

2 Q What was your understanding of what this notice to  
3 vacate letter was attempting to do?

4 A The notice to vacate was trying to take physical  
5 possession of the house.

6 Q And the defendant is claiming that in this case they  
7 could foreclose on the property and is stating that 5.5 million  
8 is owed as a balloon payment. What is your position on that  
9 claim?

10 A Well, again you have a 2014 deed of trust that  
11 secures no obligation at the time the deed of trust was issued  
12 because there was no --

13 MR. MUSHKIN: Same objection, Your Honor.

14 THE COURT: Overruled.

15 You can answer.

16 THE WITNESS: There was no guarantee by the Antos  
17 Trust under the note, and the Antos Trust was not the borrower.  
18 Then in 2016 you have the reaffirmation, but you have a  
19 defective deed of trust in November in 2014, which remains  
20 defective in 2016. We finally get to a guarantee in 2017 which  
21 obligates the Antos Trust, but there's no subsequent pledge of  
22 the collateral. The Antos Trust then transfers the property,  
23 and there's no encumbrance on the property that's -- would not  
24 be defective that would allow a foreclosure to occur.

25 / / /



1 BY MR. GUTIERREZ:

2 Q Have you heard of a company called 5148 Spanish  
3 Heights, LLC?

4 A I have.

5 Q What do you know about 5148 Spanish Heights, LLC, in  
6 relation to its involvement in this case?

7 A Well, I know Mr. Mushkin testified that it's his  
8 company. I understand that he purchased the CBC commercial  
9 loan to the KCI restaurant as guaranteed by the Antoses  
10 individually, and that he funded it with money that he  
11 borrowed, I believe, from Laurentiu Russo I think the name is,  
12 who is -- owns a neighboring -- two neighboring properties  
13 actually.

14 Q Has CBC continued trying to foreclose on the property  
15 even though it sold its note to 5148 Spanish Heights, LLC?

16 A Yes. It sold CBC -- CBC I sold its note in April  
17 of 2020. And then three months later in July of 2020, CBC I  
18 issued a notice of default.

19 Q And for the record, the CBC notice of default from  
20 July 2020 is an admitted Exhibit 144.

21 And, Mr. Bloom, why should CBC and its successor 5148  
22 Spanish Heights, LLC, be prevented from foreclosing on the  
23 Spanish Heights property?

24 A Well, CBC and its successor don't have a valid deed  
25 of trust. The deed of trust is not the obligation. It secures

1 an obligation under another -- another instrument.

2 In this case, it's a commercial restaurant loan --

3 MR. MUSHKIN: Same objection, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: In this case it's a commercial  
6 restaurant loan to KCI where Preferred Restaurant Brands  
7 through one of the amendments to the note was later added as a  
8 borrower as guaranteed by the Antoses individually. But at no  
9 time prior to the issuance of the deed of trust did the Antos  
10 Trust ever have an obligation under the note. So the deed of  
11 trust secures the pledger's obligation in this case, the  
12 obligation is zero.

13 MR. GUTIERREZ: Thank you, Mr. Bloom.

14 I'll pass the witness, Your Honor.

15 THE COURT: Cross-examination.

16 MR. MUSHKIN: Your Honor, I'd like --

17 THE COURT: Does anybody need a break before we  
18 start?

19 MR. MUSHKIN: No, I don't. I'd like to make a motion  
20 before we start, Judge.

21 THE COURT: Okay. Hold on a second.

22 Sir, do you need a break before we start  
23 cross-examination?

24 (No audible response.)

25 THE COURT: Mr. Bloom?

1 THE WITNESS: I'm sorry.

2 THE COURT: Do you need a break before we start  
3 cross?

4 THE WITNESS: I think I'm okay.

5 THE COURT: Okay. Your motion.

6 MR. MUSHKIN: Your Honor, in the opening of this case  
7 I was pretty clear the burden is on the plaintiff. This is  
8 their third witness, and they've passed.

9 THE COURT: They haven't rested yet.

10 MR. MUSHKIN: Well, Your Honor --

11 THE COURT: They haven't rested yet. There's things  
12 that happen before you make this motion. I'm not there yet.

13 MR. MUSHKIN: Okay.

14 THE COURT: If you want to reserve your examination  
15 of Mr. Bloom and I then ask Mr. Gutierrez that question --

16 MR. MUSHKIN: I would like to reserve my examination  
17 until you ask that question.

18 THE COURT: Okay.

19 MR. MUSHKIN: I apologize, Your Honor. I jumped  
20 to --

21 THE COURT: So you don't want to examine Mr. Bloom at  
22 this time. You want to reserve it for your own case in chief?

23 MR. MUSHKIN: Well, I'd like to reserve it until I  
24 have the opportunity to make my motion.

25 THE COURT: Okay. Let me say it a different way. If

1 you pass now and I ask Mr. Gutierrez if he rests or if he has  
2 any additional evidence, which is what I ask before he rests,  
3 and then he then says he rests, then it would be time to make  
4 your motion. If that happens, you are then in your case in  
5 chief, and you have to call Mr. Bloom if you want to examine  
6 him in your case in chief. You don't get to cross-examine him  
7 after Mr. Gutierrez rests. So you pick your poison.

8 Do you want to ask him questions now, or do you just  
9 want to reserve it all for when you do your --

10 MR. MUSHKIN: I'll reserve, Your Honor.

11 THE COURT: Okay. So, Mr. Bloom, you can step down.

12 THE WITNESS: Okay.

13 THE COURT: Do you have any additional evidence or  
14 witnesses that you would like to submit at this time?

15 MR. GUTIERREZ: No, Your Honor. The plaintiff will  
16 rest.

17 THE COURT: Okay. All right. So the plaintiff has  
18 rested.

19 Now, do you have something you want to do,  
20 Mr. Mushkin?

21 MR. MUSHKIN: Yes, I do, Your Honor.

22 THE COURT: Sorry. I have this procedure. I've got  
23 to get it right.

24 MR. MUSHKIN: And I apologize for jumping the gun  
25 just a little bit.

1 Court's indulgence just one minute.

2 Your Honor, when I opened, I was pretty clear that  
3 the documents were not controverted. Plaintiff has now rested.  
4 They've claimed no ambiguity. They've given you no authority  
5 other than Mr. Bloom's testimony that somehow a defense of the  
6 trust would give him standing to negate the deed of trust.  
7 Documents have all been admitted. The trust gave a certificate  
8 of trust. The trust became a credit borrower. The trust gave  
9 a guarantee. The trust said in its documents that it received  
10 direct and indirect consideration for the -- a benefit.

11 THE COURT: And Mr. Antos testified to that.

12 MR. MUSHKIN: And Mr. Antos testified to that. And  
13 more importantly, Judge, and the reason their motion fails on  
14 its face is they have made no showing that it would be  
15 unreasonable for CBC and its successor 5148 to rely on the  
16 representations of the trust. They have skipped over one of  
17 the elements that they would have to prove, that somehow they  
18 were harmed.

19 Now, let's take a look at the forbearance agreement  
20 itself and the reps and warranties where Mr. Bloom reps and  
21 warrants that he got everything he asked for. Let's look at  
22 the amended forbearance agreement where he reaffirms. And  
23 finally, Judge, you must look to the testimony that you heard  
24 today that makes absolutely no sense. It completely ignores  
25 the obligation to the Antos parties, as does the motion.



1           Your Honor, you may recall in the original motion  
2 there was a statement that now that the authenticity of the  
3 documents has been called into question. If you recall, I was  
4 quite exercised about that before.

5           THE COURT: Because we'd admitted them at the first  
6 evidentiary hearing, and I told you, yeah, I understand, but  
7 we've still got to go through the process.

8           MR. MUSHKIN: And now we've done it again.

9           THE COURT: I know. I am here with you, but I'm  
10 not --

11          MR. MUSHKIN: No challenge to authenticity.

12          THE COURT: My problem is I'm at a 50(a) standard  
13 right now, which is a different standard than I have to make if  
14 we finish the evidence. That's my current concern. Now, I  
15 understand the argument you're making. I'm going to let you  
16 finish, but that's part of the concern I have.

17          MR. MUSHKIN: I understand, Judge.

18          Now let's look at 50(a), okay. What is the standard  
19 of 50(a)? Have they proven -- now, mindful of what the  
20 testimony is that somehow it was misrepresented, that's their  
21 testimony. Now, there was a misrepresentation. Even though  
22 the documents all over say KCI Preferred Brands, et cetera,  
23 et cetera. Have they been able to present any evidence of  
24 misrepresentation to this Court unequivocally? No. No  
25 evidence of misrepresentation.

1           What they're trying to do, Judge, is avoid the  
2 obligations that they contracted for, and their defense is  
3 somehow that there's a defect that they have a right to claim.  
4 They have no right to claim said defect, Your Honor. They've  
5 waived it twice in writing. They've acknowledged it.

6           So under Rule 50 and the parol evidence rule, they  
7 have to provide you competent evidence of a material --  
8 material breach I guess is what they're saying. They're saying  
9 they don't owe it at all. It's an all or nothing here, and  
10 they have to -- they have to somehow -- somehow get this Court  
11 to believe that the documents and the title report and  
12 everything that's now been submitted to the Court is somehow  
13 wrong. And respectfully, Judge, they haven't even sniffed it.  
14 The only thing they have is convoluted testimony from Mr. Bloom  
15 that says that he can't -- that he doesn't have to pay. Your  
16 Honor, there is one document that closes the loop entirely, and  
17 they brought it out. I believe it's 74, Judge.

18           THE COURT: Is that the letter?

19           MR. MUSHKIN: That's the letter.

20           THE COURT: Okay.

21           MR. MUSHKIN: Mr. Bloom testified that this says that  
22 the Antoses transferred their interest. That's not what it  
23 says. I don't know if he didn't bother to read the letter or  
24 he just doesn't like to tell the truth to the Court.

25           THE COURT: We're avoiding personal attacks, but I

1 understand the credibility --

2 MR. MUSHKIN: No, this is -- this is that, Your  
3 Honor, I am --

4 THE COURT: Credibility is one thing, but accusing  
5 somebody of being a liar is that step we can't take. So I need  
6 you to focus on --

7 MR. MUSHKIN: So the veracity of a witness is  
8 important, Judge.

9 THE COURT: It is true. That is true. So you have  
10 to use careful words when you do that.

11 MR. MUSHKIN: I will use very careful words, Judge.  
12 The -- it's funny because I got those words from Mr. Coppedge,  
13 and I'm going to go yell at him.

14 This witness testified that he made the payments in  
15 January, February and March. The record shows the opposite.  
16 The record shows that those payments were made by CBC or their  
17 successor. That is a direct misrepresentation to the Court.  
18 He testified that he was servicing. The first payment that he  
19 made, Judge, wasn't until June paying April. We have the  
20 checks.

21 But this document says it all, Judge. It does not  
22 say that Mr. Antos has transferred his. It says that they are  
23 seeking an assignment from Mr. Bloom and an assignment from  
24 Mr. Antos, both of which were attached to that letter, and,  
25 Judge, it's pretty clear they are trying to exercise their

1 rights under the pledge agreement.

2 Now let's go to the pledge agreement for just a  
3 minute, Judge.

4 THE COURT: What number is that?

5 MR. MUSHKIN: I'm getting there.

6 MS. FOLEY: 8.

7 THE COURT: Thank you.

8 And you did a good job yesterday.

9 MS. FOLEY: Thank you.

10 MR. MUSHKIN: The first line of the pledge agreement,  
11 Judge, SJC Ventures is a party to the pledge.

12 THE COURT: But remember there wasn't a signature.

13 MR. MUSHKIN: Oh, we're going to get to that one,  
14 Judge.

15 THE COURT: All right. I'm just remembering.

16 MR. MUSHKIN: We're going to get to that one.

17 THE COURT: There's this document from -- we've  
18 talked about this one before.

19 MR. MUSHKIN: No, we have, Judge.

20 THE COURT: I know.

21 MR. MUSHKIN: Because the truth, Judge, neither  
22 signature is right, and you're going to see.

23 THE COURT: I know. I know.

24 MR. MUSHKIN: So the delivery of pledge collateral is  
25 at paragraph 3, and that's what that letter was doing was

1 exercising the delivery of pledge collateral.

2 Now, let's go to the signature line. Judge, it's not  
3 executed properly by Spanish Heights Acquisition Company  
4 because Mr. Bloom is not the manager of Spanish Heights  
5 Acquisition Company.

6 Mr. Bloom is the manager of SJCv.

7 THE COURT: Which is the manager.

8 MR. MUSHKIN: SJCv is the manager.

9 THE COURT: I know.

10 MR. MUSHKIN: So what you have is the classic  
11 misexecution. How do you cure it? Well, that's real simple,  
12 Judge. This document is in September. So we look first to the  
13 forbearance agreement itself, and the forbearance agreement  
14 itself recites a hundred percent of the interest of SHAC. Then  
15 we go to the amended forbearance agreement. It reaffirms --

16 THE COURT: What exhibit number is that one?

17 MR. MUSHKIN: The amended is --

18 MS. FOLEY: 16.

19 THE COURT: Thank you.

20 MR. MUSHKIN: Thank you.

21 SJC and Antos continue to pledge, and this one,  
22 Judge, just like the original forbearance agreement is signed  
23 by SJCv.

24 Now, I want to go to one other provision in this  
25 agreement that was looked at and again is illustrative of the



1 lack of candor in the testimony before the Court.

2 The page 7 of that document at paragraph B in bold  
3 print, Your Honor.

4 THE COURT: 7? B?

5 MR. MUSHKIN: Page 7. It's 000160.

6 THE COURT: I'm there.

7 MR. MUSHKIN: Acknowledgment and condition applicable  
8 to lease agreement options to extend have terminated. And then  
9 it goes on to say the parties have exercised, et cetera, have  
10 terminated, bold print, and it's pretty clear why, Judge, and  
11 that is because this document extends everything to March  
12 31st where it says it's over, end of relationship. You have  
13 to pay by the 31st. There is a provision in the consent to  
14 lease, a prior document, that gives CBC the right to terminate  
15 the lease agreement as well. But this makes it even more clear  
16 terminating the lease.

17 Now, so what you have, and, Your Honor, frankly  
18 occupancy is not an issue today. Today is only a motion to  
19 stop the foreclosure and a preliminary injunction.

20 THE COURT: And for dec relief on certain of the five  
21 things in the trial that --

22 MR. MUSHKIN: Yes, ma'am.

23 THE COURT: -- we have -- you have stipulated to.

24 MR. MUSHKIN: Yes.

25 So, but my 50(b) motion is simply to the preliminary

1 injunction issue. And what I want to conclude with in terms of  
2 my comments are the --

3 Court's indulgence one minute.

4 So the testimony that was given was that CBC hadn't  
5 performed and that SHAC had performed; do you recall that  
6 testimony, Your Honor?

7 THE COURT: I do recall that testimony.

8 MR. MUSHKIN: There is no testimony, and there is no  
9 question that there has -- the various obligations of the SJCV  
10 party have not been met. There have not been a quiet-title  
11 action. They've produced no applications for financing.  
12 They've not retired the debt. They have not paid the --  
13 there's just step after step that was not done, but yet the  
14 testimony before you is that somehow they performed and CBC  
15 haven't. They have no evidence of that. So in order to obtain  
16 extraordinary relief by way of a preliminary injunction, they  
17 must make this showing.

18 Respectfully, Judge, they have not gotten close.  
19 There is no showing that anything other than a due obligation  
20 secured by a deed of trust on the property, parol evidence rule  
21 bars all of this stuff that was testified to. There's been no  
22 emails produced. The prior testimony that somehow there was  
23 wrong language or it was substituted, it violates the parol  
24 evidence rule. It goes against the clear meaning of an  
25 unambiguous contract, Judge. Respectfully, the preliminary

1 injunction should be off the table.

2 THE COURT: Thank you.

3 Mr. Gutierrez.

4 MR. GUTIERREZ: Thank you, Your Honor.

5 I think the first issue raised in the 50(a) motion  
6 was on standing, and, Your Honor, Spanish Heights Acquisition  
7 Company acquired the property, and they said there was no harm  
8 to the company. Well, the harm is if they acquired a property  
9 with a deed of trust that's invalid. So they have standing to  
10 make this objection. You know, the standard under 50(a) is  
11 that we haven't met our burden, which we believe the evidence  
12 we presented not only through the testimony, but the documents  
13 has met this burden.

14 The next issue is consideration. The testimony about  
15 consideration was clear. Both Mr. Hallberg and Mr. Antos got  
16 up and said, yeah, there is no consideration. That's what they  
17 said. They said, well, there may have been indirect benefit to  
18 the trust beneficiaries. Where was the consideration? They  
19 both testified. That's the evidence before the Court.

20 They discuss -- you know, Mr. Bloom discussed in his  
21 testimony the misrepresentation regarding the third deed of  
22 trust and what it allegedly secured. He can't waive what he  
23 does not know, and that's an issue that is before the Court.  
24 It's a factual dispute that's before this Court.

25 The next issue they went down to is on CBC's failure

1 to make payments under January, February and March of 2020.  
2 It's our position that was a material breach on their end that  
3 excused any performance on First 100's position. If they came  
4 back later and made those payments and didn't pay any late fees  
5 and interest, that doesn't excuse the fact that they initially  
6 breached by failing to make those payments, and that's the  
7 issue -- that's what's before this Court at this stage.

8           There was a lot of, you know, arguments about on --  
9 by Mr. Mushkin on evidence that's not before the Court, but the  
10 evidence we have is the testimony of Mr. Hallberg and from  
11 Mr. Antos when we walked through the history of this  
12 transaction, and it's clear it's a commercial restaurant loan  
13 that was never -- that was secured by the Antoses individually.  
14 That was secured. There were 10 amendments where they then  
15 added an additional borrower. So they knew what they were  
16 doing when they added an additional borrower. But then they go  
17 and they never actually add the Antos Trust as an additional  
18 guarantor until 2017, which is after the two deeds of trust  
19 have already issued.

20           So I even asked Mr. Hallberg yesterday about the  
21 effect of his 2014 agreement. Is this a guarantee? He's like  
22 I don't think it is. He knew, and these documents were all  
23 prepared by their attorneys in Washington.

24           So, Your Honor, we have several issues and factual  
25 disputes that are before this Court that I believe this honor

1 has -- Your Honor as both the trier of fact in the trier of law  
2 will make these determinations at the end of trial, and I don't  
3 think these obviously address the other two legal arguments  
4 that will be made, which would prevent a foreclosure. You have  
5 the doctrine of merger, which is a legal argument that's going  
6 to be made, and you have clear testimony from Mr. Hallberg and  
7 documents that show that the Antoses assigned to their interest  
8 in Spanish Heights Acquisition Company to CBC Partners I and  
9 that they acquired it.

10 And Mr. Hallberg said yesterday we have a 49 percent  
11 interest in Spanish Heights Acquisition Company. Okay, well  
12 now that's a legal issue before this Court of whether or not  
13 the doctrine of merger applies in this context because they  
14 have now become both the borrower and the lender. Did that  
15 interest merge?

16 Same with the one action rule. They selected the  
17 remedy in acquiring ownership of the property, almost like a  
18 deed in lieu of foreclosure. Does that now prevent them from  
19 foreclosing?

20 Those legal issues are before Your Honor that would  
21 prevent foreclosure. So how can any ruling on a 50(a), a  
22 directed verdict at this stage would be premature. I believe  
23 Your Honor can weigh the facts and the evidence and apply it  
24 with the law that's before this Court.

25 And if you have any questions, Your Honor, I'd be

1 more than happy to --

2 THE COURT: I don't.

3 Mr. Mushkin, anything else?

4 MR. MUSHKIN: Very briefly, Judge.

5 NRS 106.320 defines a future advance of loan money to  
6 a borrower pursuant to an agreement that made after the  
7 agreement is executed. Specifically called out by statute.

8 106.005 states in pertinent part the deeds of trust  
9 create consideration in the promise, but a promise to create a  
10 trust in the future is enforceable only if it is under the  
11 requirements to enforce the note.

12 Your Honor, the plaintiff has said that the trust is  
13 not a borrower. The document that we've provided you shows the  
14 trust became a credit party. The plaintiffs have said the  
15 trust is not the guarantor. We have provided you the exhibit  
16 that shows the trust became the guarantor. In fact, the trust  
17 became a guarantor as a part of the transaction.

18 I'd like to take you to one last exhibit, Your Honor,  
19 and then I'll hopefully allow you to rule in my favor on the  
20 motion.

21 The emails have been admitted, and Mr. Bloom  
22 testified about an email that I would direct the Court's  
23 attention to.

24 THE COURT: What exhibit number?

25 MS. FOLEY: 104. It's going to be a --



1 THE COURT: Hold on.

2 MS. FOLEY: -- a specific page.

3 THE COURT: Dulce is going to send me to it.

4 MR. MUSHKIN: Hang on.

5 THE COURT: I've got to get the exhibit first. And  
6 then I'll go to the page you tell me. 104.

7 THE CLERK: Okay. This is --

8 MR. MUSHKIN: And it is at 003618.

9 THE CLERK: Okay. Because it's a thousand pages. So  
10 I can't email (indiscernible) so I have to get the page.

11 3618?

12 MR. MUSHKIN: 003618.

13 THE CLERK: Mine only goes up to --

14 MS. FOLEY: There should be three 104s in the folder.

15 THE COURT: Can you use the Elmo?

16 MR. MUSHKIN: Yes.

17 THE CLERK: Sorry.

18 THE COURT: Dulce can't email the document to me  
19 because it's too big.

20 MR. MUSHKIN: It's one page, Judge.

21 THE COURT: No. I mean the exhibit is thousands of  
22 pages.

23 MR. MUSHKIN: No. No. I -- you know you asked me if  
24 I can use the Elmo. Of course, I can.

25 THE COURT: You know what an Elmo is.

1 MR. MUSHKIN: Your Honor, I'm a high-tech kind of  
2 guy. Not.

3 THE MARSHAL: Do we need to blow them up, Judge?

4 MR. MUSHKIN: Yeah.

5 THE COURT: He's got it. He knows what he's doing.

6 THE MARSHAL: Okay.

7 THE COURT: Mr. Gutierrez knows how to do a  
8 PowerPoint, but Mr. Mushkin knows how to work the Elmo.

9 MR. MUSHKIN: That might say something about our age,  
10 Judge.

11 MS. FOLEY: Together we could do a whole show.

12 MR. MUSHKIN: So, Judge, let's kind of go through  
13 this real quick.

14 First of all, and this literally goes to the  
15 credibility of the witness that it -- it defies all logic.

16 THE COURT: But you know on a 50(a) I'm not supposed  
17 to weigh credibility.

18 MR. MUSHKIN: Your Honor, 50(a) says they have to  
19 meet a burden. How can the Court not weigh credibility if  
20 there's a burden to reach? It makes no sense.

21 So all I want to do is show that the timing and the  
22 timeline of events in this case make it impossible for the  
23 security in the judgment to have replaced the collateral of the  
24 pledge of the Spanish Heights Acquisition Company.

25 The first paragraph are SHAC as buyer obligations.

1 The second is the third lender obligations. And if you notice,  
2 at the bottom of this it -- oh, I'll go down a little farther,

3 My thoughts in this proposal give the  
4 third lender a full recovery of its note  
5 balance --

6 THE COURT: You've got to push it up a little bit  
7 further.

8 MR. MUSHKIN: Sorry.

9 THE COURT: It's okay.

10 MR. MUSHKIN: Oh, there it is.

11 -- a full recovery of its note balance,  
12 plus all protective advances past and future;  
13 interim cash flow; provides interim  
14 additional full collateral where given the  
15 current value of the property, the third  
16 position lender is currently unsecured.

17 Do you see that, Your Honor?

18 THE COURT: I do.

19 MR. MUSHKIN: That's in July. So under the rules,  
20 they have to make a showing of a likelihood of success on the  
21 merits. With the parol evidence rule, Your Honor, and the  
22 testimony of both Mr. Antos and Mr. Hallberg, the plaintiff has  
23 failed to do so, and I respectfully request that this Court  
24 rule against them on the issue of a preliminary injunction.

25 THE COURT: Thank you.

1           While there is significant evidence that would  
2 support the argument that Mr. Mushkin is making, it would force  
3 the Court to weigh the credibility and the evidence at this  
4 time. I cannot do that under 50(a).

5           So I am denying the motion for you to finish the case  
6 and then make your final arguments.

7           So would you like a break before we start your case  
8 in chief?

9           MR. MUSHKIN: Your Honor, I'd just as soon go back on  
10 until about noon and then break for lunch.

11           THE COURT: All right.

12           MR. MUSHKIN: Unless the staff or anybody else needs  
13 a break.

14           THE COURT: Do you guys need a break?

15                   (No audible response.)

16           THE COURT: They say no.

17           Next witness.

18           MR. MUSHKIN: Mr. Bloom.

19           THE COURT: Mr. Bloom. Come on back up. You've  
20 already been sworn today so I'm not going to swear you again.

21           And tomorrow we'll start at 9:30 if we don't finish  
22 today because I have a 9:00 o'clock hearing.

23                   **JAY BLOOM**

24           (having been recalled as a witness and previously sworn,  
25 testified as follows:)

DIRECT EXAMINATION

BY MR. MUSHKIN:

Q Mr. Bloom, let's go over your testimony. You testified that you and your wife and your son and your in-laws live in the house; is that correct?

A That's correct.

Q There are other people that live in the house too, aren't there?

A No.

Q Well, that's not what you testified to at your deposition. Have the living arrangements changed?

A Yes.

Q What's changed?

A We had somebody that worked for us that no longer does has moved out.

Q Your testimony at your deposition you had two other people living there.

A Yes.

Q Who were those people?

A Albert Ramirez (phonetic) has moved out, and James Burn (phonetic) has moved out.

Q And what did those people do for you?

A Albert Ramirez was a business partner, and James Burn helped around the house.

Q Your testimony is that SJCV is the owner today of

1 51 percent of the interest in Spanish Heights Acquisition  
2 Company; is that correct?

3 A That's correct.

4 Q And you've testified that SJCVC holds other projects?

5 A Correct.

6 Q What are those projects?

7 MR. GUTIERREZ: I'm going to object as to the  
8 relevance, Your Honor.

9 THE COURT: Overruled.

10 You can answer.

11 THE WITNESS: They range from real estate projects to  
12 entertainment projects to renewable energy projects. There's  
13 a -- there's a number of them.

14 BY MR. MUSHKIN:

15 Q Well, let's go through them, sir.

16 Before you do that, why would you -- why did you  
17 refuse to answer this question at the time of your deposition?

18 A Well, because the specifics of the projects are  
19 covered by confidentiality agreements that would preclude my  
20 answering the level of detail that you were asking about.

21 Q Well, I asked you for the confidentiality agreement.  
22 Do you recall that in your deposition?

23 A No, I don't recall that.

24 Q Well, let's go to your deposition.

25 THE COURT: So, Mr. Gutierrez, do you have a copy of



1 the deposition you want to share with the witness, or do you  
2 want us to do it on the Elmo?

3 MR. MUSHKIN: I'd like to publish the deposition,  
4 Your Honor.

5 THE COURT: You can't publish it. Well, publish it  
6 electronically. He can't take it. It's paper. I know.

7 MR. MUSHKIN: I'm an old -- I'm an old dog.

8 THE COURT: I can't do the whole Nevada thing of  
9 unsealing the hermetically sealed envelope with the bar napkin.

10 MS. FOLEY: They are numbered 130 and 131 in the  
11 dropbox.

12 THE CLERK: Is it Volume I or II?

13 MS. FOLEY: He'll start with Volume I.

14 MR. GUTIERREZ: Your Honor, I have a copy of -- my  
15 copy I can give to Mr. Bloom for his review if that's okay with  
16 the Court.

17 THE COURT: Mr. Bloom, go run back over there to your  
18 table, and your counsel will hand you your depo, and you can  
19 come on back up.

20 But I'm not going to let him approach because I get  
21 too crowded in the well, and I need to keep everybody at least  
22 6 feet away from everybody else.

23 MR. GUTIERREZ: This is Volume I.

24 THE COURT: Can you get him Volume 2 too since it  
25 sounds like we're going there too.

1 MR. GUTIERREZ: Yeah. I've got both of them.

2 THE COURT: Thank you. You are on top of it.

3 MR. GUTIERREZ: Thank you, Judge.

4 THE COURT: And because I know what's going to  
5 happen, Mr. Bloom, I am handing you, but not getting close to  
6 you, binder clips.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Thank you for helping us with the social  
9 distancing except within your own teams, which I can't really  
10 control.

11 All right. Where do you want him to go?

12 The depositions I and II are both published, the electronic  
13 versions. So do what you need to do now.

14 BY MR. MUSHKIN:

15 Q Are you ready, Mr. Bloom?

16 A Yes.

17 Q I asked you what was the source of funds for SJC  
18 making the advances on behalf of SHAC. Do you recall that  
19 question?

20 A Can you point me to the page you're on in the --

21 Q Well, first I'm asking you if you recall the  
22 question.

23 A Vaguely.

24 Q Okay. And do you know what your answer was?

25 A I don't recall.

1 Q I'll read you your answer, and you can read along at  
2 page 9 of your deposition if you'd like.

3 A Which half?

4 Q Volume I, page 9.

5 A Okay. Okay.

6 Q And you see your answer,

7 SJC holds various business interests  
8 from which it generates income.

9 Do you see that?

10 A I do.

11 Q And what are those various business interests?

12 Do you see that?

13 A I do.

14 Q And what was your answer?

15 A I questioned the relevance of the question.

16 Q You made an objection, didn't you, sir?

17 A I did.

18 Q Your attorney didn't, did she?

19 A No, I did.

20 Q Thank you. And you were here as a 30(b)(6); is that  
21 correct?

22 A Correct.

23 Q Are you an attorney?

24 A I am not.

25 Q Are you aware that under the rules of 30(b)(6) a

1 corporation cannot represent itself?

2 A I am.

3 Q Okay. Yet you still made objections throughout the  
4 deposition?

5 A I did.

6 Q Thank you.

7 And so you objected, and then the question was, the  
8 next question was, You still have to answer the question,  
9 Mr. Bloom.

10 And do you know what your answer was at the time --  
11 well, before you read it, do you know what your answer was at  
12 the time?

13 A I have it in front of me, and I've read it.

14 Q Okay. And so is that still your testimony?

15 A Yes.

16 Q Well, the Judge just told you had to answer. So  
17 that's not your testimony today, is it?

18 A That was my testimony up until the Judge's decision  
19 that the objection was overruled.

20 Q So is it your testimony that any time you object you  
21 don't have to answer a question?

22 MR. GUTIERREZ: Object, Your Honor.

23 BY MR. MUSHKIN:

24 Q Until a Judge rules?

25 MR. GUTIERREZ: Objection. Argumentative.

1 THE COURT: Overruled.

2 You can answer.

3 THE WITNESS: That's my understanding until the Judge  
4 or the discovery commissioner rules as to the legitimacy of the  
5 question or the applicability of the question or the  
6 appropriateness of the question.

7 BY MR. MUSHKIN:

8 Q And where did you learn this, sir?

9 A In my past I've been involved in litigations with  
10 other parties through various businesses.

11 Q And have you ever been before the discovery  
12 commissioner?

13 A I have prior to her being appointed to the -- or  
14 prior to her election to the Supreme Court -- or appointment --  
15 oh, no, she's on the appellate court.

16 Prior to her appointment to the appellate court.

17 THE COURT: And that would be Commissioner Bulla?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. MUSHKIN:

21 Q And did you learn at that hearing in front of Judge  
22 Bulla that somehow you didn't have to answer a question until a  
23 Judge or a commissioner ruled on an objection?

24 A That's my understanding.

25 Q So I asked you the question again, and your answer

1 is --

2 I'm going to ask the question again. What are the  
3 source of funds SJCV used to pay for SHAC's obligations to CBC?

4 Various sources of funds. There are various sources  
5 of funds. The documents speak for themselves. Your question  
6 is overly broad, and I'm not going to get into SJC's business  
7 outside its relevant to this matter.

8 Do you see that?

9 A I do.

10 Q And I asked the court reporter to certify the  
11 question; correct?

12 A You do.

13 THE COURT: Do you still certify questions?

14 (No audible response.)

15 THE COURT: Nevermind.

16 MR. MUSHKIN: The reporter didn't say no I don't do  
17 that anymore.

18 THE COURT: They tell me they just mark them.

19 MR. GUTIERREZ: Yeah.

20 BY MR. MUSHKIN:

21 Q So we had a rather lengthy discussion about your  
22 ability to object. Do you recall that, sir?

23 A You asked a lot of questions that day. I don't  
24 recall with specificity this one question.

25 Q I'm not sure that was responsive to my question, sir.



1 A I don't recall with specificity --

2 Q Would you like me to read back my question?

3 THE WITNESS: Please.

4 THE COURT: He says he doesn't remember.

5 BY MR. MUSHKIN:

6 Q I asked you, What representations that you made to  
7 CBC upon entering into the transaction?

8 Do you see that question?

9 A Which page and which line?

10 Q Page 10, line 16?

11 A I do.

12 Q And Ms. Barraza objects as to form. Do you see that?

13 A I do.

14 Q Now, I notice that you answered the question. So if  
15 your understanding is that you don't answer until somebody  
16 rules on it, why are you answering questions then, sir, after  
17 an objection?

18 MR. GUTIERREZ: Objection, Your Honor. Misstates the  
19 testimony. Relevance.

20 THE COURT: Overruled.

21 You can answer.

22 THE WITNESS: That's not what I said. I didn't say  
23 that you don't answer questions after an objection. I said  
24 that if you choose not to answer a question with an objection,  
25 you can -- my experience has been you can request a decision

1 from the discovery commissioner about whether an answer can be  
2 compelled.

3 BY MR. MUSHKIN:

4 Q Did your attorney seek any sort of protection for any  
5 of these questions, sir?

6 A I don't know that she did.

7 Q And then you answered the question, and you answered,  
8 The question is overly broad as well. Do you have a specific  
9 representation or representations to which you are referring?  
10 And do you see my response to you?

11 A Yes. Your response was, I'm asking the questions.  
12 You don't get to tell me whether my questions are overly broad.

13 Q Your lawyer can make that objection, but you don't  
14 get to object. Your (sic) answer my questions.

15 And then do you see your response?

16 A (No audible response.)

17 Q Mr. Mushkin, I get to enter objections as well, and I  
18 just did. So if you would like to make a more specific  
19 question, I'd be happy to address it.

20 Do you see that?

21 A Correct.

22 Q I'm asking you.

23 And then you answer, All representations over the  
24 last four or five years is overly broad, and I'm not able to  
25 answer.

1 Do you see that?

2 A Yes.

3 Q And then I go on to ask you, I'm asking about the  
4 representations that you made before you signed the agreements  
5 in question in this case. I'm asking about specific  
6 representations that you made to CBC. Do you recall any of  
7 them?

8 And what was your response, sir?

9 A Not off the top of my head. If you have a specific  
10 representation or representations you would like to ask me  
11 about, I'd be happy to address them.

12 Q And is it your testimony before this Court at the  
13 time of your deposition you didn't remember any of the  
14 representations that you made?

15 A Um...

16 Q Well, let's go through them, sir.

17 A Yeah, that would be --

18 Q There's a hundred thousand dollars in repairs. You  
19 didn't remember about the hundred thousand in repairs?

20 A No, I did not remember about the hundred thousand  
21 dollars in repairs.

22 Q There was a quiet title action --

23 A I'm sorry. I'm still answering the question.

24 THE COURT: You got to let him finish, Mr. Mushkin.  
25 You can finish, sir.

1 THE WITNESS: No, I did not remember any of the  
2 representation specifically in the context of the question. If  
3 you had asked me about the \$100,000, that would have refreshed  
4 my recollection, and I would've been able to answer it, and I  
5 can do so now.

6 BY MR. MUSHKIN:

7 Q So you didn't remember about the hundred thousand;  
8 correct?

9 A Not at the time you asked me the question.

10 Q And you didn't remember about the quiet-title action;  
11 correct?

12 A Not at the time you asked me the question during the  
13 deposition.

14 Q And you didn't remember about the balloon payment;  
15 correct?

16 A I knew that there was a balloon payment that was due,  
17 but I didn't think of it in terms of a representation.

18 Q And you --

19 A Which is why I was asking for clarification.

20 Q You didn't remember the...

21 A You can't remember?

22 Q No. I have a whole list. I'll deal with them in  
23 order.

24 You didn't remember any of them. Okay.

25 So then I asked you, Do you recall providing tax

1 returns?

2 Do you remember what you answered?

3 A Yes. I have it in front of -- I don't remember, but  
4 I'm reading the transcript. So I answered, I do not.

5 Q That's not true, is it?

6 A No, that's true.

7 Q Sir, you provided tax returns in this case in advance  
8 of the forbearance agreement. We've admitted them in evidence.  
9 Would like me to show them to you?

10 A Are you talking -- what tax returns? Because I  
11 understood this to be tax returns with respect to Spanish  
12 Heights Acquisition Company. So I --

13 Q I asked you if you provided tax returns. It doesn't  
14 say any party. I asked you if you provided tax returns?

15 A In the context of the question, I understood your  
16 question to be tax returns related to Spanish Heights  
17 Acquisition Company.

18 Q Okay. So then I direct your attention to 1041.  
19 And what do you say?

20 A So you said, Oh, no, I'm lying.  
21 And then I said, Certainly.

22 Q It's 1044.

23 A You said, It's 1044. We're going to pull it up to  
24 you.

25 And I said, Thank you.

1 Q And now I show you the federal tax returns; correct?

2 A (No response.)

3 Q Your 2014 --

4 A Yes.

5 Q -- federal U.S. individual income tax return to CBC.

6 Do you see that?

7 A I do.

8 Q And what was your answer?

9 A I said I'm not confirming or denying I provided my  
10 tax return. I just don't have a recollection.

11 Q So when you're provided the document, you still don't  
12 remember providing it, sir?

13 A I didn't at the time of the deposition. There were a  
14 lot of documents flying in a very short period of time.

15 Q Did you have counsel for the preparation and  
16 execution of the forbearance agreement?

17 A I don't remember having counsel. I don't think I  
18 used counsel for it.

19 MR. MUSHKIN: Court's indulgence one minute.

20 THE COURT: Okay.

21 (Pause in the proceedings.)

22 BY MR. MUSHKIN:

23 Q Mr. Bloom, can you see Exhibit 104, page 001801?

24 A I can. Yes.

25 Q And the subject is loan docs; correct?



1 A Correct.

2 Q And can you see who it's to?

3 A It's to me.

4 Q And who is that from?

5 A It's from Vernon Nelson, the attorney for CBC.

6 Q I don't think so. Look at the top of the page:

7 8/27/2017; 10:17 a.m.; from Jay Bloom to Vernon Nelson, Jay

8 Bloom --

9 A Hang on a second. The top of the page says from  
10 Vernon Nelson to Jay Bloom. I don't know if there's more above  
11 that.

12 Q Sir, 1801.

13 THE COURT: He may have --

14 MR. GUTIERREZ: Your Honor, I just object.

15 THE COURT: -- not all of the document's showing on  
16 the Elmo. Thank you.

17 MR. MUSHKIN: Oops.

18 THE COURT: It's all right. We'll help you.

19 MR. MUSHKIN: Thank you, Judge.

20 MR. GUTIERREZ: I was (indiscernible) confusing --

21 MR. MUSHKIN: I said I know how to use the Elmo.

22 MR. GUTIERREZ: I thought you knew how to use that.

23 MR. MUSHKIN: Obviously not.

24 Sorry, Mr. Bloom.

25 / / /

1 BY MR. MUSHKIN:

2 Q Now, let's take a look at it.

3 From Jay Bloom to Vernon Nelson. Copy Alan Hallberg,  
4 Joseph Gutierrez. Regarding loan docs,

5 I have copied my counsel Joe Gutierrez  
6 on my comments as well so we can conduct  
7 parallel discussions with our respective  
8 attorneys. Please see below and attached.

9 Do you see that, sir?

10 A I do.

11 Q Does that refresh your recollection as to who your  
12 attorney was for this transaction?

13 A So Mr. Gutierrez was the attorney for First 100. He  
14 was copied because First 100 had to sign off on -- and his firm  
15 had to sign off on the assignment under the judgment to CBC.

16 THE COURT: So you're saying "my counsel" didn't mean  
17 "my counsel." It meant First 100's counsel?

18 THE WITNESS: Yeah. I've used that --

19 THE COURT: Okay. It's all right. I'm just asking  
20 if that's what your testimony is.

21 THE WITNESS: Yeah. In this -- yes.

22 THE COURT: Okay.

23 MR. MUSHKIN: There's no question before you,  
24 Mr. Bloom.

25 THE WITNESS: There was a question from --

1 BY MR. MUSHKIN:

2 Q Now, let's go a little farther.

3 THE COURT: Same document?

4 BY MR. MUSHKIN:

5 Q It's the prior email from Vernon Nelson to you,  
6 Mr. Bloom. Do you see that?

7 A I do.

8 Q And here's a draft of the loan document. Do you see  
9 that?

10 A I do.

11 Q Do you see the deal points?

12 A (No response.)

13 Q Why don't you take a minute and look at that.

14 A I'm reading it now.

15 I think, if you're asking me about --

16 Q I'm not asking you yet, sir. I'm just asking you to  
17 take a look at it. When you're ready, I'll start asking  
18 questions.

19 A Okay. When you say take a look at it, you were  
20 referencing the deal points. The deal points seemed to go off  
21 the bottom of the page on the Elmo.

22 Q They do. When you're down at the bottom, I'll give  
23 you the next page. Just let me know.

24 A Okay. I'm down at the bottom.

25 Q Have you gotten all the way through paragraph 4?

1 THE COURT: He couldn't because it wasn't all on the  
2 screen.

3 Okay. And if you could move it over to the left a  
4 little bit. There you go. Stop.

5 Mr. Bloom, can you --

6 You got to push it up just a tad.

7 Mr. Bloom, can you read the whole thing now, the rest  
8 of 4?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Let us know when you're done.

11 MS. FOLEY: Michael, can you move your finger. Thank  
12 you.

13 THE WITNESS: Okay.

14 THE COURT: Is there more on the next portion of the  
15 email?

16 MR. MUSHKIN: Yes.

17 BY MR. MUSHKIN:

18 Q Are you done?

19 A Yes.

20 MS. FOLEY: Scoot it to the left a little.

21 THE WITNESS: Do you want to -- I'm done with what's  
22 on the screen if you want to slide it down it more.

23 MR. MUSHKIN: Okay.

24 THE WITNESS: Well, I haven't seen the rest of the  
25 document.

1 MR. MUSHKIN: No. We're going to get to the rest of  
2 it.

3 BY MR. MUSHKIN:

4 Q Do you see that, sir, where it says concurrent with  
5 the attorneys and CBC Partners?

6 A No, it's off the --

7 Q -- thanks much, Jay?

8 MR. GUTIERREZ: It's --

9 MS. FOLEY: Scoot it down a little.

10 THE WITNESS: It's off the screen.

11 MR. GUTIERREZ: Objection. Your Honor, this is not  
12 the document that's being shown.

13 THE COURT: Can you scoot down.

14 MR. GUTIERREZ: There you go.

15 BY MR. MUSHKIN:

16 Q Do you see that?

17 THE COURT: Do you see it in blue at the top?

18 THE WITNESS: Yeah, I do see it.

19 THE COURT: Okay.

20 BY MR. MUSHKIN:

21 Q Okay. So do you see anywhere in here where it talks  
22 about substitute collateral?

23 A Well, I don't know. It was at the bottom of the page  
24 that you didn't go down to.

25 Q There's nothing at the bottom.

1 THE WITNESS: Oh, no, the previous page that you only  
2 showed half the page.

3 THE COURT: And that was the part we looked at all  
4 the way to 4, remember? So if you go all the way to the bottom  
5 where we see 4 again.

6 THE WITNESS: Right. Then there was the next page  
7 that he put up.

8 BY MR. MUSHKIN:

9 Q 5.

10 A Right. And then the bottom of this page you  
11 didn't --

12 Q So it would be 7, security agreement.

13 A So the collateral --

14 Q And then the end of the letter there?

15 A No. Right. But the previous page --

16 MR. GUTIERREZ: Objection, Your Honor --

17 THE WITNESS: -- that you just pulled away --

18 MR. GUTIERREZ: -- he's trying to answer the  
19 question.

20 THE COURT: Could you go back to the prior page.  
21 Okay.

22 THE WITNESS: So your question was there any other  
23 collateral --

24 MR. MUSHKIN: No, sir.

25 / / /



1 BY MR. MUSHKIN:

2 Q Substitute collateral?

3 A Yeah. That portion of the SJC beneficial interest in  
4 the judgment is necessary to secure the secured -- and the  
5 language goes off the page -- estimated to be about  
6 \$700 million. We only need to secure about 3 million.

7 So, yeah, that's the substitute collateral.

8 Q Where does it say substitute collateral?

9 A That's the purpose of the collateral.

10 Q Show me where it says that, sir?

11 A It's not in that language, but conceptually that's  
12 what it is.

13 Q In fact, in your email that I read to you earlier, it  
14 said additional collateral, didn't it?

15 A Yes.

16 Q Thank you. And I wanted to show you that one more  
17 time, sir. Because not only does it say additional, it says  
18 additional full collateral, doesn't it?

19 A Where are you looking?

20 Q My thoughts is that this proposal gets the third  
21 lender a full recovery of its note balance plus all protected  
22 advances past and future, interim cash flow and provides  
23 interim additional full collateral where given the current  
24 value of the property of the third position lender is currently  
25 unsecured; correct?

1           A     Where given the current value of the property, the  
2 third position --

3                     If you could scroll over.

4           MS. FOLEY:   Scoot to the left, Michael.

5           THE WITNESS:  -- is currently unsecured.

6                     Yes, that's what it said, and that was the context of  
7 the proposal initially.

8 BY MR. MUSHKIN:

9           Q     And you wrote this document, didn't you?

10          A     Well, I wrote the responses to an email that was sent  
11 to me.  So part of it was written by me.

12          Q     Okay.  You don't argue that the pledge agreement  
13 recites a hundred percent of the interest; correct?

14          A     Correct.

15          Q     Yet you just alleged that -- I'm going to do it  
16 again.  I'm going to get it out of order, SJCVC -- is that the  
17 right order?

18          A     SJCVC.

19          Q     I keep questioning it now.

20          A     You got it.

21                 MR. MUSHKIN:  I reversed it one day, Judge, and I'm  
22 just lost.  I can't get in the right order.

23 BY MR. MUSHKIN:

24          Q     SJCVC.  You don't argue that the forbearance agreement  
25 says a hundred percent; correct?

1 A Yes. Although it's not signed by SJCVC.

2 Q No, the forbearance agreement.

3 A Oh, the forbearance agreement, yes.

4 Q Yes. And the forbearance agreement is signed by  
5 SJCVC?

6 A Right.

7 Q And you don't argue that the amended forbearance says  
8 a hundred percent; correct?

9 A Correct.

10 Q And that the amended forbearance agreement is signed  
11 by SJCVC.

12 A Correct.

13 Q And you don't argue that each of those documents  
14 contained merger clauses, do you?

15 A Which merger clause are you referring to?

16 Q That all modifications had to be in writing?

17 A Well, you'd have to show me the documents.

18 Q Okay. I'll show you.

19 (Pause in the proceedings.)

20 BY MR. MUSHKIN:

21 Q I would direct your attention to Exhibit 1.

22 Now, Mr. Bloom, who are the parties to this  
23 agreement?

24 A Kenneth and Sheila Antos Living Trust, CBC  
25 Partners I, Kenneth and Sheila Antos individually, and

1 SJC Ventures.

2 Q Spanish Heights Acquisition Company is also a party,  
3 are they not? Look at the first page, sir.

4 A I'm looking at the signature page because that's  
5 who's a party to the agreement. They have to sign it to be  
6 party.

7 So, no, I'm not seeing Spanish Heights as a signatory  
8 to this.

9 Q Take a look at the first page. It recites Spanish  
10 Heights Acquisition Company, LLC, and SJC Ventures. Do you see  
11 that?

12 A I do.

13 Q But then discloses the amended note; is that correct?

14 A Where are you at?

15 Q Paragraph 2.

16 A Yes.

17 Q And it tells you the date; correct?

18 A Well, it says, The amended note is secured by  
19 personal guarantees --

20 Q Just above that, sir.

21 A -- signed by Kenneth and Sheila Antos --

22 Q It gives you the date of 2012, June 22nd, 2012, and  
23 identifying the note in paragraph 1; correct?

24 A In paragraph 2, it does not.

25 Q I'm asking you about paragraph 1, sir.

1           A     Okay. You had me looking at paragraph 2.

2                     In paragraph 1, yes, it addresses the date of June  
3 22nd, 2012.

4           Q     And it says at the fourth line of that -- the third  
5 line of that paragraph,

6                             All of which have been executed by KCI  
7                     Investments and Preferred Restaurant Brands,  
8                     Inc.

9                     Do you see that?

10          A     I do.

11          Q     So it was disclosed to you in advance of  
12 September 27th that the KCI and Preferred were parties to the  
13 note; is that fair?

14          A     It was disclosed as part of this document. It was  
15 never discussed, and I didn't know the nature of KCI and  
16 Preferred Restaurant Brands involvement in the note, whether  
17 they were co-guarantors, co-borrowers. I didn't have any  
18 context in which to put that --

19          Q     Okay. Well, let's --

20          A     -- and quite frankly, I didn't even look at their  
21 names in this forbearance agreement.

22          Q     Okay. So you didn't read it. Is that what you're  
23 saying?

24          A     I read it, but I didn't -- I didn't pick up the  
25 names.

1 Q No problem.

2 Now let's look at the second paragraph. The amended  
3 note is secured by certain personal guarantees signed by  
4 Kenneth and Sheila Antos. Do you see that?

5 A I do.

6 Q The amended note is also secured by certain security  
7 agreements, subsidiary guarantees and inter-creditor  
8 agreements, deeds of trust, assignment of rents and fixture  
9 filings collectively the security agreements. Do you see that?

10 A I do.

11 Q So you were aware that there were other guarantees;  
12 correct?

13 A Again, at the time it didn't register it, but yes, in  
14 this document it clearly says that -- it clearly references the  
15 security agreements, which we've come to learn represent the  
16 security agreements of the borrower KCI and Preferred  
17 Restaurant Brands.

18 Q So the paragraph 5 says, pursuant to the terms  
19 hereunder, the Antos Trust intends to convey the property to  
20 SHAC. Do you see that?

21 A Yes.

22 Q Okay. Paragraph 4, SHAC intends to rent the property  
23 to SJCv. Do you see that?

24 A Paragraph 4?

25 Q Yes.



1           A     Okay. We have two paragraph 4s. Paragraph 4 on  
2 page 3 --

3           Q     You are correct.

4           A     Yes, paragraph 4 on page 3 says that.

5           Q     Okay. Then paragraph B starts at the bottom of the  
6 page, amended note and advance of default. Do you see that?

7           A     I do see it.

8           Q     So and you signed this document on behalf of SHAC and  
9 on behalf of SJCV; right?

10          A     I signed this document on behalf of SJC.

11          Q     Okay. So you don't dispute the numbers contained in  
12 this paragraph; is that correct?

13          A     Paragraph 4 on page 3?

14          Q     Paragraph 1 at the bottom of page 3.

15          A     Okay.

16          Q     And it goes on to page 4.

17          A     Yeah. To the extent that the Antos party refers to  
18 Kenneth and Sheila Antos individually, no, I don't dispute  
19 these numbers.

20          Q     And you don't dispute the numbers as they relate to  
21 the note and deed of trust specifically, do you?

22          A     Well, I dispute the numbers as they relate to the  
23 deed of trust. I don't dispute the note -- I don't dispute the  
24 numbers as they relate to the commercial loan to the  
25 restaurant.

1 Q I believe I understand your testimony. I believe  
2 what you're saying is what you testified earlier, that somehow  
3 the deed of trust is defective and doesn't convey a security  
4 interest. Is that what you're trying to say?

5 A Well, there's a commercial restaurant loan; right?  
6 And there's --

7 Q Which was disclosed in the very beginning to you.

8 A I'm sorry. I'm still answering.

9 THE COURT: You've got to let him finish,  
10 Mr. Mushkin.

11 Mr. Bloom.

12 THE WITNESS: There's a commercial restaurant loan.

13 In 2014, there is a deed of trust by the Antos Trust  
14 which has no nexus to that loan. It's not a borrower. It's  
15 not a guarantor.

16 So, yes, the deed of trust has a defect, and this  
17 note would not be applicable to the deed of trust. The deed of  
18 trust at the time it issued secured an obligation of zero.

19 BY MR. MUSHKIN:

20 Q So let's --

21 THE WITNESS: Which created the defect.

22 MR. GUTIERREZ: And, Your Honor, I'm going to just  
23 object. He's still -- he's interrupting Mr. Bloom.

24 MR. MUSHKIN: Sorry. I thought you were done.

25 THE COURT: All right. You finished; correct,

1 Mr. Bloom?

2 THE WITNESS: Yes.

3 THE COURT: All right. Now, Mr. Mushkin.

4 BY MR. MUSHKIN:

5 Q So now let's take a look at page 5 of this document  
6 under paragraph 2. What's the title of that paragraph, sir?

7 A Reaffirmation of Loans.

8 Q And it says,

9 In pertinent part except as modified by  
10 this forbearance agreement the Antos parties  
11 and the SJCV parties reaffirm all obligations  
12 due to CBC I under the amended note and  
13 modified deed of trust.

14 Do you see that?

15 A I do.

16 Q And did you understand at the time that you signed  
17 this document that you were reaffirming these documents --  
18 reaffirming these documents?

19 A I was reaffirming what I understood at the time it  
20 was signed to be a third mortgage against the property, not a  
21 commercial loan to a restaurant.

22 Q Well, isn't it true that it was disclosed that the  
23 loan was executed by KCI and Preferred Brands?

24 A Not in context. It was never --

25 Q It was disclosed though, wasn't it?

1           A     -- it was never discussed. And while this document  
2 references it, it doesn't say how they were related to what was  
3 represented as a third mortgage, which turned out not to be the  
4 case.

5           Q     I'm going to ask you the question again, sir, and I'd  
6 appreciate it if you'd answer my question.

7                     Isn't it true that it was disclosed that the note was  
8 with KCI and Preferred Brands?

9                     THE COURT: That's a yes or no, sir.

10                    THE WITNESS: Sort of. It was a -- it was a --

11 BY MR. MUSHKIN:

12           Q     It's a yes or no, sir. I don't need an explanation.

13                    THE COURT: It was a yes or no, sir.

14                    THE WITNESS: Yes.

15                    THE COURT: Mr. Gutierrez will allow you to explain  
16 if he needs to you when he gets back up on redirect or cross.

17                    THE WITNESS: Okay. Yes.

18 BY MR. MUSHKIN:

19           Q     So now let's look at paragraph 4.5.

20           A     Okay.

21           Q     Do you see that paragraph?

22           A     I do.

23           Q     And it gives CBC the right to exercise all of its  
24 rights and remedies. Do you see that?

25           A     I do.

1 Q And you signed this document. Do you recall that?

2 A Yes.

3 Q Now let's take a look at the conditions to  
4 forbearance.

5 A Okay.

6 Q 5.1, no new defaults. Do you see that?

7 A I do.

8 Q You allowed a lien to be recorded on this property  
9 for a health and safety hazard; is that correct?

10 A No. I never allowed the lien to be recorded.

11 Q You didn't pay it, did you?

12 A It wasn't a legitimate lien. So I just --

13 Q That's not my question, sir.

14 A I disputed it, and I'm litigating it, and I continue  
15 to litigate it.

16 Q And it is a lien against this property; correct?

17 A And it's being disputed.

18 Q But you haven't bonded this lien, have you?

19 A I have not.

20 Q Okay. So no other lenders; I don't think that was  
21 particularly applicable.

22 The next one says delivery of outstanding items. Do  
23 you see that?

24 A I do.

25 Q The next one is delivery of consent. Do you see

1 that?

2 A I do.

3 Q The next one is,

4 Pursuant to certain sales, finance and  
5 collection of the judgment, the Antos parties  
6 and SJC parties will undertake efforts to  
7 obtain financing to satisfy the note prior to  
8 the termination of the forbearance period.  
9 Such efforts shall include efforts to obtain  
10 alternative finding, SJC efforts to collect  
11 on the judgment and to use any monies  
12 collected to pay the amended note in  
13 accordance with the terms of the judgment  
14 lien pledge agreement described in Exhibit B.

15 Do you see that?

16 A I do.

17 Q Did you make any efforts to refinance the property?

18 A I did.

19 Q And did you provide any documents to show that you  
20 did?

21 A No documents exist. They were all phone calls to  
22 private lenders.

23 Q And do you have the names of those private lenders?

24 A They were introduced by third parties. So it was one  
25 conversation and a quick no. There was insufficient equity in



1 the property to refinance the notes.

2 Q So 5.8 says,

3 During the forbearance period and unless  
4 otherwise agreed to in writing, CBC I, the  
5 Antos parties will not incur any liability or  
6 expend capital expenditures and improvements  
7 over and above the amount of 125,000.

8 Do you see that?

9 A I do.

10 Q Have you provided any evidence to show that you spent  
11 the 100,000 that you contracted for?

12 A This doesn't -- this says I won't spend above  
13 125,000 --

14 Q I understand what it says, sir, but I'm asking you a  
15 specific question. Did you provide any evidence to support  
16 that you spent a hundred thousand dollars to bring this quality  
17 up -- this property to top-quality condition?

18 A Your question was in the context of what I contracted  
19 for, and that's not what the contract says. So yes, I provided  
20 evidence of expenditures.

21 Q What evidence did you provide, sir?

22 A I provided you HVAC repairs, and I believe we  
23 provided the home automation improvements, home automation  
24 system replacement.

25 Q Do you know how much --

1 A And I provided pool -- pool repairs as well.

2 Q So the contract -- let me back it up a little bit.

3 You got possession in advance of the September 27th  
4 date; correct?

5 A Shortly before I believe, yes.

6 Q Sometime in August?

7 A Okay.

8 Q And you requested that to allow for repairs to be  
9 made; correct?

10 A Correct.

11 Q And have you provided any evidence to show that  
12 repairs were made during that period of time?

13 A I don't know that the repairs were required to be  
14 made during that period of time under the agreement.

15 Q That's not my question, sir.

16 My question is did you provide any evidence of  
17 repairs during that period of time? It's a simple yes-or-no  
18 answer.

19 A I believe yes.

20 Q Can you show them to me?

21 A I don't know if they were admitted as exhibits, but  
22 they're receipts for HVAC repairs.

23 Q Is that the only repairs you recall are HVAC repairs?

24 A During that period of time. There are additional  
25 improvements subsequent to that three month period.

1 Q And have you provided receipts to show those  
2 subsequent improvements?

3 A I believe so, yes.

4 Q Okay. I don't want to go into it now, but I'm going  
5 to ask you at the lunch hour to find your repairs so that you  
6 can show them to us at lunch, and when we pick up --

7 THE COURT: Do you mean after lunch?

8 MR. MUSHKIN: After lunch. I'm sorry.

9 BY MR. MUSHKIN:

10 Q You can show them -- we'll go into them after lunch.  
11 I'm going to move on to other parts of the contract right now,  
12 but I'd like you to show me what you've produced.

13 A Okay.

14 THE COURT: So, Mr. Gutierrez, we'll reopen the  
15 courtroom at 1:00 o'clock. So if you want to leave the binders  
16 in here. We'll start 15 minutes after that to give you time to  
17 find the documents if you haven't found them, but we're not  
18 stopping for another 15 minutes.

19 Keep going, Mr. Mushkin.

20 MR. MUSHKIN: Yes, ma'am.

21 BY MR. MUSHKIN:

22 Q Now, I'd like you to look at paragraph 5.9. What's  
23 the title of that paragraph, sir?

24 A Additional collateral.

25 Q Do you see anywhere where it talks about substitute

1 collateral?

2 A No, I do not.

3 Q There's a series of negative covenants; is that  
4 correct?

5 A Okay. Yes.

6 Q Now, I'd like you to look at 5.11.2.

7 A Yes.

8 Q What does that paragraph say?

9 A It says,

10 Except for the liens arising under the  
11 amended note and modified deed of trust, the  
12 Antos parties and SJC parties will not allow  
13 any new liens to be secured by the property  
14 which is owned or hereafter acquired by the  
15 Antos parties and SJC parties or any of their  
16 affiliated companies.

17 Q And that term was violated in March of 2020; correct?

18 A No, it was not.

19 Q There was a lien recorded by the homeowners  
20 association; was there not?

21 A But it was not allowed. They did it anyway, and it's  
22 being fought. It's being litigated. And actually it was  
23 brought by your client as a member of the board.

24 Q I don't even --

25 A Who is your lender to buy the note.

1 Q -- know what you're talking about. Who --

2 A Mr. Russo is on the board for Spanish Hills.

3 Mr. Russo is the lender to 5148, your company --

4 Q Mr. --

5 A -- which is trying to acquire the property.

6 Q Do you know when Mr. Russo -- well, first of all, how  
7 do you know Mr. Russo?

8 A I've never met him, but I'm aware of who he is.

9 Q How do you know who he is?

10 A I've had people talk to me about who bought the house  
11 from Rhodes.

12 Q Who?

13 A Workers that work at the property.

14 Q "Workers that work at the property."

15 So are you telling me that you've trespassed onto  
16 5212's property to talk with workers?

17 A I have not entered that property since the Rhodes  
18 have sold it. Not even --

19 Q What workers are you talking about, sir?

20 MR. GUTIERREZ: And, Your Honor, objection. Let him  
21 finish -- he needs to finish the question and answer.

22 THE COURT: Sir, did you have anything to add? I  
23 thought you had completed your answer, but Mr. Gutierrez  
24 disagrees.

25 THE WITNESS: I had not gone on to -- I have not been

1 in the property or even on the grounds of that property since  
2 the Rhodes have sold it.

3 BY MR. MUSHKIN:

4 Q Then how did you meet workers?

5 A The workers use the streets to access the property,  
6 and I can talk to the worker from the street, as can my son.  
7 We talked to the worker from the street.

8 Q Your son has actually been on the property since the  
9 acquisition by Dacia, hasn't he?

10 A My understanding is that a worker invited him in.

11 Q Oh.

12 A Along with Mr. Rhodes.

13 Q Oh. They invited him to tip over a Porta Potty. Is  
14 that what they invited him to do?

15 MR. GUTIERREZ: Objection, Your Honor.

16 THE WITNESS: He didn't do that even though you made  
17 that false allegation.

18 THE COURT: Overruled.

19 BY MR. MUSHKIN:

20 Q You're denying that that took place?

21 A I'm denying that he did it and that there's video  
22 evidence showing that he didn't do it.

23 Q Oh, I see.

24 A But you disregard any -- any evidence that doesn't --  
25 that isn't convenient to your narrative.



1 Q So I'd like you to look at paragraph 6. It starts on  
2 page 14.

3 THE COURT: Conditions precedent?

4 MR. MUSHKIN: Yes, Your Honor.

5 THE COURT: Thank you.

6 THE WITNESS: Okay. I'm there.

7 BY MR. MUSHKIN:

8 Q Do you see that provision?

9 A (No audible response.)

10 Q Did you read it at the time you signed the agreement?

11 A I'm sure I must have.

12 Q And you see at 6.2 you agree to reimburse CBC I's  
13 cost and expenses?

14 A I do.

15 Q Did you do that?

16 A I don't recall ever being provided a bill or an  
17 invoice for a request for payment relating to this paragraph.

18 Q The paragraph 8 is the Antos parties and the SJCV  
19 parties representations and warranties. Do you see that?

20 A I do.

21 Q Now, I want to make sure before you take the time to  
22 do it, that you now go back and make sure that SJCV signed this  
23 document.

24 Do you see where SJC Ventures signed it?

25 THE COURT: Page 25.

1 THE WITNESS: Yes, I do.

2 BY MR. MUSHKIN:

3 Q Okay. Let's look at the first one. First of all,  
4 the accuracy of the representations in the forbearance  
5 agreement and amended deed of trust. You represent that  
6 your -- that they are true and correct. Do you see that?

7 A I do.

8 Q Then you see 8.2 says that there's no default other  
9 than the identified defaults. Do you see that?

10 A I do.

11 Q And then it says 8.3,

12 To the extent applicable, the Antos  
13 parties and the SJC parties lawfully possess  
14 and hold a hundred percent ownership interest  
15 in the property and collateral for this  
16 forbearance agreement.

17 Do you see that?

18 A I do.

19 Q The Antos parties and the SJCV parties own all the  
20 collateral for the amended note and modified deed of trust free  
21 and clear of any defects, reservations of title and conditional  
22 sales contracts and free and clear of any liens and security  
23 interest other than the liens and security interest in favor of  
24 CBC I.

25 Do you see that?

1           A     I do.

2           Q     There is no financing statement affecting any  
3 collateral for the obligation and the Antos parties and the SJC  
4 parties in any public office except for financing statement in  
5 favor of CBC I.

6                     Do you see that?

7           A     I do.

8           Q     Then 8.4 discloses about the judgment. Do you see  
9 that?

10          A     I do.

11          Q     8.7, Enforceable amended note and modified deed of  
12 trust. No conflicts.

13                     Do you see that?

14          A     I do.

15          Q     And it says in pertinent part,

16                     The amended note and modified deed of  
17 trust and the forbearers agreement are legal,  
18 valid and binding agreements against --  
19 agreements of Antos parties and the SJC  
20 parties enforceable in accordance with their  
21 respective terms and any instrument or  
22 agreement required hereunder or when executed  
23 or delivered is or will be similarly legal,  
24 valid, binding and enforceable.

25                     This forbearance agreement does not

1 conflict with any law, agreement or  
2 obligation by which Antos parties and the  
3 SJCVC parties is bound.

4 Do you see that?

5 A I do.

6 Q And did you agree to that when you signed the  
7 agreement?

8 A To the extent that I understood that there was a  
9 first mortgage and that the Antos parties now represent the Ken  
10 and Sheila Antos individually, yes.

11 Q Now, the next one is the Antos parties'  
12 acknowledgments. Do you see that?

13 A I do.

14 Q And did you see at 9.7,

15 Fair consideration all payments made and  
16 security granted by Antos and SJCVC parties  
17 under the amended note and modified deed of  
18 trust and this forbearance agreement are for  
19 fair consideration and reasonably equivalent  
20 value.

21 Do you see that?

22 A I do.

23 Q Item 10 is a release. Do you see that?

24 MR. MUSHKIN: Your Honor, I'm going to spend quite a  
25 bit of time on the release. Perhaps now is a good time to

1 break.

2 THE COURT: So are you going to stop now? Okay.

3 Thank you.

4 1:15. We'll open the door at 1:00 so Mr. Gutierrez  
5 can get back in to look for those documents with Mr. Bloom.

6 MR. GUTIERREZ: I found them already, Your Honor.

7 So.

8 THE COURT: Oh, you did?

9 MR. GUTIERREZ: Yeah.

10 THE COURT: So can we start at 1:00?

11 MR. GUTIERREZ: 1:00 o'clock is fine.

12 THE COURT: Okay. We'll see you guys at 1:00.

13 We are in recess.

14 (Proceedings recessed at 11:54 a.m., until 12:58 p.m.)

15 (Pause in the proceedings.)

16 THE CLERK: Mr. Bloom, come on back up. You're still  
17 under oath.

18 Mr. Mushkin, did you get the homework assignment  
19 report from Mr. Gutierrez?

20 MR. GUTIERREZ: Your Honor, it's Exhibit 98.

21 THE COURT: Thank you.

22 MR. GUTIERREZ: It's been admitted. These are  
23 invoices from Infinity Air. The request was for the documents  
24 of improvements to the property. These are dated June 2018. I  
25 guess --

1 THE COURT: All I needed was a number. 98.

2 MR. GUTIERREZ: Okay. 98, Your Honor. That's  
3 admitted.

4 THE COURT: Thank you, Mr. Gutierrez. I just wanted  
5 make sure the homework assignment was done.

6 BY MR. MUSHKIN:

7 Q So let's take a look at 98 real fast as long as it's  
8 on everybody's mind.

9 A My exhibit package goes through 64.

10 MR. MUSHKIN: Mr. Gutierrez.

11 MR. GUTIERREZ: He can have my copy, but this is the  
12 problem we had yesterday.

13 THE COURT: What are you missing, guys?

14 MR. MUSHKIN: The next book for the witness.

15 THE COURT: Oh. That was a mistake.

16 THE WITNESS: Should we just put it on the overhead?

17 (Pause in the proceedings.)

18 MR. MUSHKIN: May I take this to the witness, Your  
19 Honor?

20 THE COURT: You may not.

21 Ramsey.

22 MR. MUSHKIN: May Mr. Gutierrez take it to his --

23 THE COURT: No. I've been making the witness go down  
24 to the table, but I'll let Ramsey in his secure position  
25 deliver it.



1 MR. MUSHKIN: It's just killing me. It's just  
2 killing me.

3 THE WITNESS: Thank you.

4 THE MARSHAL: You're welcome.

5 MR. MUSHKIN: You are just killing me, Judge.

6 THE COURT: You know, somebody asked for video of our  
7 proceedings yesterday. So if I'm not acting appropriately,  
8 they will know. So I'm trying very, very hard.

9 MR. MUSHKIN: I know who that is, Your Honor. I know  
10 exactly who that is.

11 BY MR. MUSHKIN:

12 Q Mr. Bloom, would you turn to Exhibit 98.

13 A Okay. I'm at 98.

14 Q And do you see 00148?

15 A I do.

16 Q And that's for the amount of \$6,000; correct?

17 A Correct.

18 Q And I'll direct your attention to the next page,  
19 1049. That's 3500; right?

20 A Correct.

21 Q Now, let's go to 1050. That's twenty-five hundred  
22 thirty-one; right?

23 A Correct.

24 Q Now let's go to the next one. And that's four  
25 thousand, two, eighty-five; is that correct?

1 A Correct.

2 Q The next one is \$254?

3 A Correct.

4 Q Do you know how much those total up to, sir?

5 A I do not.

6 Q Well, it's less than 20,000.

7 A Okay.

8 Q Do you have any other receipts that you've performed  
9 repairs on the property?

10 A I don't know that they're exhibit -- admitted as  
11 exhibits, but, yes.

12 Q Well, have you produced them in this case?

13 A I don't think they've been produced --

14 Q Thank you.

15 A -- in the exhibits here.

16 Q I would like you to look at the date of 1048.

17 A Okay.

18 Q That's 2018; correct?

19 A Correct.

20 Q And all of these are dated after that June date. The  
21 next one is August of '18; is that correct?

22 A Correct.

23 Q The next one is April of '19?

24 A Correct.

25 Q The next one is June of '19?

1 A Correct.

2 Q And the last one is August of '19. Do you see that?

3 A I do.

4 Q Do you have any evidence of repairs being made in  
5 2017?

6 A Do I? Yes.

7 Q Where are they?

8 A They're not included in this exhibit.

9 Q So you haven't produced them?

10 A They're not -- do I have them? Yes. They haven't --  
11 they're not included in this exhibit.

12 Q Why haven't they been produced?

13 A I don't know.

14 Q So you got discovery requests in this matter; is that  
15 correct?

16 A I'm sure.

17 Q And you were asked to produce all evidence of  
18 repairs; correct?

19 A I don't remember what the discovery was --

20 Q Okay.

21 A -- encapsulated.

22 Q It's your testimony that you were not or you just  
23 don't recall?

24 A I don't recall any specific discovery requests.

25 Q Do you know how many times you said I don't recall

1 during your deposition, sir?

2 A No.

3 Q If I told you you said that 51 times, would you  
4 dispute it?

5 A I have no basis to dispute it, but it was a very long  
6 deposition. So it's entirely possible.

7 Q Now, remember you testified that you said you didn't  
8 get the note?

9 A I don't recall getting the note at the time of the  
10 transaction.

11 Q So let's take a look at the screen. And I would  
12 direct your attention to an email from you to Mr. Hallberg  
13 August 11th. Do you see that?

14 A I do.

15 Q Do you see the part that is highlighted --  
16 Well, first of all, do you recognize this as your  
17 email?

18 A I do.

19 Q And I'd like you to look down where it says,  
20 Following are points for CBC Partners  
21 proposed 11th modification to secured  
22 promissory note.

23 A I see it.

24 Q How would you know that there would be an 11th  
25 modification if you hadn't seen the note and its ten

1 modifications?

2 A I don't recall, although it could have been a topic  
3 of discussion.

4 Q It's still your testimony that you didn't see the  
5 note?

6 A I don't recall seeing the note.

7 Q And it's still your testimony that you didn't know it  
8 was a commercial note?

9 A No. Yes, it's still my testimony that no, I didn't  
10 know it was a commercial note. It had been represented to me  
11 as a third mortgage for the entirety of the conversations.

12 Q And it was also represented to you to be a note that  
13 was from Mr. Antos's company; correct?

14 A No.

15 Q Well, let's look at the forbearance agreements, sir.  
16 That's Exhibit 1.

17 A Okay. I'm on Exhibit 1.

18 (Pause in the proceedings.)

19 BY MR. MUSHKIN:

20 Q Let's look at paragraph A of the recitals.

21 A Okay.

22 Q Doesn't it say in paragraph 1 that,

23 CBC is the holder of a certain secured  
24 promissory note dated June 22nd, which was  
25 amended by 10 subsequent amendments, all of

1                   which have been executed by KCI Investments,  
2                   LLC, and Preferred Brands, collectively the  
3                   amended note?

4                   Do you see that, sir?

5           A     I do see it.

6           Q     So how is it that you come before this Court and  
7           somehow think that you were not told this was a KCI Preferred  
8           Brands note?

9           A     My recollection focuses primarily on the  
10           conversations that occurred telephonically. I skimmed these  
11           documents, and I missed the names of KCI and Preferred  
12           Restaurant Brands.

13                   I want to be clear. I think Mr. Hallberg is  
14           honorable in what he says, and he's trying to be truthful, but  
15           I think we both rushed the documents, and we both probably  
16           missed some things.

17                   In my case, I missed -- I missed the involvement of  
18           KCI and Preferred Restaurant Brands in this document.

19                   But when I say I was unaware of them, it's because of  
20           the verbal conversations. It was always maintained that it was  
21           a third mortgage.

22                   And again, I don't think it was with the intent to  
23           deceive. I think that's what Mr. Hallberg actually believed,  
24           but I don't think that's what the documents reflect.

25           Q     I'd like you to look at page 19. Do you see under



1 Item 15, Integration?

2 A I do.

3 Q I'd like you to look at the last line where it says,  
4 No modification of this forbearance  
5 agreement or the amended note and modified  
6 deed of trust shall be effective unless in  
7 writing and signed by the applicable parties  
8 to be bound thereby.

9 Do you see that?

10 A Is that on page 20?

11 Q Yes, sir, it is.

12 A I was looking on the last line on page 19 that you  
13 asked me to look at.

14 Q No. It was the last line of Provision 15. It's on  
15 page 20.

16 A Okay. Okay. I see it.

17 Q I'd also like you to look at the notice provision.

18 A Okay.

19 Q Do you see where the notice provision for both  
20 Spanish Heights and SJC Ventures is on that page?

21 A I do.

22 Q And who does the notice go to for these agreements?

23 A Maier Gutierrez.

24 Q And is it still your testimony that they were not  
25 your counsel for these agreements?

1 A Not on this particular matter, yes.

2 Q Well, why did you tell Mr. Hallberg and Mr. Nelson  
3 that they were your attorneys?

4 A Well, when I refer to them as my attorneys, I was  
5 referring to First 100 and its role.

6 Maier Gutierrez has been my attorneys on a number of  
7 cases for the last 10 years, and -- but they never were  
8 retained for this matter.

9 Q Did it say anywhere -- well, how does first -- does  
10 it say anywhere in here that they are First 100's attorneys?

11 A I believe that's on the agreement where the payment  
12 instructions, where they were told as First 100's attorneys to  
13 distribute funds payable from First 100 that are payable to SJC  
14 instead to CBC Partners.

15 Q But doesn't it say that they're your attorneys in  
16 that document, sir?

17 A I don't believe so --

18 Q Well, let's take a look --

19 A -- but we can go back and look at the document.

20 Q -- real fast.

21 A Which exhibit?

22 Q I'll get there. Give me a second. 7 or 8 I think.  
23 Let's take a look at 11. Take a minute and look at  
24 that.

25 Is there anywhere in the body of the agreement where

1 it says that they represent First 100?

2 A (No response.)

3 Q Let me direct your attention to the second page at  
4 the bottom in very small print.

5 A Okay.

6 Q Do you see anywhere in there that it talks about  
7 Maier Gutierrez representing anybody other than SJCVC?

8 A I don't see that it represents SJCVC.

9 Q Well, let's look a little farther.

10 A But what it does say is that First 100 holdings  
11 represents and warrants that no party other than the collection  
12 professionals engaged to collect the judgment and certain other  
13 creditors of First 100 have priority to receive judgment  
14 proceeds prior to distribution to members.

15 Q I see that, sir. Let's take a look at --

16 A So Maier Gutierrez is one of those --

17 Q -- the next page.

18 A So Maier Gutierrez is one of those collection  
19 attorneys collecting on the judgment.

20 Okay. I'm on the next. Page 110?

21 Q Let's go to look at the very bottom of 110 where it  
22 says,

23 Maier Gutierrez & Associates shall  
24 contemporaneously provide CBC I with an  
25 accounting of how Maier Gutierrez &

1 Associates intends to distribute the judgment  
2 funds amongst the collection professionals,  
3 the First 100 priority creditors, the members  
4 of First 100, including the distribution of  
5 the creditors' judgment interest.

6 Do you see that?

7 A I do.

8 Q Anywhere in there where it says it represents First  
9 100 to the exclusion of SJC?

10 A Well, I think it's imputed that they represent First  
11 100 since they're collecting the funds on behalf of First 100,  
12 but, no, it doesn't mention their representation of SJC.

13 Q Thank you. All right. Now I'd like you to take a  
14 look at Exhibit 1, page 23.

15 A Okay.

16 Q Do you understand what that provision means?

17 A I'm on page 23. Which provision are you referring --

18 Q 25.

19 A Yes.

20 Q And that says, Cumulative remedies; right?

21 A It does.

22 Q And you agreed to that at the time you executed the  
23 contract; correct?

24 A On behalf of SJC, yes.

25 Q So let's take a look at Exhibit 5 now.

1 A Okay.

2 Q Do you know what this agreement is?

3 A The cover page indicates it's a limited liability  
4 company agreement of Spanish Heights Acquisition.

5 Q Why don't you take a minute and look at it. Make  
6 sure you check the signature page.

7 Do you see your signatures there?

8 A I do.

9 Q You signed both as the investor member and as the  
10 manager; is that correct?

11 A Correct.

12 Q Do you believe this is a binding agreement?

13 A I do.

14 Q Well, let's take a look at what your obligations are.  
15 Would you take a look at page 12, provision F2.

16 A Okay.

17 Q Do you see where it says,

18 Directly permit to exist any lien or  
19 security interest on any of the assets of the  
20 company unless such action results in the  
21 satisfaction of the lender CBC Partners  
22 receivable secured by the property?

23 A I do.

24 Q You, in fact, allowed the lien to be recorded, didn't  
25 you?

1 A No, I did not.

2 Q Well, you didn't pay the assessment, did you?

3 A I did pay the assessments.

4 Q No. You were assessed \$19,000 as a health and safety  
5 violation; correct?

6 A That's not an assessment. That's a compliance fine  
7 and --

8 Q Sir, you were assessed --

9 MR. GUTIERREZ: Your Honor, object. Let him -- to  
10 let the witness finish the question.

11 THE COURT: He had finished, Mr. Gutierrez.

12 Okay. Keep going.

13 THE WITNESS: No, I was still answering, Your Honor.

14 THE COURT: Go on, Mr. Mushkin, please.

15 BY MR. MUSHKIN:

16 Q Mr. Bloom, isn't it true that you were assessed a  
17 fine by the HOA of approximately \$19,000?

18 A Yes.

19 Q And that fine was not paid by you, was it?

20 A That's correct. It was --

21 Q You contested the fine; correct?

22 A Correct.

23 Q But there is a lien that's been filed by the HOA;  
24 isn't that correct?

25 A Which is also being disputed.



1 Q Well, I appreciate that, sir, but that isn't  
2 responsive to my question. It's a yes-or-no question. There  
3 was a lien filed by the HOA; correct?

4 A Correct.

5 Q You haven't paid that lien, have you?

6 A Correct.

7 Q You haven't bonded that lien, have you?

8 A I have not. Nor did I directly permit the lien to  
9 occur.

10 Q Now I want to direct your attention to page 20,  
11 Section 8.02.

12 A Okay.

13 Q Do you see that?

14 A I do.

15 Q And did you understand these member -- investor  
16 member covenants when you signed this document?

17 A I believe I did.

18 Q So the first one under I says provide a \$150,000  
19 reserve account within 90 days of the execution of this  
20 agreement. You did not do that, did you?

21 A That requirement was waived. So no, I did not.

22 Q I didn't hear your answer, sir.

23 A That requirement was waived. So, no, I did not.

24 Q Do you have a document that says it was waived?  
25 Signed by the parties to the agreement?

1 A No. It was waived --

2 Q Thank you.

3 A -- by the performance --

4 Q Let's look at 2.

5 A Okay.

6 Q Provide a second funding of annual expense reserve

7 one year later in an additional amount of 150,000.

8 Did you do that?

9 A No, that provision was waived as well with the  
10 prepayment --

11 Q You said --

12 A -- in lieu of the security deposit.

13 Q And you don't have a written document that says that,  
14 do you?

15 A Other than the checks evidence in the prepayment, no.

16 Q So did you prepay the second year?

17 A I believe so.

18 Q Do you have a check that shows that?

19 A I believe the prepayments are shown.

20 Q Show me where it is, sir.

21 A Where are the checks in these hundred exhibits? I  
22 don't -- I don't know where the checks are in the exhibits.

23 Q Well, I'll represent to you that we have no such  
24 check, and if you can find one, we'll let you come up with it  
25 overnight or something. Because we don't have --

1 THE COURT: Mr. Gutierrez, do you know where they  
2 are?

3 MR. GUTIERREZ: I don't even know what checks counsel  
4 is referring to. We've got several checks as exhibits between  
5 115 to 128, but if he has --

6 MR. MUSHKIN: I asked the witness if he prepaid the  
7 second year's rent, and he said yes.

8 And I said, Do you have a check?

9 THE COURT: And he said yes.

10 MR. MUSHKIN: And he said yes --

11 THE WITNESS: Actually I --

12 MR. MUSHKIN: -- and I haven't seen such a check.

13 THE WITNESS: Actually, I believe it was by wire  
14 transfer.

15 BY MR. MUSHKIN:

16 Q Do have -- you were asked to produce evidence of  
17 payments in this case; is that correct?

18 A I'm not sure what the requests were on the  
19 production.

20 Q You don't recall being asked to provide proof of  
21 payments?

22 A I don't think that it's at issue that the payments  
23 were made.

24 Q Mr. Bloom, I'm asking a very specific question, sir.  
25 Did you prepay year two?

1 A Yes.

2 Q Where's the proof of it?

3 A In the -- well, there should be a wire transfer  
4 evidence somewhere in these documents, but beyond that there's  
5 no request or demand for payment for the entirety of the year  
6 by CBC, which would have been the case had the payment not been  
7 made.

8 Q Sir, that wasn't responsive to my question. I'm just  
9 asking if you have any proof of it. You haven't produced any  
10 proof of that in this case, have you?

11 A There is a wire transfer evidenced, but I don't know  
12 where it is in these documents.

13 Q And it's your testimony that you produced a wire  
14 transfer for approximately 12 times \$8,000 for prepayment of  
15 year two?

16 THE COURT: 96,000.

17 MR. MUSHKIN: I'm sorry?

18 THE COURT: 96,000.

19 MR. MUSHKIN: Thank you, Judge.

20 THE COURT: I was --

21 MR. MUSHKIN: It's a little more than 8,000. So it  
22 would be a little more than that but...

23 THE WITNESS: I don't know if it was for the monthly  
24 amount of the rent and the taxes or just the monthly amount of  
25 the rent. But, yes, it would be for the amount of the first

1 year's obligations which were supposed to have been secured by  
2 the security account, but was waived in favor of prepayment  
3 negating the need for a security account which was originally  
4 intended to secure the payments that were now being prepaid.

5 BY MR. MUSHKIN:

6 Q So let's look at Item 3. Item 3 says,  
7 Caused the company to service the  
8 nonmember CBC Partners receivable against the  
9 subject property commencing 90 days after the  
10 closing of this agreement.

11 Do you see that?

12 A I see it.

13 Q Did you do that?

14 A Yeah, I believe that was what the payments that were  
15 prepaid represented.

16 Q Cause to -- look at 4,  
17 Caused the company to effect repairs to  
18 the premises to bring back to top quality  
19 standard and working repair.

20 A Yes.

21 Q Do you see that?

22 A I do.

23 Q And you provided us less than \$20,000 worth of  
24 receipts; isn't that correct?

25 A In a subset of the receipts that's not exhaustive,

1 yes.

2 Q Where are the rest of them?

3 A They haven't been produced in this case. I'm not  
4 sure why.

5 Q Thank you. Your --

6 Caused the company to maintain and  
7 provide all costs related to ongoing  
8 maintenance of the property.

9 Do you see that?

10 A Yes.

11 Q Caused the company -- did you do that?

12 A Yes.

13 Q Caused the company to pay all utilities?

14 A Yes.

15 Q Now, I want to go back to maintain the property. Is  
16 it your testimony that the solar heating system works on the  
17 pool?

18 A To the best of my knowledge.

19 Q Mr. Bloom, you know that's not true, don't you?

20 A No. We've recently had somebody up there. It had a  
21 leak, and he repaired it, but I think it's working now.

22 Q Where's the -- I'm sorry. I didn't mean to cut you  
23 off.

24 A I believe it's working --

25 Q Have you provided any proof of repairs to the solar



1 system?

2 A That was actually just recent subsequent to the  
3 provision of documents.

4 Q So you haven't produced them, have you?

5 A No.

6 Q Thank you.

7 Pay all utilities, is that -- you've done that?

8 A Yes.

9 Q Caused the company to pay for all real property  
10 insurance. Have you done that?

11 A Yes.

12 Q Caused the company to pay all HOA assessments and  
13 fines. Have you done that?

14 A Assessments, yes. Fines, no.

15 Q Thank you.

16 Caused the company to pay for all landscaping.

17 Do you see that?

18 A Yes.

19 Q And it talks -- the next one is the First 100. Do  
20 you see that?

21 A I do.

22 Q At the earlier of two years upon collection of the  
23 judgment, pay the proceeds -- pay off the CBC receivable as it  
24 relates to the property.

25 Do you see that?

1 A I do.

2 Q And that was extended by three months by the amended  
3 forbearance agreement; is that correct?

4 A That's correct.

5 Q But other than that it remains in effect; correct?

6 A I believe so.

7 Q Thank you. And then the next one is,

8 The earlier of two years or upon  
9 collection of the judgment proceeds either  
10 assume service or retire either or both of  
11 the first and second position lenders.

12 Do you see that?

13 A I do.

14 Q Have you done that?

15 A Yes.

16 Q You've assumed the loans?

17 A It says or -- oh, I'm sorry. Assume service of the  
18 loans, yes. I've been servicing the loans for almost a year  
19 now.

20 Q Isn't it true that you did not assume or retire the  
21 loans within two years?

22 A Is it true that -- I'm sorry. Can you ask that  
23 again.

24 Q Sure.

25 A Because what you're asking is different than what the

1 document says.

2 Q Isn't it true that you did not assume or retire  
3 either the first or the second within two years?

4 A I assumed service but not assume the loan, and it was  
5 within the period of the extension.

6 Q Sir, you did not service that loan the first  
7 24 months, did you?

8 A No.

9 Q Thank you. And you didn't service the second loan  
10 the first 24 months, did you?

11 A Same situation. I assumed service at the end of the  
12 extension.

13 Q And so that would be April 1?

14 A Correct.

15 Q And you did not make payments for January, February  
16 and March of 2000, did you?

17 A Nobody did in January, February and March.

18 Q It's your testimony that those payments were never  
19 made?

20 A No. They were never made in a timely fashion as  
21 required by the agreement --

22 Q And did you notice --

23 A They weren't -- they weren't made in January,  
24 February and March by CBC under its obligation --

25 Q And did you --

1           A     They were later made, but there are late fees and  
2 penalties that were assessed that still remain outstanding to  
3 this day because of those late payments in several thousands of  
4 dollars.

5           Q     Did you notice default to CBC Partners at any time?

6           A     I did not.

7           Q     And then let's look at 13,

8                     At the earlier of two years or upon  
9                     collection of the judgment proceeds pay off  
10                    past due and accrued property tax assessments  
11                    if not already addressed by first or second  
12                    lender.

13                   Do you see that?

14          A     I do.

15          Q     And did you pay those past due property taxes?

16          A     I believe it was addressed by the first lender.

17          Q     No, sir. In fact, you testified in your contempt  
18 hearing that you were paying only the postinjunction taxes  
19 pursuant to the Court's order; correct?

20          A     Correct.

21          Q     So that you in the first two years did not pay the  
22 property taxes that had accrued; isn't that correct?

23          A     If not addressed by the first or second lender and it  
24 was addressed by the first lender.

25          Q     Sir, I'm not asking you that. If you keep --

1 MR. MUSHKIN: Your Honor, I'd ask you to admonish the  
2 witness to answer my questions, or we'll be here forever.

3 THE COURT: I understand. And when it's appropriate,  
4 I will tell him to answer your question in a certain fashion,  
5 but I'm not going to give that as a blanket.

6 BY MR. MUSHKIN:

7 Q Mr. Bloom, my question was, you did not pay the tax  
8 arrears during the first two years, did you?

9 A Correct.

10 Q Thank you. And then Number 14 is,

11 Utilize its lawyers to effectuate a  
12 quiet-title action for the purposes of  
13 extinguishing any and all judgment creditor  
14 liens against the property.

15 You did not do that, did you?

16 A Correct.

17 Q Now, let's take a look at -- the next provision is at  
18 Article XI. It says books and records.

19 A Okay.

20 Q And it says that, The company shall maintain true and  
21 correct books and records; is that correct?

22 A It is.

23 Q Isn't it true that the LLC Spanish Hills Acquisition  
24 Company did not have its own bank account until April of 2000?

25 A Correct.

1 Q Isn't it true that Spanish Hills Acquisition Company  
2 issued no tax returns up through and including today?

3 A I believe so.

4 Q And isn't it true that there had been no reports to  
5 members as required in the next provision 1102?

6 A I believe so.

7 Q Now let's take a look at 12.04 on page 26.

8 A Okay.

9 Q It says binding agreement; correct?

10 A Correct.

11 Q Do you believe this to be a binding agreement on the  
12 members, managers and their respective heirs, executors,  
13 administrators, personal representatives and successors?

14 A (No audible response.)

15 Q That would be a yes?

16 A I didn't hear a question. I just heard you read the  
17 paragraph.

18 Q I asked you isn't it true that this is a binding  
19 agreement against the members, managers and their respective  
20 heirs, executors, administrators, personal representatives and  
21 successors?

22 A Yes.

23 Q Let's take a look at Exhibit 7.

24 Do you see that document?

25 A I do.



1 Q Now, before we get into this document, I want to go  
2 back over your testimony at the time of the first application  
3 for extraordinary relief. The suit -- we'll do this first.  
4 I'm sorry. Let's go back to the forbearance agreement.

5 Do you see Exhibit B to the forbearance agreement?

6 A Yes.

7 Q Okay. Now, I'd like you to look at page B3, which is  
8 00081.

9 A Okay.

10 Q It sets forth the accuracy of the recitals. Do you  
11 see that?

12 A I do.

13 Q And it says that,

14 The Antos parties and the SJC parties as  
15 defined in the forbearance agreement  
16 expressly acknowledge that the recitals set  
17 forth are true, accurate and correct.

18 Do you see that?

19 A Well, I see that it says the Anton parties, but I  
20 assume it means the Antos parties.

21 Q You're right. I'm assuming that's a typo.

22 A The rest of the sentence, yes, I see that.

23 Q Thank you. And it says,

24 CBC has relied on the Antos parties' and  
25 the SJC parties' express acknowledgment of

1                   these recitals.

2                   Do you see that?

3           A     With the same notation as to the Anton parties, yes.

4           Q     No problem. But there's no question that the SJCV is  
5 spelled properly; is that true?

6           A     Correct.

7           Q     According to these recitals are incorporated into the  
8 forbearance agreement pursuant to this Exhibit B, and these  
9 recitals are material provisions of the forbearance agreement.

10                  Do you see that?

11          A     I do.

12          Q     Isn't it true that in the recitals it discloses KCI  
13 and Preferred Brands as the makers of the note?

14          A     It references KCI and Preferred Brands. It doesn't  
15 reference them as the makers of the note I don't believe.

16          Q     It certainly references them as parties to the note;  
17 is that fair?

18          A     But not as makers of the note, yes.

19          Q     Well, there's either a maker and a holder. It's  
20 pretty obvious that CBC is loaning them money; correct?

21          A     Or they're guarantees or they're co-borrowers, or  
22 there are a bunch of different parties potentially to a note.

23          Q     We're now talking about KCI, sir.

24          A     Correct.

25          Q     KCI was the maker of the note; true?

1 A Ultimately came to learn that, yes.

2 Q Thank you. Now let's talk about that for a minute.  
3 You've testified that you learned all of this stuff, this  
4 all -- what is parol information after you filed the lawsuit;  
5 is that correct?

6 A That's correct.

7 Q Well, sir, then why didn't you provide the assignment  
8 of company interest pursuant to the demand made upon SHAC -- I  
9 mean made upon SCJV -- SJCVC --

10 A Mr. Mushkin, could you pull your mask up over your  
11 nose, and then I would ask you to repeat the question. Thank  
12 you.

13 THE COURT: Thanks for catching that, sir. Okay.

14 MR. MUSHKIN: I didn't know it had slipped.

15 THE COURT: It's all right. We're all going to keep  
16 you honest with your mask.

17 BY MR. MUSHKIN:

18 Q Isn't it true that your testimony was that you didn't  
19 know about this defect until after the litigation started?

20 A Yes.

21 Q Then why didn't you sign over the pledge like you  
22 promised?

23 A I signed over the security interest in the portion of  
24 the judgment like I promised. That released the --

25 Q Sir?

1 A -- obligation to provide the pledge.

2 Q It says in the forbearance agreement a hundred  
3 percent interest; right?

4 A Yes.

5 Q It says in the amended forbearance a hundred percent  
6 interest where you ratify it; correct?

7 A That's what it says.

8 Q And then in the pledge agreement it says a hundred  
9 percent, and it says SJCV is a party; correct?

10 A SJC is not a party. The signature block was removed.

11 Q I didn't say that, sir.

12 A And that was deliberate.

13 Q I said they're a party to the contract in the  
14 beginning of the contract; isn't that true?

15 A They were referenced --

16 MR. GUTIERREZ: Object to the form of the question.

17 THE COURT: Overruled.

18 THE WITNESS: They were referenced in the beginning  
19 of the contract --

20 MR. MUSHKIN: Thank you.

21 THE WITNESS: -- but they are not a party to the  
22 contract under -- as a signatory.

23 BY MR. MUSHKIN:

24 Q But it says in both the forbearance agreement and the  
25 amended forbearance agreement that a hundred percent is being

1 pledged; correct?

2 A That's what the agreement says.

3 Q And you have testified that there's some legacy  
4 language that's wrong?

5 A Correct.

6 Q Do you recall what I asked of you the first time you  
7 said this?

8 A Not really.

9 Q I asked you if you had any proof of it, that there  
10 was legacy language.

11 A Okay.

12 Q And I've now gone through your testimony and showed  
13 where it said over and over again additional collateral.

14 Do you recall that?

15 A Yes.

16 Q So do you have any information that substantiates  
17 your claim that these documents contained language that isn't  
18 correct?

19 A Yes.

20 Q What document do you have?

21 A The pledge agreement to which SJC is not a signatory.

22 Q Sir, that's not my -- that's not my question. I'm  
23 asking you a question if you have any document that supports  
24 your claim of legacy language?

25 A Yes.

1 Q What document?

2 A It's a combination of documents.

3 Q What documents?

4 A You can see from the initial conversations by email  
5 that there was originally discussions as to pledging the stock,  
6 and you can see by later actual executed documents that the  
7 signature block was taken out and removed, and the stock was  
8 not pledged by SJC, solely by the Antos Trust.

9 Q You acknowledged earlier that the execution was not  
10 proper by either SHAC -- Spanish Heights or by SJCV; isn't that  
11 correct?

12 A I think it's accurate. I think it's -- well, it's  
13 definitely not signed by SJC, but I think it's accurate as to  
14 SHAC listing me as the manager in my capacity as the manager of  
15 SJC.

16 Q But it doesn't list you in your capacity as the  
17 manager of SJC, does it?

18 A Well, it says as manager, but that's a rather  
19 lengthy --

20 Q Thank you. It doesn't say it, does it?

21 A Okay.

22 Q Okay. But both of the forbearance agreements say  
23 that you're pledging your stock, and you acknowledge that  
24 you're pledging -- that SJCV continues to pledge; correct?

25 A Well, it's acknowledging something that doesn't



1 exist --

2 Q I appreciate your -- but I'm just asking you what  
3 those documents say. They say that you pledged; right?

4 A That's what the documents say.

5 Q Okay. And in your July letter, you talk about  
6 additional collateral being the judgment; correct? Your email.

7 A The original proposal, the initial proposal, yes.

8 Q Okay. Now, I'm going to ask you again, is there any  
9 document other than the pledge agreement itself that you can  
10 show that this was language that was not agreed to?

11 A No.

12 Q The pledge language was not agreed to?

13 A No. The pledge agreement is -- it says it all.

14 Q Okay. Thank you.

15 Now, you understand that -- let's take a look at the  
16 Exhibit 8, page 2. It says the delivery of the pledge  
17 collateral will be done in a certain way; correct?

18 A It does.

19 Q And it specifically says the secured party shall have  
20 the right at any time in secured party's discretion after a  
21 nonmonetary event of default, after notice and a 30-day-cure  
22 period having been provided to pledge orders to transfer or to  
23 register in the name of secured party or any secured parties  
24 nominee any or all to pledge collateral.

25 Do you see that?

1 A I do.

2 Q What makes you think you still own any interest in  
3 SHAC?

4 A Well, that paragraph talks about pledge collateral,  
5 but the pledge agreement was not signed by SJC, and this also  
6 references a nonmonetary default, and you're alleging a  
7 monetary default on the commercial restaurant loan.

8 Q Well, I don't think that's quite true, sir. Let's go  
9 take a look at the very first letter that I sent out in March.  
10 And I want to look at the response as well. Give me just a  
11 moment.

12 (Pause in the proceedings.)

13 BY MR. MUSHKIN:

14 Q Let's take a look at Exhibit 66, sir.

15 A Okay.

16 Q You received that letter?

17 A I believe I recall seeing this, receiving this.

18 Q How long did it take you to provide evidence of  
19 homeowners insurance?

20 A I don't recall how long the response was.

21 Q And you never did produce evidence of repairs  
22 pursuant to paragraph 3C1, did you?

23 A I believe we did.

24 Q Not in response to this letter, did you?

25 A I believe we did.

1 Q You believe we did. Good. Let's go on.

2 Evidence of Bank of America account. Did you provide  
3 that?

4 A No, that requirement was waived. So it was never  
5 produced because it didn't exist.

6 Q Opinion letter from SJC Ventures and First 100  
7 Holdings' counsel regarding the judgment and security agreement  
8 pursuant to paragraph 2. Did you ever provide that?

9 A I don't believe so.

10 Q Evidence of corporate authority and First 100  
11 holdings pursuant to 1A13 of amendment to forbearance agreement  
12 related agreements. Do you see that?

13 A I do see it.

14 Q Did you provide that?

15 A I don't know if it was provided or not.

16 Q And Item 6, evidence of SJC Ventures's filing of  
17 applications for mortgages to refinance. Did you see that --  
18 did you provide that?

19 A I do see it, and that was all verbal communication  
20 with private lenders. So there was nothing to provide in  
21 response.

22 Q Did you provide any response to that letter?

23 A I believe that there was a response.

24 Q Say it again.

25 A I believe that there was a response.

1 Q Well, let's take a look at Exhibit 69. Have you ever  
2 seen this document before?

3 A Yes.

4 Q So you didn't provide any information in response to  
5 that letter except this correspondence; is that correct?

6 A I believe additional documents were provided, such as  
7 the repair bills that you provided in your exhibits that were  
8 provided in response to this letter.

9 Q No, sir. But you can testify to that all you want.  
10 Do you have any proof of that?

11 A That's just my understanding. I didn't initiate it.  
12 It went through attorneys.

13 Q Okay. And so your testimony is that you provided a  
14 hundred thousand dollars worth of receipts?

15 A I provided -- I don't know what the total was, but  
16 it --

17 Q Well, we just went over them.

18 A I'm sorry. I'm in the middle of finishing my answer.  
19 I provided receipts that are in that neighborhood,  
20 but that was an estimate, not a guaranteed minimum payment  
21 under the obligation.

22 Q It was an estimate, huh?

23 A Yeah.

24 Q It said a hundred thousand, didn't it?

25 A Estimated to be a hundred thousand. We just read it.

1 Q But it said not more than a hundred and twenty-five;  
2 didn't it?

3 A Correct.

4 Q So the minimum was a hundred; correct?

5 A No. It said estimated to be a hundred, not more than  
6 one, twenty-five.

7 Q But there was a chart --

8 A But there was no minimum --

9 Q There was a chart given, wasn't there, of all the  
10 things that you were supposed to do?

11 A Do you have it that I can --

12 Q I'm just asking you if you remember.

13 A -- look at?

14 THE COURT: You've got to let him finish.

15 MR. MUSHKIN: Sorry.

16 THE COURT: Mr. Bloom, were you done?

17 THE WITNESS: Yeah. Not that I can remember, but if  
18 it's -- if you have an exhibit you want me to look at to  
19 refresh my recollection.

20 BY MR. MUSHKIN:

21 Q So I'd like you to look at the third paragraph.

22 A Of Exhibit 69?

23 Q Yes.

24 A Okay.

25 Q It says,

1                   Accordingly, your notice of default  
2                   letter is in violation of the amended  
3                   forbearance agreement, which stays any  
4                   default until March 31st, 2020.

5                   Do you see that?

6           A     I do.

7           Q     That's not true, is it?

8           A     I believe it is true.

9           Q     Well, let's go back to Exhibit 1. Take a look at  
10          page 5, 000005.

11          A     Okay.

12          Q     Paragraph 4.1,

13                   Forbearance limited to identified  
14                   defaults. CBI's (sic) forbearance is limited  
15                   solely to the suspended exercise of its  
16                   respective rights and remedies arising under  
17                   the amended note and modified deed of trust  
18                   as a result of the identified defaults, and  
19                   CBC shall not be deemed to have suspended or  
20                   waived any rights or remedies it may have  
21                   with respect to any other existing breach,  
22                   default or event of default under the loan  
23                   documents, including the amended note and the  
24                   modified deed of trust.

25                   Do you see that?



1 A I do.

2 Q So the notice that you received is not in violation  
3 of the amended forbearance agreement, is it?

4 A Bear with me while I review what you just asked me to  
5 read.

6 THE COURT: Once you've completed that, let us know,  
7 sir.

8 THE WITNESS: Thank you.

9 So in comparing the documents, I believe it is in  
10 violation of the forbearance agreement.

11 BY MR. MUSHKIN:

12 Q Tell me why.

13 A Section 4.1 says CBC's forbearance is limited solely  
14 to its suspended exercise of its respective rights and remedies  
15 arising under the amended note and modified deed of trust. In  
16 your letter dated March 16th --

17 Q And see we got to read the rest of the sentence --

18 THE COURT: Wait.

19 MR. GUTIERREZ: Your Honor --

20 BY MR. MUSHKIN:

21 Q -- sir.

22 THE COURT: He's got to be able to finish.

23 MR. GUTIERREZ: Thank you.

24 THE COURT: Please, Mr. Bloom, finish.

25 THE WITNESS: Okay. So in Exhibit 1, the forbearance

1 is limited to identified defaults, and the forbearance is  
2 limited solely to the suspended exercise of its respective  
3 rights and remedies arising under the amended note and modified  
4 deed of trust.

5 In your letter, Exhibit 66, it says,

6 The law firm has been retained to  
7 represent the interest of CBC I as it relates  
8 to the secured promissory note -- amended  
9 secured promissory note, modified deed of  
10 trust.

11 Right. So the letter that you sent relates to the  
12 actions that were considered to be forbearance (sic) under 4.1 of  
13 Exhibit 1.

14 BY MR. MUSHKIN:

15 Q Really?

16 A That's what --

17 Q Doesn't it say just the opposite, sir? It says only  
18 the identified defaults. All other defaults limited.

19 Do you see that, sir?

20 A So I guess my question would be to better understand  
21 this what are the identified defaults?

22 Q Well, that's not my question.

23 A Because what it says --

24 Q -- sir. My question --

25 A It says in that --

1 THE COURT: Wait. One of us can speak at a time.  
2 Mr. Bloom, can you finish, please.

3 THE WITNESS: Yes. Thank you.

4 What it says in that paragraph is it's limited solely  
5 to the suspended exercise of rights and remedies arising under  
6 the amended notes and modified deed.

7 So if the identified defaults are rights and remedies  
8 arising under the amended note and modified deed, then they're  
9 precluded from taking any action until March 31st. So your  
10 letter March 16th would be in violation of that.

11 BY MR. MUSHKIN:

12 Q Is it your testimony that any of the items requested  
13 in the letter of March 23rd are identified defaults?

14 A It's my interpretation that as you referenced the  
15 secured promissory note as being defaulted that that's what  
16 you're referencing. If you're --

17 Q So --

18 A If you're suggesting that you're noticing us of a  
19 default of the operating agreement, that's not what your letter  
20 says.

21 Q Mr. Bloom, the forbearance agreement sets out certain  
22 things that you were going to do; correct?

23 A Correct.

24 Q And it references the operating agreement; correct?

25 A Correct.

1 Q And in both of the agreements, the operating  
2 agreement and the forbearance agreement, you promised to do  
3 certain things, including provide evidence of homeowners  
4 insurance, evidence of repairs, Bank of America account  
5 balance, an opinion letter from counsel, and evidence of  
6 corporate authority for SJCV, along with filing of applications  
7 for mortgages.

8 Do you see those?

9 A I do.

10 Q They're all nonmonetary; right?

11 A Correct.

12 Q And none of them are identified defaults, are they?

13 A (No audible response.)

14 Q In fact, they are specific covenants that you agreed  
15 to in these agreements?

16 A I think the confusion comes from your letter  
17 referencing that you're writing regarding the promissory note  
18 and modified deed of trust. Because you're declaring -- you're  
19 not declaring a breach of the operating agreement or the  
20 forbearance agreement. That's never mentioned in your letter.  
21 The only thing mentioned is a breach of the promissory note and  
22 the amended promissory note and the modified deed of trust.

23 Q And that's exactly what the paragraph in the  
24 forbearance agreements references; isn't it, sir?

25 A But your letter does not. So your letter references

1 the note and the deed of trust, which it's in violation.

2 Q Which are the subject matter of the forbearance  
3 agreement; correct?

4 A It's related.

5 Q Thank you.

6 Now, I'd like you to take a look at Exhibit 68. And  
7 it's an email from my office to Ms. Barraza with copies to you,  
8 Mr. Hallberg and Mr. Gutierrez. Do you see that?

9 A I do.

10 Q Now, the -- it's interesting. There's no lawsuit  
11 pending at this point; right?

12 A I don't believe so, no.

13 Q But Mr. Gutierrez and Ms. Barraza are your attorneys;  
14 right?

15 A At this point in time they were.

16 Q No? And this email says.

17 Unfortunately, your letter is incorrect.  
18 Both the forbearance and amended forbearance  
19 agreement identify specific defaults that  
20 were subject to forbearance. The remaining  
21 obligations under the various agreements are  
22 to be followed.

23 In fact, the amended forbearance  
24 agreement calls out specific items to be  
25 provided, most of which are within my letter.

1                   As they have not been provided, you are  
2                   hereby defaulted.

3                   Do you see that?

4           A     (No audible response.)

5           Q     Do you see that?

6           A     I'm sorry. I was looking at -- I was looking at  
7 something else in continuation of my last answer.

8           THE COURT: Do you need him to repeat his question,  
9 sir?

10          THE WITNESS: Yeah.

11          THE COURT: Okay. Would you repeat your question,  
12 please.

13 BY MR. MUSHKIN:

14          Q     Have you ever seen the email dated March 25th,  
15 2020, at 11:19 from me to Ms. Barraza with copies to other  
16 parties?

17          A     I'm sure I did. I'm copied on it.

18          Q     And it says,

19                         Unfortunately, your letter is incorrect.  
20                         Both the forbearance and the amendment to the  
21                         forbearance agreement identify specific  
22                         defaults that were to be subject to  
23                         forbearance. The remaining obligations under  
24                         the various agreements are to be followed.

25                         In fact, the amended forbearance



1 agreement calls out specific items to be  
2 provided, most of which are within my letter.  
3 As they have not been provided, you are  
4 hereby defaulted.

5 Do you see that?

6 A I do see that.

7 Q And do you see the response from Ms. Barraza just  
8 above it?

9 A I do.

10 Q Did you authorize her to send this response?

11 A I don't believe we discussed it, but I'm in agreement  
12 with it.

13 Q The documents speak for themselves.

14 Do you see that?

15 A I do.

16 Q My client will be pursuing damages for any breach of  
17 the governing forbearance agreement, including the improper  
18 attempts to deem my client in default.

19 Do you see that?

20 A I do.

21 Q I'd like to show you what's been admitted as  
22 Exhibit 69.

23 A I'm there.

24 Q Which one did I point you to?

25 A 69.

1 Q Okay. Now, this is March 23rd of 2020.

2 A Correct.

3 Q Hold on. I'm sorry. We already did that one. I'm  
4 sorry.

5 A This is the one where we retained Maier Gutierrez for  
6 the first time.

7 Q Yeah. For some reason I have -- check your second  
8 page or the third page. Let's see.

9 MS. FOLEY: It's the attachment to the letter.

10 BY MR. MUSHKIN:

11 Q It's the amended forbearance agreement. Do you see  
12 the amended forbearance agreement attached?

13 A I do. It's the second document on the third page of  
14 Exhibit 69.

15 Q And you see again,

16 As such, no default has occurred.

17 Do you see that?

18 A Where are you looking?

19 Q In the letter: As such, no default exists.

20 A Oh. Okay. I thought you were on the amended  
21 forbearance.

22 Q It's the 722, the last line.

23 A Correct.

24 Q Now, you didn't make any claim that there was a  
25 defect in the deed of trust at this time, did you?

1 A We were unaware of it.

2 Q Okay. So and you made no claim that the pledge had  
3 not been given in these documents; correct?

4 A No claim was made under the pledge. So we would have  
5 no reason to reiterate that SJC was now participatory in the  
6 pledge.

7 Q Mr. Bloom, is it your testimony that no demand was  
8 made under the pledge? I just went over the letter with you  
9 that had the -- that went to you and Mr. Antos requesting your  
10 assignments with your assignment.

11 A When was that?

12 Q March.

13 MS. FOLEY: 74.

14 BY MR. MUSHKIN:

15 Q Let's take a look at 74:

16 Dear Mr. Bloom and Mr. and Mrs. Antos.

17 A Wait a second. 74 I have an assignment of company  
18 and membership interest.

19 Q You've got to look at the first page, sir. It's a  
20 letter: 000887.

21 A Okay. That's --

22 THE COURT: Are you there?

23 THE WITNESS: -- the last page of 73. Oh, wait, no.  
24 It's not in 73. The last page of 73 is 886. The first page of  
25 74 is 888.

1 MS. FOLEY: Well, we're missing 887.

2 BY MR. MUSHKIN:

3 Q 887, sir.

4 A Yeah. I --

5 MR. GUTIERREZ: Yeah. I might have --

6 THE COURT: He may not have it. Why don't you put it  
7 up on the Elmo.

8 MR. MUSHKIN: We just went over it in great length.

9 THE COURT: Mr. Mushkin, it's okay. Sometimes  
10 documents are missing.

11 BY MR. MUSHKIN:

12 Q Do you see this letter, sir, dated April 1st?

13 A I do.

14 Q Do you see it's to Mr. Bloom and Mr. Antos?

15 A Correct.

16 Q It talks about, the second paragraph, Notice of  
17 nonmonetary default was delivered on March 16th. You see  
18 that?

19 A The March 16th letter is the one we went through  
20 previously.

21 Q Yes, sir.

22 A Yes.

23 Q Now, this is exercising the rights under the pledge  
24 agreement. Do you see that?

25 A Correct.

1 Q And there's an assignment attached for you, which  
2 is 888 -- I'm sorry, for Mr. Antos, which is 888; and one for  
3 Jay Bloom, manager, 889.

4 Do you see that?

5 A I see 888 and 889 is both unsigned --

6 Q Both unsigned?

7 A Right.

8 Q Right. But that's what those -- that's what came  
9 with the letter; right?

10 A I don't remember those. I do remember the letter.

11 Q Okay.

12 A And I do remember objecting to the assertion that  
13 there was a pledge of --

14 Q Do you see the last paragraph, sir?

15 A Which paragraph? Which page?

16 Q Of the letter?

17 MS. FOLEY: You have to put it back on the Elmo.

18 MR. MUSHKIN: Sorry. Thank you, Karen.

19 MS. FOLEY: No problem.

20 BY MR. MUSHKIN:

21 Q Do you see that last paragraph?

22 A I do.

23 Q Enclosed herein, please find an assignment of  
24 membership interest for your review and signature.

25 Do you see that?

1 A I do.

2 Q Any reason to believe that the assignment was not  
3 attached?

4 A No.

5 Q Thank you. But you didn't sign it, did you?

6 A No.

7 Q And you didn't make any claim that the pledge was not  
8 effective at this time, did you?

9 A I believe I did. That's why it wasn't signed.

10 Q Where did you make the claim?

11 A Well, we spoke through attorneys. So it would have  
12 been through the attorneys.

13 Q Any written document that says that?

14 A I don't know.

15 Q All right. Let's go back to the amendment to  
16 forbearance agreement. It's Exhibit 16.

17 A Okay. I'm there.

18 Q Hold on one second. I don't want stuff to start  
19 ricocheting around the courtroom. Okay.

20 Have you ever seen this document before?

21 A I believe so.

22 Q I'd like you to look at 162, page 9 of the agreement.  
23 You signed on behalf of Spanish Heights and on behalf  
24 of SJC; right?

25 A Correct.



1 Q The final "whereas" states that,

2 The parties desire to extend the  
3 forbearance until March 31st of 2020.

4 Do you see that?

5 A I do.

6 Q And then it recites consideration. Do you see that?

7 A And now therefore in consideration, is that what  
8 you're referring to?

9 Q Yes. Mutual covenants and agreements. Do you see  
10 that?

11 A Yes.

12 Q And it goes to conditions to extension. Do you see  
13 that?

14 A I do.

15 Q And Item Number 5,

16 The membership pledge agreement executed  
17 by SJCV and the Antos Trust shall remain in  
18 effect, and the execution of this amendment  
19 shall not be considered a waiver of CBC I's  
20 rights under the membership pledge agreement.

21 Do you see that?

22 A I do see it.

23 Q And did you understand what you were signing when you  
24 signed this document?

25 A Well, there is no membership pledge agreement --

1 Q Sir, it's not --

2 A -- executed by SJC.

3 THE COURT: Could you rephrase your question.

4 BY MR. MUSHKIN:

5 Q Did you understand the terms of this amendment when  
6 you signed it?

7 A I thought I did at the time.

8 Q Now, let's go back to the next paragraph,

9 SHAC will provide CBC I with evidence of  
10 homeowners insurance coverage that is  
11 effective through March 31st, 2020.

12 Do you see that?

13 A I do.

14 Q And you ultimately provided that; did you not?

15 A I did.

16 Q The payment of the balloon is due on March 31st.

17 That's paragraph 7.

18 A Correct.

19 Q Did you pay that?

20 A No.

21 Q The parties acknowledge the extension of a lease  
22 agreement and such agreement shall continue to govern the lease  
23 of the parties. Do you see that?

24 A I do.

25 Q The membership pledge executed by SJCV and the Antos

1 Trust shall remain in effect, and the execution of this  
2 amendment shall not be considered a waiver of CBC's rights  
3 under the membership pledge agreement.

4 Do you see that?

5 A I do.

6 Q That's actually a repeat of Number 5, isn't it?

7 A It is.

8 Q Twice they put that in there.

9 The assignment of rents will remain in  
10 effect.

11 Do you see that?

12 A I do.

13 Q And then 11,

14 The account control agreement shall  
15 remain in effect.

16 Do you see that?

17 A I do.

18 Q But you never funded the account control agreement,  
19 did you?

20 A The account control agreement was not able to be set  
21 up. So prepayment was made in lieu of an account control  
22 agreement that was supposed to secure the payments.

23 Q Mr. Bloom, that wasn't responsive to my question. My  
24 question is a real simple yes or no.

25 You never funded a control agreement, did you --

1 excuse me, a control account, did you?

2 A No.

3 Q Thank you. And then it goes on,

4 The security agreement shall remain in  
5 effect. Exercising of the amendment shall  
6 not be considered a waiver of CBC's rights  
7 under the security agreement. In addition,  
8 SJC agrees to obtain from counsel for SJCV  
9 and First 1 Holdings dated as the effective  
10 date of this agreement, the form and  
11 substance reasonably satisfactory to CBC I to  
12 the effect that the judgment lien pledge  
13 agreement,

14 One, constitutes a valid and binding  
15 obligation of SJCV and First 100, LLC, in  
16 accordance with its terms;

17 Two, properly evidenced to CBC I's first  
18 priority position and that no other party  
19 apart from the collection professionals has  
20 priority over CBC I to receive payments in  
21 relation to the judgment;

22 And, three, no, ungiven notice to or  
23 obtained consent, authorization, approval or  
24 order of any court or governmental agency or  
25 body is to be obtained by SC -- agency or

1 body required to be obtained by SJCV or First  
2 100 holdings is required for the consummation  
3 of the transaction sets forth.

4 CBC I may require that the opinion of  
5 counsel address any other matters incident to  
6 the matters herein contemplated by CCV I may  
7 -- sorry -- CBC I may reasonably request.

8 Do you see that?

9 A I do.

10 Q And did you understand that term when you signed it?  
11 When you signed the agreement?

12 A I believed I did at the time.

13 Q And did you ever provide that opinion letter?

14 A No.

15 Q Thank you.

16 A It wasn't requested until March, at the end of the  
17 expiration of the forbearance agreement.

18 Q Well, this document is dated December of '19;  
19 correct?

20 A The document that says that CBC may require --

21 Q Exhibit 16.

22 A Yes.

23 Q And you were requesting that information in the  
24 middle of March; correct?

25 A Of 2020.

1 Q Correct.

2 A Yes.

3 Q Approximately three months later.

4 And we already went through that the lease has been  
5 terminated, and we went through that you signed it.

6 Okay. So in spite of this document, is it still your  
7 testimony that somehow SJCV is not obligated under the amended  
8 note and -- the amended secured note and deed of trust?

9 A We have gone through the lease was not terminated to  
10 correct your prior statement.

11 And no, SJC still has pledged its assignment of its  
12 interest in the judgment if it's collected.

13 All it's saying is the house is not collateral  
14 because the deed of trust was issued before an obligation  
15 existed.

16 Q Now, is it still your testimony that you never saw  
17 the note and the 10 amendments?

18 A I don't recall seeing it until this litigation.

19 Q Well, then how did you write that email that said you  
20 wanted an 11th amendment if you hadn't seen the others?

21 A I don't even recall the email, but it must have been  
22 from oral communications regarding that it was a note as  
23 amended 10 times from telephonic communications.

24 Q And you do -- well, let's go back to that release  
25 provision that I ended on.

1           So let's take a look at page 18 to Exhibit 1. Do you  
2 see the paragraph Number 10?

3           A     I do.

4           Q     And take a minute and read it, would you.

5                 Have you finished the paragraph, sir?

6           A     Almost. Okay.

7           Q     So in the middle it starts that you release CBC,  
8 hereby fully release, remise and forever discharge CBC, the  
9 parents of CBC I -- sorry. I said CBC -- CBC I and any other  
10 affiliates and predecessors of CBC I and all past and present  
11 officers, directors, agents, employees, servants, partners,  
12 shareholders, attorneys and managers of CBC I from, for and  
13 against any and all claims, counterclaims, liens, demands,  
14 causes of action, controversies, offsets, obligations, losses,  
15 damages and liabilities of every kind and character whatsoever,  
16 including without limitation any action, omission,  
17 misrepresentation or other basis of liability found either in  
18 tort or contract and the duties arising thereunder that the  
19 releasors or any one or more of them has had in the past or now  
20 has, whether known or unknown, whether asserted or unasserted  
21 by reason of any matter caused or things set forth in, relating  
22 to or arising out of in any way connected with the resulting  
23 from the amended note and modified deed of trust. This  
24 forbearance agreement and any other agreements executed in  
25 connection with this forbearance agreement.



1 Do you see that?

2 A I do.

3 Q And did you understand at the time that you were  
4 signing this document that you were waiving these claims?

5 A In the context of there was a third mortgage on a  
6 property, which we later learned did not exist, yes.

7 Q Thank you. I'd like you to go to paragraph 4.2 on  
8 page 6.

9 A Of Exhibit 1 still?

10 Q Yes.

11 It warrants that there will be no new events of  
12 default; correct?

13 A Correct.

14 Q And you have violated that provision; correct?

15 A How so?

16 Q It's a yes or no.

17 A I'm asking you to clarify the question.

18 THE COURT: So, sir, you can say yes or no. If you  
19 want, Mr. Gutierrez will have plenty of opportunity to follow  
20 you -- follow up with you.

21 THE WITNESS: Yeah, potentially. Potentially there  
22 could be a -- construed as a default, yes.

23 MR. MUSHKIN: Thank you.

24 BY MR. MUSHKIN:

25 Q And then in paragraph 4.5 where it talks about the

1 exercise of rights and remedies, in the amended forbearance --  
2 in the agreement, it says CBC I is free to exercise all of its  
3 rights and remedies under the amended note and modified deed of  
4 trust, including, but not limited to the rights and remedies  
5 available to CBC I as a result of the identified defaults.

6 Do you see that?

7 A I do.

8 Q Okay. And you understood at the time that you signed  
9 this; is that correct?

10 A I understood at the time I signed this? I understood  
11 what?

12 Q That provision?

13 A Oh. Yes.

14 Q And then paragraph 25, we may have already gone over  
15 this. That says cumulative remedies?

16 A Wait. Wait. What page are you on?

17 Q 23. Do you see that?

18 A I do.

19 Q And it says at the last line that CBC may pursue at  
20 any time from time to time and in such order as CBC shall  
21 determine in its sole discretion. Do you see that?

22 A I do.

23 Q Thank you. And you understood that provision when  
24 you signed this; is that correct?

25 A Within the context of there was a third mortgage that

1 didn't exist, yes.

2 Q Now, you made a separate promise to the Antoses;  
3 isn't that correct?

4 A Could you be more specific in what you're referring  
5 to?

6 Q Well, the Antoses are a party to the forbearance  
7 agreements; correct?

8 A I believe so, yes.

9 Q And they're referred to as the Antos parties, which  
10 is them individually and as trustees in the trust; is that  
11 correct?

12 A I'd have to look again. I know it's to them  
13 individually.

14 Q Let's go back to the first page of Exhibit 1.

15 I take that back. Let's do -- let's go to the  
16 amended forbearance agreement, which is I believe 16.

17 A 16?

18 Q Let me just check.

19 Right.

20 Do you see in the second "whereas" where they refer  
21 to the Antos parties?

22 A I do.

23 Q Okay. Do you understand who the Antos parties are?

24 A It's referencing the loan documents, which was signed  
25 by the Antos parties individually.

1 Q Sir, it's referencing the first paragraph:

2 Kenneth and Sheila Antos Living Trust,  
3 Kenneth and Sheila Antos Trust, Kenneth and  
4 Sheila Antos as trustees, and as personal  
5 guarantors of the secured promissory note  
6 described below.

7 Do you see that?

8 A Well, I see that, but I don't see --

9 Q And those are the Antos parties, aren't they?

10 MR. GUTIERREZ: Objection, Your Honor. He's got to  
11 let him finish.

12 THE COURT: You've got to let Mr. Bloom finish,  
13 Mr. Mushkin.

14 MR. MUSHKIN: Sure, Judge.

15 THE COURT: Even if you don't like what he's saying.

16 MR. MUSHKIN: I just didn't -- I can't hear him half  
17 the time, Judge.

18 THE COURT: It's okay.

19 Mr. Bloom, finish up.

20 THE WITNESS: I don't see a definition of the Antos  
21 parties other than a reference to the loan documents executed  
22 which were executed by Sheila and Ken Antos in their individual  
23 capacities, not by the Antos Trust.

24 BY MR. MUSHKIN:

25 Q Okay. Let's take a look at page 6 of the amended

1 forbearance agreement, and that provision is marked G.

2 A Okay. I'm there.

3 Q And Exhibit G says,

4 The Antos parties and SJCV represent  
5 they continue to lawfully possess and hold  
6 100 percent ownership.

7 Is that correct?

8 A Correct.

9 Q The Antos parties and SJCV in paragraph H,

10 They continue to acknowledge that the  
11 amended note, modified deed of trust and  
12 forbearance agreement are legal, valid and  
13 binding agreements of the Antos parties and  
14 the SJCV parties.

15 Correct?

16 A Correct in that that's what it says, yes.

17 Q And Jay -- and you understood that when you signed  
18 this agreement, didn't you?

19 A Well, we didn't have all the information on the  
20 notes. So within the context of the information I had, I  
21 understood it.

22 Q Well, what information didn't you have, sir?

23 A I didn't have the notes to see that it was a  
24 commercial loan to a restaurant where the Antoses individually  
25 guaranteed it, and the Antos Trust did not.

1           Q     But doesn't it say that on the very first page of  
2 the -- I just went through it with you, in the original  
3 forbearance agreement it talks about KCI Investments and  
4 Preferred Restaurant Brands, that they executed the note.  
5 Explain that to the Court, please.

6           A     I think we did explain it when we went through it and  
7 that we don't know what capacity they participated.

8                     I was told that there was a third mortgage on the  
9 house. The house was owned by the Antos Trust. I don't know  
10 who the restaurants were. I didn't know it was a restaurant  
11 loan. I didn't know that the Antos Trust, the owner of the  
12 house never signed the loan and that it didn't sign as a  
13 borrower. It didn't sign as a guarantor, and, quite frankly, I  
14 should've paid more attention and asked more questions, but I  
15 didn't. I was told it was a third party -- it was a third  
16 mortgage. I accepted on its face the representation that it  
17 was a third party and a third mortgage.

18          Q     And, in fact, you were provided a preliminary title  
19 report too, weren't you?

20          A     I don't remember, but entirely possible.

21          Q     And that preliminary title report has been admitted  
22 as?

23                     MS. FOLEY: It's the blue tab.

24                     MR. MUSHKIN: Say it again.

25                     MS. FOLEY: It's the blue tab on the side. It's

1 Exhibit 104. And it's attached to an email sent to Mr. Bloom.

2 BY MR. MUSHKIN:

3 Q I would direct your attention to Exhibit 104.

4 MS. FOLEY: The page before is the email where it --

5 BY MR. MUSHKIN:

6 Q Page 003682. It's about two thirds of the way down.

7 A Do you have a Bates number?

8 Q 003682.

9 A In Exhibit 104?

10 Q 104.

11 A So Exhibit 104 runs from Bates Number 1220 to 1348.

12 I don't have one that starts in the three thousands.

13 MR. GUTIERREZ: He can have my copy if he needs it,  
14 Your Honor.

15 THE COURT: Mr. Bloom, why don't you go grab at  
16 Mr. Gutierrez's from him.

17 THE WITNESS: I am on my way.

18 THE COURT: Great. I'm trying to keep people out of  
19 the well.

20 MR. GUTIERREZ: You're doing a great job, Your Honor.

21 (Pause in the proceedings.)

22 THE COURT: Take the time you need to look at the  
23 document, and then let us know when you're ready, sir.

24 THE WITNESS: Thank you.

25 Starting on 3682?



1 MR. MUSHKIN: Yes, sir.

2 BY MR. MUSHKIN:

3 Q Have you ever seen this document before?

4 A I don't remember it, but it's entirely possible I  
5 did.

6 Q Let's take a look at the exceptions which start on  
7 page 3686.

8 A Okay.

9 Q All right. Do you understand what these exceptions  
10 reference?

11 A I haven't read them in detail, but they look pretty  
12 boilerplate. So I believe so with a cursory review.

13 Q And through items 32, they're pretty boilerplate,  
14 aren't they? Easements, orders of vacation, things like that;  
15 right?

16 A Right.

17 Q CC&Rs, reservations, patents, all that; right?

18 A Correct.

19 Q And then you get to Item 33, and that's a deed of  
20 trust by Kenneth and Sheila Antos for 3,640,000, dated  
21 October 6, 2010. Do you see that?

22 A I do.

23 Q And is that the first deed of trust that is reflected  
24 on the exceptions?

25 A I believe so.

1 Q And then Item 34 is a revolving credit deed of trust  
2 and assignment of rents to Northern Trust. Do you see that?

3 A I do.

4 Q And is that the second deed of trust recorded on the  
5 property?

6 A Yes.

7 Q And Item 35 is a deed of trust and assignment of  
8 rents for the amount of \$3 million in favor of CBC Partners I,  
9 LLC, a Washington limited liability company. Do you see that?

10 A I do.

11 Q Is that the third deed of trust on the property?

12 A Yes.

13 Q Thank you. And I'd like you to look at Item 36. And  
14 that's a lien from Red Rock Financial Services. Do you see  
15 that?

16 A I do.

17 Q Do you know what that's for?

18 A I do not.

19 Q The next item I want to look at is a treasury of  
20 certificate holding delinquent property taxes. Do you see  
21 that?

22 A I do.

23 Q Okay. And then the next one is a judgment. Do you  
24 see that document?

25 A I do.

1 Q And do you know how much that judgment is for?

2 A It's reflected on the title report as \$87,213.05.

3 Q I'd like you to look at the next one, a judgment,  
4 this one from E and H distributing. Do you see that?

5 A I do.

6 Q How much is that one for?

7 A That one appears to be for \$15,819.09.

8 Q And Item 40 is an application of foreign judgment,  
9 and that is in the amount of \$812,217.92. Do you see that?

10 A I do.

11 Q Creditor CT Communications. Do you see that one?

12 A I do.

13 Q And then 41 is a judgment. Creditor is Shetakis, and  
14 is 19,640.98. Do you see that?

15 A I do.

16 Q The next one is a judgment dated May of '16. The  
17 creditor is Robert Walsh and the amount is 538,500. Do you see  
18 that?

19 A I do.

20 Q And then the next one is another application of  
21 foreign judgment. Do you see that one?

22 A I do.

23 Q And that's 93,190.49. Do you see that?

24 A I do.

25 Q And then the next one is another application of

1 foreign judgment in the amount of 89,524.

2 Do you see that?

3 A I do.

4 Q And then finally, another judgment, the debtors --  
5 creditor is Mengyun Han, and that's for \$585,000.

6 Do you see that?

7 A I'm looking at one that it's 560,000.

8 Q I'm looking at 45. Are you looking at 45?

9 A I am.

10 Q It says amount 560, and 585 and other amounts due  
11 hereunder. So I guess that one's a million, four. Is that  
12 fair?

13 A A million 45.

14 Q Thank you. And you are obligated yourself to file a  
15 quiet-title action; is that correct?

16 A As a method to resolve the liens.

17 Q And you didn't file that quiet-title action, did you?

18 A I did not.

19 Q And those judgments remain of record on the property  
20 to this day; isn't that correct?

21 A They do.

22 Q Why haven't you filed the quiet-title action?

23 A Because I don't think a quiet-title action would be  
24 necessary. I think they made the same mistake that CBC did.  
25 The judgments are against the Antoses individually, but at the

1 time the lien was filed, it was filed against the Antos Trust  
2 property, which is a separate entity.

3 Q Well, that's --

4 A So these liens never -- those liens never should have  
5 been recorded, and I think a quiet-title action is probably not  
6 necessary. There's no reason to file a dozen litigations when  
7 a demand would probably yield the same result.

8 Q Did you submit a demand?

9 A I have not.

10 Q You obligated yourself to file a quiet title; did you  
11 not, sir?

12 A The intent was to resolve the liens, yes.

13 Q And you have not resolved those liens, have you, sir?

14 A Not yet.

15 Q Mr. Bloom, you promised Mr. Hallberg on a number of  
16 occasions to pay off the note, didn't you?

17 A Upon recognizing liquidity, yes.

18 Q Well, I'm going to direct your attention to 104  
19 again, this time the very first page of 104, 2717.

20 A What's the Bates number?

21 Q 2717.

22 MS. FOLEY: That's the middle of 104. 104 starts  
23 [inaudible].

24 MR. MUSHKIN: I'm sorry.

25 / / /

1 BY MR. MUSHKIN:

2 Q It's the first one in the book that I'm looking at.

3 A That could not be less helpful.

4 MR. MUSHKIN: I feel the exact same way, Judge.

5 THE COURT: So, Mr. Bloom, if you want to go,  
6 Mr. Gutierrez may have something for you there it looks like.

7 THE WITNESS: Okay. Should I return this book to  
8 him?

9 MR. MUSHKIN: No, leave it up there.

10 THE COURT: No. You're going to gather all the books  
11 you have and keep them until you're done.

12 THE WITNESS: Okay.

13 (Pause in the proceedings.)

14 MR. MUSHKIN: Your Honor, would you like to take the  
15 afternoon break now?

16 THE COURT: If you think it's a convenient time.

17 How much longer do you think given the pace that is  
18 currently going?

19 MR. MUSHKIN: Today is Tuesday; is that right? My  
20 expectation is all week.

21 THE COURT: You can't see my face under the mask.  
22 And it is a good --

23 MR. MUSHKIN: That was a yes, today is -- I'm bad  
24 with days of the week.

25 THE COURT: Yeah.

1 MR. MUSHKIN: I work all seven. At least I try to do  
2 a little.

3 THE COURT: Today was Tuesday.

4 MR. MUSHKIN: It's almost gone.

5 THE COURT: Uh-huh.

6 MR. MUSHKIN: My expectation that I'll be done maybe  
7 by the end of Thursday.

8 MR. GUTIERREZ: And, Your Honor, I'd like to know  
9 exactly what's going to take another two and a half days.

10 THE COURT: Are you going to just examine Mr. Bloom?

11 MR. MUSHKIN: Yes, sir -- yes, ma'am, absolutely.

12 THE COURT: Because at some point I'm going to tell  
13 you you're done if that's how we're going.

14 MR. MUSHKIN: Well, I'm doing the best I can, Judge.

15 THE COURT: I understand, but at some point it's like  
16 no matter how much difference you guys have there's only so  
17 much we can do.

18 MR. MUSHKIN: Well --

19 MR. GUTIERREZ: And, Your Honor, I'd object just  
20 given the limited scope of this trial. I want to make sure  
21 he's addressing the issues, and obviously going till  
22 Thursday --

23 THE COURT: Well, he is addressing the issues.

24 MR. GUTIERREZ: He is, but not until Thursday.

25 THE COURT: I'm not saying this is Mr. Mushkin's



1 fault.

2 MR. GUTIERREZ: Right. But --

3 THE COURT: And as --

4 MR. GUTIERREZ: -- going to till Thursday --

5 THE COURT: Wait. I don't know that you heard me,  
6 Mr. Gutierrez, but I almost granted the 50(a) motion.

7 MR. GUTIERREZ: Understood.

8 THE COURT: The only reason I didn't grant the 50(a)  
9 motion is there's a case, I don't remember if it's published or  
10 not, that says I'm not supposed to weigh evidence at the 50(a)  
11 stage. So I didn't.

12 MR. GUTIERREZ: Understood.

13 THE COURT: But if I had weighed evidence at the  
14 50(a) stage, we wouldn't still be here.

15 MR. GUTIERREZ: Understood, Your Honor, and --

16 THE COURT: So --

17 MR. GUTIERREZ: And these are serious issues that we  
18 take serious. We want to make sure the record is complete, but  
19 I want to make sure that the record is limited to what we are  
20 actually addressing --

21 THE COURT: Absolutely.

22 MR. GUTIERREZ: -- in this case.

23 THE COURT: The five issues that we're addressing --

24 MR. GUTIERREZ: Absolutely.

25 THE COURT: -- plus the preliminary injunction.

1 But at some point, Mr. Mushkin, for purposes of the  
2 limited trial we have on this issue, we're beating a dead  
3 horse. That's all I'm trying to say.

4 MR. MUSHKIN: Your Honor...

5 THE COURT: I'm going to take the afternoon break and  
6 let you guys think and talk.

7 MR. MUSHKIN: Thank you, Your Honor. Fifteen  
8 minutes?

9 THE COURT: Sure.

10 (Proceedings recessed at 2:41 p.m., until 2:50 p.m.)

11 (Pause in the proceedings.)

12 THE COURT: Okay. Keep going.

13 MR. MUSHKIN: Your Honor, I'm going to try and get  
14 through this as quickly as I can.

15 THE COURT: I know you tried cases in front of Stu  
16 Bell and Sally Loehrer before. So...

17 MR. MUSHKIN: You know, Your Honor, I have and --

18 (Pause in the proceedings.)

19 BY MR. MUSHKIN:

20 Q Okay. Mr. Bloom, you contracted to pay the HOA dues;  
21 is that correct?

22 A Spanish Heights did, yes.

23 Q And you failed to do that for a period of time,  
24 didn't you?

25 A Spanish Heights did.

1 Q They failed?

2 A Yes.

3 Q In fact, the HOA was going to go to foreclosure;  
4 correct?

5 A Nobody would have allowed it to go to foreclosure.

6 Q Well, you didn't pay it, did you?

7 A No.

8 Q In fact, my client had to pay it the day before the  
9 sale, didn't he?

10 A I don't remember it being the day before the sale,  
11 no.

12 Q Well, isn't it true, Mr. Bloom, that you were trying  
13 to steal position on title by letting that accrue and then  
14 buying it at an auction?

15 A No, that's not true.

16 Q Why didn't you pay the HOAs?

17 A I don't remember the circumstances, but, no, that is  
18 not --

19 Q Thank you.

20 A -- I was not looking to steal title --

21 Q You don't remember. I appreciate that, sir. okay.

22 And do you know what the amount of the HOA notice of  
23 default was?

24 A I do not.

25 Q It was -- would you be surprised if it was \$8,507.83?

1 A Not necessarily.

2 Q Let's take a look at 3230. It's in Exhibit 4.

3 (Pause in the proceedings.)

4 THE WITNESS: So it's not in my Exhibit 4, and I  
5 don't know that Mr. Gutierrez had it either.

6 MR. MUSHKIN: That's all right. We'll put it on the  
7 Elmo. I'm such an expert.

8 BY MR. MUSHKIN:

9 Q Do you see this email on January --

10 THE COURT: You've got to lower it a little bit.  
11 Thank you.

12 MR. MUSHKIN: I've got to look up.

13 BY MR. MUSHKIN:

14 Q All right. Do you see that email?

15 A I do.

16 Q And that's your email address, Jay Bloom at F 100  
17 LLC, dot, com?

18 A Yes.

19 Q And it goes to Alan Hallberg. Do you see that?

20 A I do.

21 Q Below is the email that you respond to. There's one  
22 from Alan to you.

23 A Okay.

24 Q It says,

25 It looks like the HOA dues are owing,

1                   and the association is taking action. Would  
2                   you please take care of this. Please let me  
3                   know if you'd like to chat first.

4                   And what was your response, sir?

5           A       The response in the email was,

6                               I'll take care of this. I prepaid for a  
7                   period of time and forgot about it when the  
8                   property -- when the prepay ran out. It went  
9                   to NOD. Easy fix.

10          Q       You didn't fix it though, did you, sir?

11          A       I think they advanced it to the payoff.

12          Q       Sir, my question is you did not take care of the HOA  
13       dues, did you?

14          A       Mr. Mushkin, could you pull up your mask, please.

15          Q       No. I'm asking you a question. My mask is fine.

16                   THE COURT: Pull your mask back over your nose,  
17       please.

18                   MR. MUSHKIN: It was over my nose.

19                   THE COURT: No, it wasn't. It had fallen down.

20                   MR. MUSHKIN: Only to there.

21                   THE COURT: All right.

22       BY MR. MUSHKIN:

23           Q       Mr. Bloom, you did not take care of the HOA dues, did  
24       you, sir?

25           A       I spoke with CBC, and CBC --

1 Q Sir, it's a yes-or-no answer.

2 A Yes.

3 Q Show me the payment, sir.

4 A It wasn't by payment. It was by arrangement with  
5 CBC.

6 Q What?

7 A I spoke with CBC, and we made an arrangement where  
8 they would pay it and add it to the balance.

9 Q That they would pay it?

10 A Yes.

11 Q Do you have that in writing anywhere?

12 A It was evidenced by the actions of the parties.

13 Q Oh, I see.

14 My question again, sir, you did not pay the HOA dues,  
15 did you?

16 A I paid a great number of HOA dues.

17 Q Sir, I'm referring to the HOA dues represented in the  
18 notice of default. You did not pay those dues, did you?

19 A Those particular dues, no.

20 Q Thank you.

21 MR. MUSHKIN: We may be here that long, Judge.

22 THE COURT: I'm just telling you I understand,  
23 Mr. Mushkin, but...

24 BY MR. MUSHKIN:

25 Q Is it fair to say that SHAC made no payments pursuant

1 to these agreements until May of 2020?

2 A No.

3 Q SHAC never had a bank account until April 30th,  
4 2020; correct?

5 A Correct.

6 Q So how would SHAC make payments?

7 A SHAC was due rent from SJC and assigned its rent  
8 payments to satisfy the obligations directly. So it did it by  
9 way of assignment of rents receivable.

10 Q Who assigned what rents to who?

11 A SHAC assigned SJC rents to SHAC's obligations.

12 Q Sir. I'm asking a real simple question. You're  
13 making this a lot harder.

14 Isn't it true that SHAC did not make any payments  
15 pursuant to this agreement until May of 2020 when they opened  
16 their bank account? It's a yes-or-no answer.

17 A No, that's not true.

18 Q Isn't it true that others made payments on behalf of  
19 SHAC until April -- until May of 2020?

20 A Others made payments to SHAC obligations on behalf of  
21 SHAC obligations in satisfaction of their obligations to SHAC.  
22 So SJC owed Spanish Heights rent. Spanish Heights assigned  
23 those rent receivables to satisfy Spanish Heights obligations  
24 to pay them.

25 Q I'm not asking about assignment, sir. I'm asking who



1 made payments, and isn't it true that all the payments made up  
2 until May of 2020, all payments made to CBC I were made by a  
3 party other than SHAC?

4 A Yes.

5 Q Thank you. Do you recall my asking in the deposition  
6 for proof of the hundred thousand and repairs?

7 A Not offhand, but I'm not specifically denying that  
8 you asked that.

9 Q And do you also recall I'll leave a blank in the  
10 transcript for you to add whatever you have not produced up  
11 until now? Do you recall that?

12 A No, but I'm sure you said that.

13 Q I'm going to direct your attention -- are you  
14 acknowledging that you made that statement, sir, with the deny  
15 or don't deny? Which is your answer? Did you recall it, or do  
16 you not recall?

17 A You're referencing a statement that you made. I  
18 didn't make that statement.

19 Q I'm asking if you recall hearing it, sir?

20 A Okay. Sort of. Vaguely.

21 Q Have you produced everything you have showing that  
22 you made a hundred thousand in repairs?

23 It says, I'd have to go back and check to see what  
24 production I gave to the attorneys.

25 Question, I'll leave a blank in the transcript for

1 you to add whatever you have not produced up until now.

2 Do you see that?

3 A I see that.

4 Q Did you produce anything subsequent to your  
5 deposition?

6 A I don't know if the production of the home automation  
7 repairs was prior to or subsequent to my deposition and other  
8 expenses.

9 Q Are you saying you don't know?

10 A I don't know if it was prior to or subsequent.

11 Q We've gone through the produced receipts. You saw  
12 those earlier?

13 A I did.

14 Q Did you provide anything in addition to those  
15 receipts?

16 A Yes.

17 Q Pursuant to the depo?

18 A I provided things in addition to the receipts. I  
19 don't remember if it was pursuant to the depo or prior to the  
20 depo.

21 Q Where are those documents, sir?

22 A They've been provided.

23 Q Where? Show me them.

24 A Well, I don't see them in the exhibits beyond the  
25 HVAC repairs.

1 Q So there aren't any, are there, sir?

2 A There are.

3 Q Where are they?

4 A They're not --

5 Q There have been no other --

6 THE COURT: You've got to let him finish.

7 MR. MUSHKIN: Sorry. I thought he was done, Judge.

8 THE COURT: Mr. Bloom, could you finish, please.

9 THE WITNESS: They're not in the exhibits, but there  
10 are more documents.

11 BY MR. MUSHKIN:

12 Q But you have not produced them in this case?

13 A I provided them to counsel. I don't see them. They  
14 didn't make the exhibit pack.

15 Q So you answered a question that said that -- we were  
16 talking about SJCVC as the investor member and the covenants  
17 that you agreed to upon entering into and taking management of  
18 SHAC.

19 And your response to that was, When you say "you,"  
20 you mean SJCVC? And your answer is, Yes, sir.

21 And then you add, Subject to modification of the  
22 parties subsequent to this agreement, yes. Okay.

23 And I ask you, Are you aware of any modifications  
24 other than the amended forbearance agreement?

25 Do you recall that question?

1 A If you could put it on the Elmo, it would be helpful.

2 Q Do you recall that question?

3 A I don't specifically recall that question.

4 Q I'm asking you today, are you aware of any written  
5 modifications to the documents other than the amended  
6 forbearance agreement?

7 A No.

8 Q I asked you a question:

9 Did you ever have any agreement from  
10 Mr. Antos that you were not obligated to do  
11 what you promised Mr. Antos in the operating  
12 agreement.

13 Do you recall that question?

14 A I do not.

15 Q Well, I'm going to ask it now. Do you have any  
16 agreement from Mr. Antos that you were not obligated to do what  
17 you promised Mr. Antos in the operating agreement?

18 A No.

19 Q Do you remember what your response was to that  
20 question at the time of your deposition?

21 A I do not.

22 Q Your answer was, Mr. Antos directed me to speak to  
23 CBC.

24 A Okay.

25 Q Why did you answer that way at the deposition?

1 A By "that way," you mean truthful?

2 As I said at the beginning of this trial, the  
3 beginning of my testimony, I spoke to Mr. Antos maybe once.  
4 Every other time he directed me to speak to CBC.

5 Q So in answer to the question, Did you have any  
6 agreement from Mr. Antos that you were not obligated to do what  
7 you promised in the operating agreement, you responded,  
8 Mr. Antos directed me to speak to CBC?

9 A Apparently. That's what the transcript says --

10 Q And you believe that to be a truthful answer --

11 A I don't recall that.

12 Q -- to the question?

13 THE COURT: Wait. You've got to let him finish.  
14 Sir.

15 MR. MUSHKIN: Well, I didn't finish my question  
16 first.

17 THE COURT: Sir, were you done with your answer?

18 THE WITNESS: I'm not sure what the question was at  
19 this point.

20 THE COURT: Okay. Could you start over.

21 BY MR. MUSHKIN:

22 Q Did you ever have a written agreement from Mr. Antos  
23 that you were not obligated to do what you promised Mr. Antos  
24 in the operating agreement?

25 A Is that the end of the question?

1 Q Yes.

2 A No.

3 Q When I asked that question at your deposition you  
4 answered, Mr. Antos directed me to speak to CBC.

5 Why did you give that answer?

6 A It's a truthful answer. That's --

7 Q Well -- sorry.

8 A That's what I -- that's what I recalled in the moment  
9 in response to that question.

10 Q It's not responsive to the question, is it, sir?

11 A You know, I'm not sure that it isn't.

12 Q Thank you.

13 A I'm not sure that it is.

14 Q Thank you, Mr. Bloom. So I asked you a question, and  
15 I'm asking it to you again today. Are there other  
16 modifications other than the amended forbearance agreement?

17 A None that I can recall in the moment.

18 Q When I asked you that question, your answer was as  
19 follows: There are potentially other email communications  
20 which would be subsequent modifications, and then there are  
21 telephone conversations.

22 Is it your testimony that the contracts can be  
23 modified by an email?

24 A I would think they could.

25 Q You believe they can. Okay. And I asked you,

1                   Doesn't it say in the operating  
2                   agreement as well as the forbearance  
3                   agreement that all modifications must be in  
4                   writing, signed by the parties?

5           A     I believe so.

6           Q     Thank you. Why did you tell me you don't know at the  
7           time of your deposition to the same question?

8           A     Pull your mask up. Thank you.  
9           Could you repeat that.

10          Q     The question is,

11                   Doesn't it say in this document that all  
12                   modifications must be in writing?

13           Your answer is, I don't know.

14           I answered -- I asked you the same question just now,  
15           and you said yes. Why did you say I don't know at the time of  
16           your deposition?

17          A     Well, I think we just reviewed the document, and I  
18           saw it here. I think.

19          Q     There are no amendments to the operating agreement.  
20           Is that fair?

21          A     No. No.

22          Q     There are no amendment -- isn't it true there are no  
23           amendments to the operating agreement?

24          A     Yes, I believe that's the case.

25          Q     Now, when I asked you that question, you equivocated,



1 and your answer was,

2                   There are no formal amendment to the  
3                   operating agreement, but the agreement terms  
4                   are modified by the amendment to the  
5                   forbearance agreement, which we've  
6                   acknowledged, and emails that occurred  
7                   between the parties.

8                   Right? That was your answer?

9           A     I'll accept your representation, but I don't have the  
10           transcript in front of me.

11          Q     Didn't you just testify that you rarely had any  
12           conversations with Mr. Antos?

13          A     Yes.

14          Q     And Mr. Antos and you are the only parties to the  
15           operating agreement; right?

16          A     Correct.

17          Q     The operating agreement is referenced in the  
18           forbearance agreement; right?

19          A     Correct.

20          Q     And the same covenants appear in both the 150, the  
21           quiet title, all those things that were under investor.  
22           Remember, those appear in the forbearance agreement; correct?

23          A     I believe so.

24          Q     Okay. And -- but in your answer it says,

25                   But the agreement terms are modified by

1                   the amendment to the forbearance agreement  
2                   and emails occurred between the parties.

3                   Have you produced any emails with Mr. Antos?

4           A     I don't believe so.

5           Q     Thank you. There's no modification by emails to the  
6           operating agreement; correct?

7           A     None that I can recall as I sit here today.

8           Q     I may have covered this already, but you were aware  
9           that Preferred Restaurant Brands and KCI were parties to the  
10          note before you entered into the agreement on September 27th;  
11          correct?

12          A     Well, the language was included in the document, no,  
13          it was not.

14          Q     Well, when I asked you that question -- let me read  
15          the two questions I asked you:

16                  Are you talking about paragraph 1 that it says that  
17          the note -- sorry.

18                  I'll represent to you that it's CBC I, but I don't  
19          really care. And then it talks about the original note on June  
20          22nd, 2012, and its origination. Do you see that?

21                  Can't hear you. Are you talking about paragraph 1,  
22          which it says the notes have been executed by KC Investments  
23          and Preferred Brands?

24                  Your answer, yes. Yes, I see that.

25                  Question, and you saw that at the time you entered

1 into the agreement. Is that also true?

2 Do you know what your answer was?

3 A I do not.

4 Q Well, I'm going to ask you now: Did you see the KCI  
5 and Preferred names at the time you entered into the agreement?

6 A I don't recall seeing that.

7 Q At the time of your deposition you answered yes. Why  
8 are you answering differently today?

9 A Well, I think during my deposition I made a mistake.

10 Q So at the time of your deposition I asked you this  
11 question: Pursuant to the terms hereunder, SHAC intends to  
12 acquire the property and make certain payments to CBC and other  
13 parties pursuant to the terms of this forbearance agreement.

14 Do you recall that provision in the forbearance  
15 agreement?

16 A I'm sorry. Are you asking a question now, or are you  
17 reading the transcript?

18 Q I am asking you a question. Pursuant to the terms of  
19 the agreement, the terms hereunder, SHAC intends to acquire the  
20 property and make certain payments to CBC and other parties  
21 pursuant to the terms of this forbearance agreement.

22 Is that in fact the provision within the forbearance  
23 agreement?

24 A I believe so.

25 Q And did you agree to that provision at the time of

1 you signed the agreement?

2 A I believe so.

3 Q Thank you. Now, I asked you, and the question is --  
4 I'll read it: And, finally, in addition amounts -- in  
5 additional amounts for accrued interest, recoverable costs,  
6 including reasonable attorneys' fees, certain indemnities,  
7 postforbearance protection payments and other note expenses as  
8 described below, and I asked you if you saw that provision.

9 Do you know what you responded?

10 A I do not.

11 Q Well, did you see the -- do you recall seeing the  
12 provision at the time of your depo?

13 A No.

14 Q And have you reviewed these documents in advance of  
15 today?

16 A No.

17 Q So do you -- are you able to affirm or deny that the  
18 forbearance agreement covered accrued interest, recoverable  
19 costs, reasonable attorneys' fees, indemnities, postforbearance  
20 protection payments and other note expenses as described below.  
21 That's what's covered in the forbearance agreement; correct?

22 A I believe so.

23 Q And you agree to pay all of those sums; isn't that  
24 correct?

25 A Uh --

1 Q SJC?

2 A Yes.

3 Q Thank you. And, in fact, as we've shown you on the  
4 preliminary title report, the CBC note is in third position.  
5 That's also correct, isn't it?

6 A There is a deed of trust recorded in the third  
7 position for the benefit of CBC securing a note to which the  
8 Antos Trust as the pledgor has no nexus.

9 Q Now, you have now claimed that something was  
10 misrepresented to you; is that correct?

11 A I believe so.

12 Q What was misrepresented?

13 A The existence of the third mortgage. There was no  
14 third mortgage. It was a commercial loan to a restaurant, and  
15 I only found that out through the course of this proceeding.

16 Q Well, if you only found -- the day you filed this was  
17 April 9th of 2020; right?

18 A I believe about then, yes.

19 Q Okay. If you didn't find out about any of this  
20 defect, why didn't you make the balloon payment on March  
21 31st, 2020, as required by the amendment to the forbearance  
22 agreement?

23 A I don't -- I think because we were arguing about the  
24 default that you had sent two weeks prior.

25 Q Who is we?

1 A Me and MGA.

2 Q Well, I showed you the letter. You claimed there  
3 couldn't be a default; right?

4 A Well, the defaults that you were claiming weren't  
5 defaults.

6 Q Okay.

7 A Yeah.

8 Q Well, but you acknowledged that the document matures  
9 March 31st; right? That's the end of the forbearance period?

10 A Correct.

11 Q Well, you testified that you didn't know about any  
12 defect until the course of this litigation. I'm assuming that  
13 was when discovery was taking place; is that fair?

14 A That's correct.

15 Q Well, then why didn't you pay on March 31st, like  
16 you were obligated to?

17 A You noticed a default improperly two weeks prior.

18 Q And that's the --

19 A And it set us down this path.

20 Q And you're testifying to this Court that the notice  
21 of default is a defense to payment of a matured note?

22 A Mr. Mushkin, your mask is down again.

23 There are several. We have a breach of the  
24 forbearance agreement by CBC in January, February and March.

25 Q Did you notice default?

1 A Not at that time.

2 Q Okay.

3 A We didn't know about the default to notice the  
4 default.

5 Q Well, if you didn't know about the default, then how  
6 can that be a defense to payment on March 31st? I'm asking  
7 you what you knew on March 31st that you can tell this Court  
8 that's a defense to payment of this balloon payment?

9 A We knew that you noticed a default improperly.

10 Q That's all?

11 A And then we found out there were subsequent --  
12 subsequently we found out other issues.

13 Q Well, but you didn't find out until sometime in May  
14 or June; right?

15 A Right.

16 Q March 31st the obligation was due; right?

17 A Correct.

18 Q Now, through the course of this you spoke directly to  
19 me on a number of occasions, didn't you?

20 A I did.

21 Q And, in fact, there was consent given by your counsel  
22 to speak with me; isn't that correct?

23 A Correct.

24 Q What were you trying to accomplish in speaking to me?

25 A I don't recall. I think we were talking about



1 extending the forbearance.

2 Q You wanted more time; right?

3 A Correct.

4 Q And you asked that of Mr. Hallberg; correct?

5 A Correct.

6 Q And Mr. Hallberg said no; correct?

7 A Correct.

8 Q And, in fact, Mr. Hallberg told you all  
9 communications were to go through my office; right?

10 A Yes.

11 Q And you communicated with Mr. Hallberg after that,  
12 didn't you?

13 A I did.

14 Q You sent him an email, didn't you -- I mean a text  
15 message, didn't you?

16 A Possibly.

17 Q Do you know what that -- do you remember what the  
18 text message said?

19 A No. What did it say?

20 Q Do you recall?

21 A I do not.

22 Q It said, Your attorney is going to get you into  
23 trouble.

24 Do you recall that?

25 A Probably. That sounds -- yes.

1 Q Okay. Now, you were instructed not to communicate  
2 with him; correct?

3 A Uh --

4 Q You just said, yes, all communications through  
5 counsel.

6 A It was -- it was a request to communicate with you.

7 Q Okay.

8 A That's not an instruction not to communicate with  
9 him.

10 Q But then you decided you would try and interfere with  
11 my relationship with my client; is that correct?

12 MR. GUTIERREZ: Objection, Your Honor.  
13 Argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: It was not intended to interfere with  
16 your relationship. It was intended to inform your client as to  
17 some of the actions you were taking are improper.

18 BY MR. MUSHKIN:

19 Q So can you tell me today what was falsely represented  
20 to you?

21 A The existence of a third mortgage.

22 Q But we've just gone through it that it's the third  
23 deed on the property; correct?

24 A It is a third deed, but the deed is not the  
25 obligation. The deed secures an obligation, and it was an

1 obligation that didn't exist that represented that it -- which  
2 was represented as a (indiscernible).

3 So when CBC says there's a third mortgage, I  
4 understand that to be an obligation of the Antos Trust. What  
5 came out later is that the Antos Trust never really did have  
6 that obligation, that it was a commercial restaurant loan.

7 Q Well, what document revealed this to you?

8 A When we finally got the note.

9 Q Sir, you referenced a note before the documents are  
10 assigned. You're creating the 11th modification.

11 A Right. Based on telephone --

12 Q You saw the note before you signed.

13 A That's not true.

14 Q Okay. Do you have any proof of that?

15 A I don't think you can prove the absence of something.  
16 I mean, clearly if there was an email that said the note is  
17 attached we would have provided it, but you've provided every  
18 email except that critical one. The note was never provided.

19 Q Well, did you ever ask for it?

20 A No. I accepted it on face value of the  
21 representation that there was a third mortgage, that the Antos  
22 Trust was a borrower.

23 Q And you have now seen the documents that set forth  
24 the Antos -- the certificate of borrowing. You saw that  
25 document; correct?

1 A Certificate of borrowing?

2 Q The certificate of authority to borrow, sir, do you  
3 recall that document?

4 A There's a certificate of trust -- I don't know which  
5 document you're referring to, and I don't want to guess.

6 MS. FOLEY: 34.

7 THE COURT: Maybe it's 34.

8 BY MR. MUSHKIN:

9 Q Let's take a look at 34.

10 A Okay. So 34 is a certificate of the trust existence  
11 and authority.

12 Q You got that document, didn't you, sir?

13 A In discovery.

14 Q And there's also a document that is the guarantee of  
15 the trust, isn't there?

16 A Yes.

17 Q Okay.

18 A In discovery.

19 Q Tell me why you can't -- you're not obligated to pay,  
20 sir.

21 A Well, it's really not as complicated as you're making  
22 it. In 2014, the Antos Trust was not a borrower and not a  
23 guarantor, but it issued a deed of trust. The deed of trust is  
24 supposed to secure an obligation of the Antos Trust as a  
25 pledgor. No obligation existed for the Antos Trust. It

1 existed for the Antoses individually and for KCI and Preferred  
2 Restaurant Brands at some point either prior or subsequent. In  
3 2016, there was a confirmation, but the confirmation didn't  
4 create the liability, and there was an amended deed of trust,  
5 but again, against no obligation of the Antos Trust. So there  
6 was no obligation for the pledgor to secure.

7 In 2017, there first appears a guarantee by the Antos  
8 Trust which creates the obligation, but there's no deed of  
9 trust that's issued afterwards. The prior ones are defective,  
10 and the subsequent one -- there is no subsequent one.

11 Q But you waived --

12 A And then the trust transferred the ownership of the  
13 property.

14 Q Okay. And you've released and waived all these  
15 claims, haven't you?

16 A You can't waive what you don't know about.

17 THE COURT: You don't think so?

18 THE WITNESS: Not intentionally.

19 THE COURT: Okay.

20 BY MR. GUTIERREZ:

21 Q It says right in here known or unknown, doesn't it,  
22 sir?

23 A It may, but that wasn't my intent to waive something  
24 that was misrepresented.

25 Q How many years have you been in the real estate

1 business, sir?

2 A Probably 20.

3 Q And your testimony doesn't change from these  
4 documents. You still think you don't have to pay?

5 A Well, I think SJC has an obligation under its  
6 assignment of proceeds or its security agreement under the  
7 judgment, but that's a different question than whether or not  
8 the property is pledged as collateral.

9 Q I didn't ask you if the property was pledged as  
10 collateral. Sir, I asked you if you had to pay. You think you  
11 don't have to pay?

12 A No. I think when the judgment -- when the judgment  
13 is collected there's an obligation under the security agreement  
14 that remains.

15 Q What about your obligation to the Antos parties?

16 A Which obligation specifically?

17 Q Well, what did you pay for the 51 percent in SHAC?

18 A Well, I put over a million dollars into that house so  
19 far, maybe under a million dollars, but close to it.

20 Q Sir, that's not what you paid to the Antoses. That's  
21 what you put in the house. I had asked you a very specific  
22 question. What did you pay the Antoses for your 51 percent of  
23 the property?

24 A The Antoses were upside down millions of dollars in  
25 equity in the property. There was nothing to be paid to them

1 other than to alleviate some of their liability.

2 Q So you paid nothing to them; is that correct?

3 A They didn't have any equity. They were upside down  
4 by millions.

5  
6 Q Sir, I'm not asking about equity. I'm just asking  
7 you simple questions. Hopefully you can answer yes or no so we  
8 can get off of this merry-go-round quicker than we're going to  
9 get off the way you're answering questions. Please answer yes  
10 or no when I ask a yes or no question.

11 You paid the Antos parties nothing; correct?

12 A Correct.

13 Q So they have received no consideration for the  
14 51 percent that you got in Spanish Heights Acquisition Company;  
15 isn't that correct?

16 A That is not correct.

17 Q Tell me what you paid them.

18 A Consideration comes in forms other than direct cash  
19 payments to the Antoses.

20 Q And isn't the very same thing true of the deed of  
21 trust that the Antos Trust pledged for the benefit of CBC I?

22 A No.

23 Q Okay. Even though the documents recite that; no?

24 A The Antoses got specific consideration in the form of  
25 relief. But the Antos Trust got no consideration for issuing



1 that deed of trust. CBC testified to it. The Antoses  
2 testified to it, and, yes, there's language in the document  
3 that says for consideration, but it doesn't say what  
4 consideration, and the testimony both in the depositions and  
5 here at trial is that no consideration had been provided.

6 Q So you know that's not what their testimony is, sir.  
7 You heard Mr. Antos testify --

8 MR. GUTIERREZ: Objection.

9 BY MR. MUSHKIN:

10 Q He testified --

11 MR. GUTIERREZ: -- misstates testimony.

12 THE COURT: Overruled.

13 BY MR. MUSHKIN:

14 Q He testified that he got exactly what he wanted. He  
15 got an extension of credit; correct?

16 A He got a benefit individually, but he didn't  
17 testify --

18 Q And the Antos --

19 A I'm sorry. You didn't --

20 THE COURT: Wait. You've got to let him finish.

21 THE WITNESS: He did not testify that the Antos Trust  
22 received a benefit. He testified that he as a beneficiary of  
23 the trust individually got a benefit, and KCI got a benefit  
24 because they got additional extensions of credit for their  
25 working capital.

1 BY MR. MUSHKIN:

2 Q And the document itself recites that the trust and  
3 its beneficiaries receive both the direct and indirect benefits  
4 from the forbearance agreement; isn't that correct?

5 A Correct.

6 Q Thank you.

7 Now, you keep making an issue about this being a  
8 commercial note. You always knew it was a commercial note;  
9 correct?

10 MR. GUTIERREZ: Objection. Asked and answered.

11 THE WITNESS: Not correct.

12 THE COURT: Overruled.

13 BY MR. MUSHKIN:

14 Q So and when I asked you a question at your  
15 deposition,

16 It is a third-position mortgage. It's  
17 reported -- recorded against the property.  
18 Let's go back to the first representation  
19 executed by KCI Investments and Preferred  
20 Brands; correct?

21 Answer, I said commercial note.

22 So you knew right from the get-go it was a commercial  
23 note; isn't that correct?

24 A No, that's not what my testimony in the deposition  
25 says either.

1 MR. MUSHKIN: I would bring the Court's attention to  
2 page 48 of his deposition.

3 THE COURT: Okay.

4 BY MR. MUSHKIN:

5 Q Now, I asked you, And so because the Antos Trust was  
6 not a borrower, you believe that's a defense to payment under  
7 this agreement.

8 And Ms. Barraza objected as to form.

9 And do you know what your answer was?

10 A I do not.

11 Q To the extent it calls for a legal conclusion, I  
12 would object, but that's my belief, and you can -- that you  
13 can't pledge a deed of trust against a loan where there's no  
14 obligation to pledgor. That's not a mortgage.

15 Do you see that?

16 A I don't have that testimony in front of me.  
17 If you could slide it over.

18 Q Oh, thank you.

19 Do you see that?

20 A Yes.

21 Q And is that still your belief today?

22 A Yes.

23 Q What is the basis of that belief, sir?

24 A My experience in real estate.

25 Q Any other?

1           A     My understanding of what a deed of trust comprises  
2 of.

3           Q     So you keep -- you said over and over again that the  
4 trust owed zero, and I've shown you the documents that obligate  
5 the trust. Is that still your testimony today that in view of  
6 the certificate of trust that authorizes the deed of trust and  
7 in view of the recitation of consideration, both direct and  
8 indirect, it's still your testimony that the trust is not  
9 obligated to pay anything?

10          A     No.

11          Q     So the trust is obligated to pay?

12          A     Yes, but just not -- it didn't secure its debt with  
13 the real property.

14          Q     So you made a separate promise to the Antoses, both  
15 individually and as the trust in the forbearance agreement;  
16 correct?

17          A     I didn't make promises to the trust to anybody, not  
18 the trust. The Antoses own the trust or are the beneficiaries  
19 of the trust.

20          Q     Well, the parties -- the Antoses are a party -- the  
21 trust is a party to the agreement; correct?

22          A     I believe so.

23          Q     And they're referred to as the Antos parties?

24          A     The Antos parties I think refers to Ken and Sheila  
25 Antos individually.

1 Q Oh, okay. You made a promise to them to pay the CBC  
2 I note; did you not?

3 A SJC and SHAC made a promise to pay the Antos Trust  
4 obligation under the deed of trust.

5 Q SHAC didn't make that promise, did they? SCJV (sic)  
6 did, didn't they?

7 A I'm not clear.

8 Q In fact, you made that promise in order to get your  
9 51 percent and become the irrevocable manager; isn't that  
10 correct?

11 A That's not correct.

12 Q Well, then how do you become the manager? How do you  
13 get your 51 percent? What did you pay for it?

14 A All the other aspects of the agreement.

15 Q And you didn't perform any of them, did you?

16 A Yes, I did.

17 Q You didn't get a quiet title, did you?

18 A I did pay the utilities. I did pay the repairs. I  
19 did pay the improvements. I did pay the first and second for  
20 almost a year now. Yeah, there's --

21 Q Sir --

22 A -- there's material performance under the contract.

23 Q Those promises you made to CBC I, sir, you have not  
24 fulfilled a single promise you made to the Antoses, have you?

25 A What promises do you think I made to the Antoses?

1 Q Quiet title? No?

2 A That was to CBC.

3 Q No. It's in the operating agreement, sir.

4 A So are the other performance issues that I --

5 Q Exactly. You made a separate promise to the  
6 Antoses --

7 A Your mask is --

8 Q -- and the Antos Trust to retire this obligation;  
9 isn't that true?

10 A So you said --

11 Q Yes or no, sir?

12 THE COURT: That's a yes or no, sir.

13 THE WITNESS: Can you ask the question again.

14 BY MR. MUSHKIN:

15 Q No, I can't. You heard it.

16 A No. I was hearing something different.

17 THE COURT: You're going to have to repeat it,  
18 please, Mr. Mushkin.

19 BY MR. MUSHKIN:

20 Q Isn't it true that you made a promise to the Antos  
21 parties to pay the CBC I obligation?

22 A SJC did.

23 Q Thank you.

24 Now, I asked you a question, and the question is --  
25 the first question is, well, how much do you think the note is

1 off?

2 The balance that is owed by the trust is zero. They  
3 are not a borrower. They are not a guarantor.

4 Do you recall that question and answer, sir?

5 A Not specifically, but I agree with it.

6 Q But that's false, isn't it?

7 A No.

8 Q We've shown you the guarantee of the trust.

9 A This proceeding is the first time I've seen it.

10 Q It recites all over these documents, doesn't it, that  
11 the Antos Trust owes this money?

12 A Well, it didn't prior to this document, which was the  
13 2017 document. The Antos Trust did not owe this money in 2014  
14 when it issued the deed, the deed of trust, and it didn't in  
15 2016 when it reconfirmed the deed of trust.

16 Q So what? What's the effect?

17 A The effect is the deed of trust is to secure, to  
18 provide security for an obligation under a different  
19 instrument.

20 Q Is it executed wrong?

21 A Well, I don't know if it's executed wrong or not. It  
22 just doesn't exist.

23 Q So you're just claiming this defect based upon your  
24 testimony. You have no other document to support it; is that  
25 correct?



1 A All of these documents support it.

2 Q Sir?

3 A They have the 2014 -- we have the 2000 --

4 THE COURT: Let him finish. Thank you.

5 THE WITNESS: We have the 2014 deed of trust. We  
6 have the note and the 10 amendments, none of which add the  
7 Antos Trust as a guarantor or a borrower. The first time the  
8 Antos Trust has a nexus to the note is in 2017, the year after  
9 it issued the deed of trust. So the deed of trust, when it was  
10 issued and when it was reconfirmed in 2014 and 2016 had no  
11 obligation to secure. There was nothing for the pledgor to  
12 secure.

13 Q So it doesn't matter that Mr. Antos is obligated as a  
14 guarantor, and he's the beneficiary? That has no consequence  
15 to you?

16 A That's defeats the purpose of trust.

17 Q And where do you come up with this understanding of  
18 trust law, sir?

19 A I mean, I think it's plain on the face; right? The  
20 Antos Trust would have to be a borrower or a guarantor to have  
21 an obligation for which it could secure.

22 Q Do you know what a living trust is, sir?

23 A Somewhat.

24 Q What is it?

25 A It's a -- it's an instrument that's used by

1 individuals to safeguard assets and separate assets from  
2 themselves individually.

3 Q Do you know that a revocable living trust has no  
4 separate existence?

5 A No.

6 Q Do you know that a revocable living trust has no tax  
7 return?

8 THE COURT: Separate and apart from the trustors.

9 BY MR. MUSHKIN:

10 Q Separate and apart from the trustors?

11 A Okay.

12 Q But you stand by your testimony that somehow the  
13 trust cannot obligate itself under this deed of trust. Is that  
14 your testimony?

15 MR. GUTIERREZ: Objection. Misstates the testimony.

16 THE COURT: Overruled.

17 THE WITNESS: That's my understanding that the trust  
18 would have to obligate itself and is not obligated by an  
19 obligation of the guarantors by an obligation of the  
20 beneficiaries of the trust outside of the trust itself.  
21 Otherwise every trust would be subject to obligations of the  
22 beneficiaries' pledges.

23 Q But you clearly promised the Antoses to pay this  
24 debt; correct?

25 A SJC has an obligation under its agreement when it

1 collects the judgment to pay the debt.

2 Q Where does it say that, that you only have the  
3 obligation --

4 A I think it's in the.

5 Q -- when it collects its judgment?

6 A I think it's in the forbearance agreement.

7 Q Show me. It's Exhibit 1.

8 A Or maybe the -- where's the security agreement?  
9 Which exhibit?

10 Security agreement, Exhibit 10. I'm going to look at  
11 that for a second.

12 THE COURT: Okay. Thank you for telling us.

13 THE WITNESS: All right. It's not that document.  
14 I'd have to go through the documents to find it.

15 BY MR. MUSHKIN:

16 Q Mr. Bloom, there's nowhere in any of these documents  
17 that says that the sole remedy for CBC or its successors is  
18 collection under that judgment, is there?

19 A I don't think it's the sole remedy.

20 Q In fact --

21 A CBC has cumulative remedies.

22 Q Thank you.

23 A So they can look to KCI. They can look to Preferred  
24 Restaurant Brands. They can look to the Antoses individually.

25 Q And they can look to the property that was secured by

1 a deed of trust. Thank you, sir.

2 A No, they cannot.

3 Q That's -- I'm talking about the third. The agreement  
4 by SJCv to pay off the third within 24 months is a condition to  
5 the conveyance of the property to SHAC; isn't that correct?

6 Do you know what your answer was?

7 A What's that?

8 Q Well, what's your answer today?

9 A Today, my answer today is there was no third.

10 Q Okay. With the caveat that there is no third, and it  
11 was misrepresented, the commercial note to KCI was  
12 misrepresented by CBI as constituting a third mortgage and two,  
13 subject to the extension by the parties. Yes.

14 Do you see that answer?

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

16 THE COURT: Could you put it on the Elmo, please.  
17 That's lovely. Thank you.

18 MR. MUSHKIN: Sorry, Judge.

19 THE COURT: That's all right.

20 BY MR. MUSHKIN:

21 Q So the first caveat is there is no third; right?

22 A Correct.

23 Q And you're claiming it was misrepresented as a  
24 commercial note; right?

25 A No. It was misrepresented as a mortgage when, in

1 fact, it was a commercial note.

2 Q And, in fact, it is a third mortgage; isn't it, sir?  
3 It's the third deed of trust on the property?

4 A No. It's a commercial loan to a restaurant. It's  
5 not a mortgage. There is a deed of trust by an entity that  
6 owns the property that's not party to the commercial loan to  
7 the restaurant. It's very different from a third mortgage.

8 Q So then why did you say yes at the end of this  
9 answer?

10 A Can you put it back up so I can see it.

11 Q You had caveats, and then you said, yes, but the  
12 conveyance is subject to the condition that SJCV pay off the  
13 note.

14 That's not what I'm talking about. It's talking  
15 about the payment of the third. The agreement by SJCV to pay  
16 off the third within 24 months is a condition to the conveyance  
17 of the property to SHAC; isn't that correct?

18 And then you give me a bunch of caveats, and then  
19 ultimately you say yes; isn't that correct?

20 A Okay.

21 Q So the payment of the CBC obligation was a condition  
22 precedent to the transfer of property to SHAC. That is a true  
23 statement; correct?

24 A Had there been a third mortgage, yes.

25 Q That's not what I said, sir. I said the payment of

1 the obligation to CBC I is a condition to precedent -- the  
2 eventual payment is a condition precedent to the transfer of  
3 the real property from the Antos Trust to SHAC?

4 A I don't think it's a condition precedent.

5 Q Then why did you say yes?

6 A Well, because I still think that SJC has an  
7 obligation. It's just the house isn't pledged as collateral.  
8 Those are two separate issues that you're conflating.

9 Q When I asked you if you agreed to pay those balloon  
10 payments, do you know what your answer was?

11 A I do not.

12 Q The answer -- what's your answer today? Are you  
13 obligated? Is SJC obligated to pay those balloon payments?

14 A I think so.

15 Q If you're obligated to make those payments, why  
16 haven't you made them?

17 A Because I think the payments are going to be made out  
18 of the liquidity event that was discussed.

19 Q Where in this -- well, you -- let's talk about that  
20 for a minute, Mr. Bloom. You provided Mr. Hallberg with  
21 various emails saying you were about to pay him, didn't you?

22 A Correct.

23 Q Why didn't you pay him?

24 A Because the liquidity events that were referenced in  
25 those emails didn't come to pass.

1 Q Well, but you didn't reference liquidity events in  
2 all the emails, did you?

3 A I think I did.

4 Q Well, let's take a look at 2717. It's part of 104.  
5 Do you see that email?

6 A I do.

7 Q That's from you, isn't it?

8 A I believe so.

9 Q And it's to Mr. Hallberg, and it's dated January  
10 22nd of 2018.

11 A Correct.

12 Q I'll read the relevant part:

13 Hi, Alan. All parties are en route to  
14 or have already arrived in Hong Kong.  
15 Closing this week for funding the hedge fund  
16 which is buying out our judgment out of their  
17 management fees. Subscription agreements  
18 drafted and being reviewed today and  
19 tomorrow. Signatures this week. Funding by  
20 February 16th, Chinese new year is the  
21 goal.

22 I have not yet seen the prefunded  
23 interest check. I am looking at a month end.  
24 I'm supposed to pick up a check from someone  
25 for 260 K this week against which I will



1                   issue a CBC check.

2                   Talking a little bit.

3                   Did you send that email?

4           A       I believe so.

5           Q       Did you ever send CBC a check?

6           A       No.

7           Q       Why?

8           A       I believe that was a litigation funding source that  
9 was -- there had been discussions about funding against the  
10 judgment, and ultimately they didn't fund.

11          Q       Did you ever tell Mr. Hallberg that you didn't have  
12 the money?

13          A       I believe so.

14          Q       When?

15          A       We had numerous phone conversations, but it would  
16 have been on or about that following week, whatever the day was  
17 in the email.

18          Q       Did you ever send him an email?

19          A       I don't recall. It would have been an email or a  
20 telephone call. Those were our two primary methods of  
21 communicating.

22          Q       So let's take a look at 2913.

23                   THE COURT: And this is still in 104?

24                   MR. MUSHKIN: Yes, ma'am. Still in 104.

25                   THE COURT: Just checking.

1 BY MR. MUSHKIN:

2 Q I'll try and make it a little easier for you by  
3 putting it up here.

4 A All right. Okay.

5 Q Have you ever seen this document?

6 MS. FOLEY: You need to move it --

7 MR. MUSHKIN: Oops. Sorry.

8 BY MR. MUSHKIN:

9 Q Have you ever seen this email before?

10 A (No audible response.)

11 Q Do you see that?

12 A I do.

13 Q And do you see that it references a complete set of  
14 executed documents from the closing this morning?

15 A I see that.

16 Q And did you get a complete set of documents?

17 A I got a set of documents.

18 Q Thank you. So I'd like to direct your attention to  
19 2929. Have you ever seen this document?

20 A I don't believe I have.

21 THE COURT: Drop it down a little.

22 THE WITNESS: The other direction.

23 THE COURT: Does that help, sir?

24 THE WITNESS: It does. Okay.

25 / / /

1 BY MR. MUSHKIN:

2 Q And can you see that this is March of '18?

3 A I do.

4 Q And this is regarding hazard insurance; is that  
5 correct?

6 A Yes.

7 Q Thank you.

8 (Pause in the proceedings.)

9 THE COURT: Mr. Gutierrez, put your mask back on.

10 MR. GUTIERREZ: I was getting a mint, Your Honor.  
11 I'm sorry.

12 BY MR. MUSHKIN:

13 Q Now, in regards to the insurance, there was quite a  
14 back and forth on this issue; is that correct?

15 A I believe so.

16 Q And for a while you had insurance in your personal  
17 name; is that correct?

18 A I gave -- yes.

19 Q And then it was after I became into the case and gave  
20 you several written demands you ultimately went and got  
21 insurance in the name of SHAC; is that correct?

22 A Well, after your first written request, I asked the  
23 insurance company to modify the policy, and ultimately they  
24 did.

25 Q Thank you. And that was in March of 2020; correct?

1 A Could be.

2 Q Thank you. I would direct your attention to 3226 of  
3 104.

4 A I don't believe I have that in my packet.

5 Q I'm just going to show you the first page.

6 Have you ever seen this document before?

7 A If you can scroll down.

8 Yes.

9 Q And that is a recorded notice of default for failure  
10 to pay HOA assessments; is that correct?

11 A Correct.

12 Q You never did pay that, did you?

13 A No. I believe CBC paid that.

14 Q Thank you. Now, you promised on more than one  
15 occasion to pay that, didn't you?

16 A Not that I can recall. I think I had conversations  
17 with Mr. Hallberg, and they agreed to pay it, and add it to the  
18 balance.

19 Q Well, don't you recall the email I just showed you  
20 that said I'll take care of it?

21 A Oh. I'm sorry. I'm thinking of the taxes.

22 Q No. This is the assessments.

23 A Right.

24 Q You agreed to take care of it, didn't you?

25 A I believe so.

1 Q And then let's look at 3233, and this is to Ken  
2 Antos.

3 I indicated to Alan I would take care of  
4 this. I don't think I mentioned today. I'm  
5 jammed up the rest of the week. The NOD file  
6 provides no less than 90 days pursuant to  
7 NRS 116. I'll probably have time to cure it  
8 next week.

9 Do you see that?

10 A I do.

11 Q You didn't cure it, did you, sir?

12 A No.

13 Q That would be a no? You did not cure that, did you?

14 A That's correct.

15 Q Okay. Now let's take a look at the next one, and  
16 that's 3255. Do you see that? Do you recall seeing it?

17 A I don't recall seeing it, but that's my email  
18 address.

19 Q And it says the liquidity expected on March 5th and  
20 any, slash, all other sources. Do you see that?

21 A I do.

22 Q Isn't it true that you represented to Mr. Hallberg  
23 that you had multiple sources for payment of this obligation?

24 A That's correct.

25 Q But in your deposition, why did you keep answering,

1 when I asked this that you intended to pay only from the  
2 collection of the note?

3 A Can you show me in the deposition what you're  
4 referring to?

5 Q No. I'm asking you a question.

6 A Well, you're referencing the deposition. So I'd like  
7 to confirm that that's the testimony.

8 BY MR. MUSHKIN:

9 Q Sir, I --

10 THE COURT: Sir, do you recall one way or the other?  
11 If you don't recall, that's fine.

12 THE WITNESS: I don't. I don't recall.

13 THE COURT: Okay.

14 MR. MUSHKIN: That's fine. The deposition has been  
15 published.

16 We published the deposition. Is that correct, Your  
17 Honor?

18 THE COURT: Both volumes.

19 MR. MUSHKIN: Oh, yes.

20 MR. GUTIERREZ: So objection. Is there a cite that  
21 he has for (Indiscernible) or is he not going to --

22 THE COURT: He doesn't have to give him one.

23 MR. GUTIERREZ: Okay. I just want to make sure that  
24 the record is accurate of what he's referencing.

25 (Pause in the proceedings.)

1 BY MR. MUSHKIN:

2 Q Mr. Bloom, I like to direct your attention to 3341,  
3 part of Exhibit 4 -- 104.

4 Can you read that?

5 A I can.

6 Q And this is March 28th of '19. You're in the  
7 property about 18 months at this point; right? August of '17  
8 to March of '19?

9 A Okay.

10 Q Is there any mention in here of applying to assume or  
11 refinance the mortgage?

12 A No.

13 Q And did any of these sources of income come through,  
14 Mr. Bloom?

15 A Not yet.

16 Q And you don't have five and a half million dollars  
17 available to you today to retire this note, do you?

18 A I would have to free it up.

19 Q I didn't hear you, sir.

20 A I would have to free it up.

21 Q You don't have \$5 million of cash available to pay  
22 this note today, do you, sir?

23 A Not in liquidity.

24 Q Thank you. I want to direct your attention to 3349.

25 Do you see that?



1 A I do.

2 Q And you're forwarding an email from Andersen Law  
3 Firm; is that correct?

4 A Correct.

5 Q And who are the Andersen Law Firm?

6 A The Andersen Law Firm is local counsel here in Vegas  
7 for First 100. They represented First 100 as a judgment  
8 creditor in our judgment debtor's bankruptcy petition.

9 Q And you were never able to collect anything; is that  
10 correct?

11 A Not yet.

12 Q Thank you. Now, you claim to have some sort of  
13 copper powder; is that correct?

14 A Correct.

15 Q Where is it?

16 A It's in a storage facility here in Las Vegas.

17 Q What's the address?

18 MR. GUTIERREZ: Objection, Your Honor. Relevance.

19 THE COURT: Sustained.

20 MR. MUSHKIN: Well, Your Honor, I have a security  
21 interest.

22 THE COURT: The address -- well, but if you want  
23 access to that, we'll go through a different kind of procedure,  
24 if you have a judgment debtor exam. I understand you have a  
25 security interest, but that doesn't mean you get the location

1 of it at this point in time.

2 BY MR. MUSHKIN:

3 Q Isn't it true that that isotope was stored in your  
4 home in the garage?

5 A It has been on occasion.

6 Q And it was recently moved; is that fair?

7 A It's moved in between my home and storage locations.

8 Q And have you managed to sell any of that?

9 A Not yet.

10 Q Why?

11 MR. GUTIERREZ: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: It's a fairly rare isotope that has a  
14 handful of end users and very rare. Very little of it exists.  
15 So it's extremely valuable, but it's not very liquid. It's not  
16 like gold or silver.

17 Q How do you know this?

18 A Because we've been dealing with this for years trying  
19 to liquidate it.

20 Q So I'm going to direct your attention to 3372,  
21 another email from you to Mr. Hallberg. Who is Benjamin Wei?

22 A Benjamin Wei is somebody out of San Francisco that  
23 contacted me that he was a victim in a transaction of our  
24 judgment debtor, and he read about our judgment.

25 Q So you represent to Mr. Hallberg in April of '19

1 that, We seized 861 million in copper and found 321 million --

2 I take it MM means million; correct?

3 A Correct.

4 Q -- in Bitcoin.

5 A Correct.

6 Q Have you been able to -- do you still have the  
7 Bitcoin?

8 A We found it on a computer that our judgment debtor  
9 had in a Bitcoin wallet. We have not been able to access it.

10 Q So you didn't find 320 million in Bitcoin, did you?  
11 MR. GUTIERREZ: Objection. Misstates the testimony.  
12 THE COURT: Overruled.

13 You can explain.

14 THE WITNESS: Yes. We found a significant sum of  
15 Bitcoin in our judgment debtor's cryptocurrency wallet, and  
16 we're trying to access it.

17 BY MR. MUSHKIN:

18 Q You have not been able to access it until now, have  
19 you, up through today?

20 A As of today we have not accessed it.

21 Q And when did you find it?

22 A Sometime around the date of that email.

23 Q Back in April of '19?

24 A Correct.

25 Q So, Mr. Bloom, do you recall our discussion at your

1 deposition about the commission agreement for the sale of this  
2 property of the house to SHAC?

3 A Not really.

4 Q And do you recall that I asked you who was obligated  
5 to pay the commission? Do you recall that?

6 A I don't.

7 Q And do you recall testifying that the seller was  
8 obligated to pay the commission?

9 A I don't recall that testimony.

10 Q You don't recall any of it?

11 A Not that particular line of questions.

12 Q And you don't recall me pointing out the commission  
13 agreement to you where it says that the buyer is to pay the  
14 commission on the transaction?

15 A I'm not denying that the conversation took place.  
16 Clearly there's a record on the transcript. I just don't  
17 recall it.

18 Q You don't recall any of this?

19 A No.

20 Q Do you know today who is supposed to pay the  
21 commission for the sale of the property to SHAC?

22 A I'm not sure.

23 Q I'm going to show you 3412.

24 Do you recall receiving this?

25 A I don't recall receiving it, but that's my email

1 address.

2 Q Isn't it true that as of November 29th of '19 you  
3 were in arrears --

4 MS. FOLEY: The book's going to fall. Mike, the  
5 book's going to fall.

6 BY MR. MUSHKIN:

7 Q You were in arrears pursuant to the --

8 THE COURT: Good catch.

9 MR. GUTIERREZ: Great catch. That was good.

10 MR. MUSHKIN: Thank you, Karen. That would have gone  
11 everywhere.

12 BY MR. MUSHKIN:

13 Q You were in arrears under the forbearance agreement  
14 of \$70,360.94?

15 A I don't believe so. I think that relates to a  
16 prepayment that was coming up.

17 Q The email says.

18 Per our earlier call, here's what I'm  
19 coming up with. Let me know if there's  
20 anything -- if you're arriving at the same  
21 number.

22 Do you see that?

23 A No. You took the page away.

24 Q Do you see it now?

25 A I do.

1 Q Did you respond to this in any way?

2 A Can you slide it down a little.

3 Yeah. So this is definitely for prepayments of rents  
4 at the end of the second extension -- or at the end of the  
5 second year of the initial term. I don't know if I responded  
6 or not.

7 Q Sir, this isn't for prepayments. This shows that  
8 you're in arrears as of 11/29/19, of 70,360.94; isn't that  
9 correct?

10 A No, it's not arrears. It's 11/29/19, is the email,  
11 and it's amounts owing to 3/31 of 2020. So that's a  
12 prepayment. That's for the next however many months.

13 Q Well, that's 25 of it. Fair?

14 A That's 25 of it, and the amount owing --

15 Q And the amount owing is 70,000; correct?

16 A For a prepayment.

17 Q No. It says you're in arrears. Amount owing to  
18 12/27/19, forty-four, six, seventy-nine, sixty-eight.

19 A But the email is dated prior to 12/27/19.

20 Q I appreciate that, sir. So your December payment  
21 would be 8,600 -- \$8,560.42, and you were in arrears four  
22 months at that time, weren't you?

23 A So we were at the end of the second year's  
24 prepayment, and we were discussing an extension and a continued  
25 prepayment for the extension.

1 Q It's a yes or no. You were in arrears four months as  
2 of the date of that email; correct, sir?

3 A No.

4 Q Explain it to me.

5 A Okay. I had prepaid for the second year, and we went  
6 through a period of several months figuring out what we were  
7 going to do, and this was for under the extension rents that  
8 would be due, both from the period of the end of the prepay to  
9 the current point and forward as future prepayments. But, no,  
10 it wasn't arrears because we didn't have a controlling document  
11 at that point.

12 Q Sir, this is 11/29 of '19; correct?

13 A Right.

14 Q And as of that time, it says you owe forty-four, six,  
15 seventy-nine, sixty-eight, through 12/27 of '19; isn't that  
16 correct?

17 A Correct.

18 Q So there's one month that's not technically due, but  
19 there are four months approximately that are in arrears as of  
20 11/29/19; isn't that correct?

21 A Yeah. I had prepaid the year through -- I guess it  
22 would be July or August.

23 Q Thank you.

24 A All right. So --

25 Q So by November you were in arrears four months?



1 That's correct, isn't it, sir?

2 A No, it's not arrears because we were figuring out  
3 what we were going to do to structure it. Once we had an  
4 agreement, then it became rent due at the point of the  
5 agreement.

6 Q Sir?

7 A And then the agreement contemplated forward rent, as  
8 had been the case for the prior two periods.

9 Q Mr. Bloom, you had a forbearance agreement for 24  
10 months; correct?

11 A Correct.

12 Q And you had paid only through July of the second  
13 year; correct?

14 A Which would be the end of the 24th month.

15 Q No, sir. The 24 months goes farther, doesn't it?  
16 Doesn't it go until August?

17 A Well, then it would've been through August.

18 Q So from August on you're in default; is that fair?

19 A Until we signed the extension.

20 Q Until you signed the extension. Thank you very much.  
21 So can you locate in your book 3417.

22 A Yes.

23 Q And you see this is a redline; is that correct?

24 A I do.

25 Q I direct your attention to paragraph 5.

1 A Which page?

2 Q 3418.

3 A Okay.

4 Q And a condition to extension, membership pledge  
5 agreement executed by SJCVC and Antos Trust shall remain in  
6 effect, and the execution of this amendment shall not be  
7 considered a waiver by CBC of the rights under the membership  
8 pledge agreement. Do you see that?

9 A I do.

10 Q Do you see any redline changes to that?

11 A I do not.

12 Q Thank you. And you see on page 8 where it says  
13 options to extend have terminated? B1.

14 A Yes.

15 Q Do you see any redline there?

16 A I do.

17 Q Where?

18 A The last sentence of B1 where it says the parties  
19 acknowledge the conditions to which the options were subject  
20 have been satisfied, and the SJC options have been exercised.

21 Q Right.

22 A That's the top of Bates page --

23 Q Okay. There's one word, not have been exercised.  
24 Those are the changes; right?

25 A Right.

1 Q Okay. Nothing about substitute security or anything  
2 like that; right?

3 A No.

4 Q Thank you. And do you recall when you executed the  
5 amended forbearance agreement?

6 A I do not.

7 Q All right. Now let's take a look at March 18th  
8 exhibit -- that's 3456. Can you pull that one up.

9 A Okay.

10 Q And it's sort of in the middle of the page. It says,

11 Just an update. We had a visit this  
12 week from representatives. The Chinese  
13 government for the purchase of copper  
14 isotopes. They wanted it and wanted it to  
15 physically verify that the quantity we  
16 represented actually existed.

17 The second bullet point.

18 We are 30 to 60 days out from  
19 \$180 million investment tax credit  
20 monetization on 4100 mobile solar generators  
21 worth 150 K each.

22 Final,

23 I am negotiating refinancing of all  
24 three loans now. We are with the recent Fed  
25 rate drop to zero percent, it's getting

1 easier to negotiate this refinance.

2 As you may or may not be aware, 5116  
3 Spanish Heights Drive, two doors over on the  
4 same side of the street, comparable, just  
5 sold for 4,950,000 on 12/20/19, after 203  
6 days on the market. I really believe that an  
7 amicable resolution is around the corner  
8 which will provide a hundred percent recovery  
9 for CBC Partners despite the property being  
10 upside down in equity by 2 million, and it is  
11 a much shorter time frame than would be  
12 otherwise realized through an adversarial  
13 action, and I'm willing to bear all costs  
14 from April forward in order to prevent CBC no  
15 longer need front any money during these  
16 final months.

17 I look forward to hearing back from you  
18 soon and hopefully with acceptance of this  
19 proposal.

20 Do you see that?

21 A I do.

22 Q Did you get the tax credit monetization?

23 A We did not.

24 Q Did you sell the isotope to the Chinese government?

25 A Not yet.

1 Q And did you refinance the loans?

2 A No.

3 Q And have you provided any evidence of effort to so  
4 refinance?

5 A No.

6 Q Thank you.

7 All right. I'm going to show you 3459. This is  
8 March 20 of 2020. Do you recall sending this email?

9 A I don't, but that's my email address, and I'm sure I  
10 sent it.

11 Q So the negotiations for further extension have broken  
12 down at this point; is that correct?

13 A I believe so.

14 Q And you've been advised to communicate solely with my  
15 office; is that correct?

16 A I had been requested to communicate with you for  
17 questions.

18 Q And here you are communicating with Alan again:

19 Hi, Alan. You know, sometimes the  
20 universe just works in our favor. We were  
21 just approached by SPAC on NASDAQ with  
22 200 million in cash. They formed in 2018 and  
23 have a deadline to close the acquisition no  
24 later than June 10th, 2020, or the SPAC is  
25 going to be dissolved with millions in

1 penalties. They are -- they had an  
2 acquisition that just fell through, and they  
3 are pursuing us pretty aggressively. I am on  
4 with their co-CEOs. One is out of Sac  
5 (phonetic) and more recently Steve Cohen's  
6 family office, and as I'm typing this  
7 email --

8 I'm sorry. I may have skipped -- no.

9 I'm in touch with their co-CEOs. One is  
10 out of Sac and more recently Steve Cohen's  
11 family office as I am typing this email.

12 So as the property -- so as to the  
13 property, as there is a moratorium on any  
14 foreclosure activity right now, nothing is  
15 happening for the next 90 days I would  
16 venture. Even a nonjudicial foreclosure  
17 would require 90-day notice of default  
18 starting after the moratorium is lifted and  
19 then an additional 30-day notice if opposed.  
20 It could be forced to a judicial foreclosure,  
21 and then a foreclosure start might force a  
22 Chapter 11 restructure for Spanish Heights  
23 Acquisition Company, which would cause a cram  
24 down and hurt your ability to sell the note  
25 or force reduction on the face value.

1                   Either I can pay the first and second  
2                   for the next three months under an extension  
3                   or CBC can absent an extension. Either way  
4                   it looks like I will have the funds from SPAC  
5                   if nothing else by June.

6                   I'm trying to get CBC every dollar, and  
7                   I'm hoping that CBC acts rationally in its  
8                   own best interest. It would seem to me that  
9                   if you are looking to sell the note an  
10                  extension and resultant performing note would  
11                  sell better than a nonperforming note which  
12                  is upside down in equity and subject to cram  
13                  down. Help me help you.

14                  Talk soon, buddy.

15                  Did you write that email?

16           A     I believe I did.

17           Q     And did you ever get the 200 million in cash?

18           A     This doesn't say that I was getting 200 million in  
19           cash?

20           Q     It says, We were approached by SPAC on NASDAQ with  
21           200 million in cash. That's what it says, sir.

22           A     Right. So and SPAC is a "spack." It's a special  
23           purpose acquisition company. It's an entity that goes public  
24           and raises cash and looks for a venture. So that's not  
25           intended to say that I had \$200 million coming to me from the



1 SPAC, but that that entity had \$200 million in cash.

2 Q Did you get any money from the SPAC?

3 A No. We didn't fit their profile for --

4 Q Thank you.

5 A And by the way, this email was in response to Alan's  
6 email 15 minutes earlier. So this was not in spite of  
7 instructions not to contact Alan.

8 Q All right. We've already gone over the July 21, '17,  
9 email. I don't want to repeat that.

10 You don't dispute that you owe the property taxes;  
11 correct?

12 A That SHAC owes the property taxes.

13 Q Sorry. SHAC owes them. You don't dispute that, do  
14 you?

15 A I do not.

16 Q Okay. Now, let's take a look at 3626. No, I take  
17 that back -- oh, yes, that is correct.

18 Would you take a look at 3627.

19 Do you see where at the second paragraph you offer  
20 \$150,000 one-year reserve?

21 A I do.

22 Q And then do you see the list of items that set forth  
23 that amount?

24 A I do.

25 Q Almost one forty-three, five, thirty-nine,

1 twenty-two?

2 A I do.

3 Q And did you ever provide that reserve?

4 A This was that security account that we referenced  
5 earlier. So this was an initial proposal from July of 2017  
6 that ultimately turned into a prepayment instead.

7 Q The answer is no, you never provided it, did you?

8 A There was nothing to reserve against. It was  
9 prepaid.

10 Q Now, you know in March -- I'm sorry, in December  
11 of '19, you agreed again to create the reserve account in the  
12 amended forbearance agreement. You acknowledge that; right?

13 A That's what the document reflects --

14 Q Thank you.

15 A -- but that's different than the parties agreed to.

16 Q And you never did create that 150,000 reserve, did  
17 you?

18 A As with the prior year, we prepaid the year. So  
19 there was no requirement to establish a reserve. And, in fact,  
20 Bank of America wouldn't let us.

21 Q That would be a yes, you never funded the account,  
22 did you?

23 A Correct.

24 Q I may have asked you this. You don't -- did you tell  
25 me you didn't recall who was to pay the commission?

1 A I did not. I don't recall.

2 Q You do not recall?

3 A No.

4 Q Do you know who Gavin Ernstone is?

5 A I do.

6 Q And do you recall the testimony and the deposition  
7 where I took you through the commission agreement where it said  
8 that the buyer is to pay the commission?

9 A I don't really have a very good recollection of that  
10 conversation, but I --

11 Q Do you have any reason to dispute that the commission  
12 agreement says that the buyer will pay?

13 A No.

14 Q So you do not dispute it?

15 A I do not dispute it.

16 Q Thank you. Though you testified that it was the  
17 seller's obligation.

18 A I would imagine that was my understanding at the time  
19 of the testimony.

20 Q Okay.

21 A Or at least my recollection during the testimony.

22 Q Now, are you aware that there were arrears on the  
23 first and second as well?

24 A At what point in time?

25 Q At the time in September, '17.

1           A     No, I don't think I was. At the time we entered the  
2 agreements?

3           Q     Well, it's true that CBC undertook to make the  
4 payments on the first and second; correct?

5           A     That's my understanding.

6           Q     And do you recall why they did that?

7           A     They represented it as a protective advance.

8           Q     Wasn't it true that they had contacted City National  
9 and asked them for a standstill?

10          A     I don't know about the conversations with City  
11 National.

12          Q     You didn't receive the emails?

13          A     Not that I recall. If you have a specific exhibit  
14 you want to look at, I'd be happy to.

15          Q     I just want your recollection, sir.

16          A     Not that I recall.

17          Q     Mr. Bloom, do you know how much is due on the second  
18 loan on the property?

19          A     Approximately.

20          Q     Approximately what?

21          A     Just under 600,000.

22          Q     Would \$584,079.35 sound right?

23          A     At some point in time. It's been --

24          Q     Yeah, I agree. Do you know when that's due and  
25 payable?

1 A I believe March 31st.

2 Q So now the second is due and payable; is that  
3 correct?

4 A Not yet.

5 Q No, as of March, the loan will be due and payable;  
6 correct?

7 A I believe so.

8 Q And have you made arrangements to pay that off?

9 A I'm in discussions with the bank about having  
10 somebody purchase the note from me.

11 Q But you haven't paid it off? You haven't made  
12 arrangements to pay it off?

13 A No. I've made arrangements to purchase it.

14 Q And do you have good funds in your possession of  
15 \$584,079.35?

16 A The entity that I made arrangements to purchase it  
17 does, yes.

18 Q I'm not asking if the entity does, sir. I'm asking  
19 if you do.

20 A I have access to capital to purchase that note.

21 Q Where?

22 A Through my relationships.

23 Q Oh. And but do your relationships know the number of  
24 judgments that you have against you personally?

25 A That would be zero and, yes.

1 Q Zero?

2 A Yes.

3 Q You don't have a tax lien?

4 A The tax lien was paid.

5 Q Your testimony to this Court today is that all your  
6 tax liens are paid?

7 A To the best of my knowledge.

8 Q Okay. Now, do you know in '17 that there were tax  
9 arrears?

10 A On this property?

11 Q Yeah, on this property.

12 A I'm not sure. I'm not sure if I knew it at the time.

13 Q Isn't it true that City National advanced money to  
14 pay the prior property taxes?

15 A I believe so, but I don't know for what period of  
16 time.

17 Q Thank you.

18 THE COURT: So we've got 13 minutes until we break.  
19 We're coming back at 9:30 tomorrow, and if we don't finish  
20 tomorrow, we're coming back Tuesday at 10:00.

21 MR. MUSHKIN: Today is Tuesday; right? Yeah?

22 THE COURT: Wednesday --

23 MR. MUSHKIN: Today is Wednesday?

24 THE COURT: -- is tomorrow?

25 MR. MUSHKIN: Wednesday is tomorrow. We don't get

1 Thursday?

2 THE COURT: Oh, yeah, you get Thursday.

3 Is today Tuesday?

4 MR. MUSHKIN: Stop doing this to me. Stop it. I  
5 confuse easily.

6 THE COURT: I am --

7 MR. GUTIERREZ: I thought she pulled Thursday from  
8 us.

9 MR. MUSHKIN: What's going on here?

10 THE COURT: So tomorrow you're 9:30, and Tuesday -- I  
11 mean Thursday, Thursday it looks like -- what's that thing  
12 that's on there Thursday? Is that a special setting on 9:30 on  
13 Thursday?

14 THE CLERK: No, that's empty, Judge.

15 THE COURT: It's empty?

16 THE CLERK: Yeah.

17 MR. MUSHKIN: It's a fake out.

18 THE COURT: 9:30 on Wednesday and Thursday, and then  
19 if you don't finish on Thursday --

20 MR. MUSHKIN: I will finish.

21 THE COURT: Then you will be Tuesday at 9:30.

22 MR. MUSHKIN: What happened to Friday?

23 THE COURT: Friday I have a personal appointment in  
24 the morning, and I can't move it. I tried.

25 MR. MUSHKIN: No problem. Whatever you want, Judge.



1 THE COURT: Okay.

2 MR. MUSHKIN: And if you'd like to end, it's a good  
3 point to break right now if you'd like to thirteen minutes --

4 THE COURT: No, I'd like to use 11 more minutes.

5 MR. MUSHKIN: I will be happy to use 11 more minutes.

6 BY MR. MUSHKIN:

7 Q Mr. Bloom, would you turn to 1232. That's going to  
8 be in a prior book. You have the second book. You need to go  
9 to the first book of emails.

10 A Do you have an exhibit number?

11 Q It's part of 104, and it's 001232. Do you see that  
12 email?

13 A I'm turning to it now. Okay.

14 Q So in Item 1, it asks, it says,

15 If I understand correctly, once a  
16 judgment is domesticated in any given  
17 jurisdiction, there's an automatic stay.

18 Do you see your answer? Is that your answer in red?

19 A I believe so.

20 Q How do you come to know that when you domesticate a  
21 judgment there's 120 day stay?

22 A Somebody -- well, somebody must have told me that,  
23 one of the attorneys that was working on the collection of the  
24 judgment.

25 Q Then down a little farther it says,

1                   At the time of the writ service, the  
2                   defendant has approximately three weeks to  
3                   mount a defense based upon the assets covered  
4                   by the writ being exempt. Is this basically  
5                   correct?

6                   You say,

7                   Correct. An important note is that  
8                   during the period the account is frozen, and  
9                   all funds -- and should funds be released,  
10                  the financial institution assumes liability  
11                  for any funds.

12                  Do you see that?

13                 A     I do.

14                 Q     And where did you learn that?

15                 A     That would have been from one of the attorneys that  
16                 was working on the collection of the judgment.

17                 Q     Okay. Then it says.

18                         Offshore the judgment has been  
19                         domesticated in Hong Kong.

20                         Is that right?

21                 A     I think that was a question by Alan.

22                 Q     Are these your responses, sir?

23                 A     Yeah. What you read, Offshore the judgment has been  
24                 domesticated in Hong Kong, which is in black, would be part of  
25                 Alan's initial email.

1 Q Correct. And your response is in red; is that right?

2 A Correct.

3 Q Did you get anything in Hong Kong?

4 A No.

5 Q And then it says.

6 And is pending in Bahrain. An attempt  
7 that would be made to summary judgment in the  
8 Cayman Islands.

9 Do you see that?

10 A Correct.

11 Q Was that ever done?

12 A We were unable to recover assets from there.

13 Q So these are representations that you made to CBC in  
14 July of 17; is that correct?

15 A That's correct.

16 Q Thank you. You drafted the operating agreement; is  
17 that correct?

18 A Yes.

19 Q And did you have counsel?

20 A No.

21 Q And you provided a K-1 from First 100 Holdings; is  
22 that correct?

23 A Entirely possible. I do have a --

24 Q Thank you. Okay. You represented to Mr. Hallberg  
25 that there was \$6 million in -- verified in a Morgan Stanley

1 account; is that correct?

2 A What are you referencing?

3 Q I'm just asking for your recollection.

4 MR. GUTIERREZ: Your Honor, objection. Vague.

5 THE COURT: If you remember, sir.

6 Overruled.

7 THE WITNESS: No, I don't represent -- I don't recall  
8 that representation.

9 BY MR. MUSHKIN:

10 Q And didn't you represent to Mr. Hallberg that somehow  
11 the money had been transferred from Morgan Stanley to bank  
12 Muscat (phonetic). Does that refresh your recollection?

13 A I think you're talking about we found -- our  
14 investigators found our judgment debtor had money at Merrill  
15 Lynch and that he transferred it from a Merrill Lynch account.  
16 We're not sure where it went, but our investigators found that  
17 he had money at Bank Muscat as well.

18 Q And were you able to collect any of that money?

19 A No.

20 Q Now, are you sure you didn't have counsel during this  
21 time?

22 A I had not retained counsel for this, no.

23 Q I'd like to direct your attention to 1340. In the  
24 middle of the page.

25 THE CLERK: I'm sorry. Mr. Mushkin, what's the Bates

1 again?

2 MR. MUSHKIN: 1340.

3 And if it's all right with you, Judge, I'll end with  
4 this question.

5 THE COURT: That would be lovely.

6 MR. MUSHKIN: Mr. Bloom, I'd like you to look at the  
7 middle of the page where it says from Jay Bloom to Alan  
8 Hallberg dated August 1, 2017.

9 BY MR. MUSHKIN:

10 Q Okay. Below is Mr. Hallberg's email to you that I  
11 believe you're responding to, and it starts out,

12 Just got out of my meeting. We're okay  
13 to proceed on the terms as we discussed.

14 And you say,

15 That's great. Please let me know when  
16 your attorneys would like to speak with ours.

17 Mr. Bloom?

18 A Yes.

19 Q You sure you didn't have counsel?

20 A Yeah, I don't believe I retained counsel for  
21 preparing these documents for this transaction.

22 Q So why did you misrepresent that to Mr. Hallberg?

23 A It's not a representation.

24 Q It isn't a representation when it says would like to  
25 speak with ours?

1 A Yeah, no. I was considering getting counsel.

2 Q Oh, I see.

3 A And then subsequently I decided to do it myself.

4 Q I see.

5 A And Mr. Hallberg's attorneys, CBC's attorneys  
6 certainly had an opportunity to speak to counsel.

7 Q And in spite of all the emails to Mr. Gutierrez, he  
8 wasn't your attorney?

9 A No.

10 Q Okay.

11 A Not on this matter.

12 Q Okay. How many members are there to First 100?

13 A 40 or 50.

14 Q What type of entity is First 100?

15 A It's a limited liability company.

16 Q And is it registered with the Securities and Exchange  
17 Commission?

18 MR. GUTIERREZ: Objection. Relevance, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: It filed a what's called a Reg D 506  
21 exemption, safe harbor exemption.

22 MR. MUSHKIN: Thank you.

23 Judge, I promise that was the last question for  
24 today. It will be the last question for today.

25 THE COURT: All right. How long do you think you're

1 going to need in addition to tomorrow? Tomorrow is Wednesday.

2 MR. MUSHKIN: I will finish -- I believe I will  
3 finish my examination of Mr. Bloom tomorrow without a problem.

4 THE COURT: Okay. Thank you.

5 And then what additional evidence do you think?  
6 Because I know Mr. Hallberg is leaving on Thursday.

7 MR. MUSHKIN: I have about 5 or 10 minutes with  
8 Mr. Hallberg. That's about it.

9 THE COURT: Okay.

10 MR. MUSHKIN: Just to confirm certain documents and  
11 this and that. I mean, with cross-examination I guess it could  
12 be an hour.

13 THE COURT: And then after that?

14 MR. MUSHKIN: That's it.

15 THE COURT: All right. Mr. Gutierrez, you're going  
16 to do some examination of Mr. Bloom after Mr. Mushkin finishes.  
17 You might ask some follow-up questions. Mr. Mushkin then  
18 rests.

19 Do you have additional witnesses you think you're  
20 going to call in a rebuttal case?

21 MR. GUTIERREZ: Not at this time, Your Honor.

22 THE COURT: So you guys think you'll be done on.  
23 Thursday?

24 MR. GUTIERREZ: Yes. Yeah, I think so.

25 (Proceedings recessed for the evening at 4:44 p.m.)



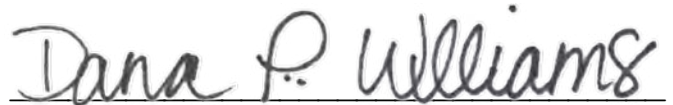
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**DANA L. WILLIAMS**  
LAS VEGAS, NEVADA 89183

A handwritten signature in cursive script that reads "Dana L. Williams". The signature is written in dark ink and is positioned above a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

02/07/2021

DATE

**BY MR. GUTIERREZ:**  
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**RECORDER: [3]** 5/3  
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**\$6 million [1]** 232/25  
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**\$812,217.92 [1]** 155/9  
**\$87,213.05 [1]** 155/2  
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**000887 [2]** 25/8 135/20

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**00148 [1]** 91/14  
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**100's [4]** 40/3 62/17  
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**106.005 [1]** 42/8  
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**10:00 [1]** 228/20  
**10:17 a.m [1]** 61/7  
**10th [1]** 220/24  
**11 [6]** 17/10 98/23  
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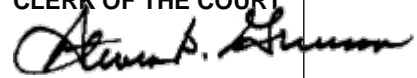
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[4]</b> 167/10 168/1 202/16 229/25 <b>whatsoever [1]</b> 145/15 <b>when [71]</b> 3/21 9/13 9/15 9/19 9/23 10/14 10/16 17/22 18/2 19/24 20/23 30/9 31/2 34/10 40/11 40/16 60/11 63/17 63/19 63/22 64/10 76/16 81/6 83/6 87/22 88/6 96/19 98/4 103/16 113/3 135/11 139/23 140/5 143/10 143/11 147/23 150/17 151/6 152/23 157/6 164/7 164/8 166/15 169/19 172/3 172/18 173/25 175/14 179/13 183/3 183/8 186/12 186/12 187/10 189/14	194/14 194/15 195/9 195/10 196/25 197/5 198/25 200/9 202/14 207/1 211/21 218/4 226/24 230/20 234/15 234/24 <b>where [72]</b> 5/19 7/21 8/21 12/12 17/12 23/9 23/25 28/6 31/20 31/22 37/12 39/18 40/14 45/14 50/11 53/8 65/4 65/21 66/5 67/8 67/10 67/19 67/23 68/1 70/14 81/25 85/24 93/7 94/19 97/3 97/19 98/11 98/12 98/25 99/21 100/8 101/17 104/20 104/21 104/22 105/1 106/12 108/2 118/6 119/13 134/5 134/18 138/10 146/25 148/20 150/24 152/4 165/7 168/21 168/23 169/3 190/13 195/17 197/2 200/19 209/15 212/13 217/12 217/17 217/18 223/19 225/7 225/7 227/21 231/14 233/16 234/7 <b>where's [3]</b> 106/2 108/22 197/8 <b>whereas [2]</b> 139/1 148/20 <b>whether [8]</b> 9/23 41/12 56/1 56/12 71/16 145/20 145/20 186/7 <b>which [90]</b> 6/25 7/11 7/12 10/21 12/15 12/25 13/21 14/15 15/4 16/7 18/19 20/13 20/22 26/19 26/20 30/2 32/13 34/24 36/7 39/11 40/18 41/4 41/5 50/9 51/3 51/8 55/9 55/9 56/9 58/19 69/15 71/6 71/18 72/15 74/7 74/14 74/21 76/3 82/14 83/5 88/2 95/24 96/1 98/21 100/17 102/25 106/6 107/1 107/3 115/7 119/21 126/3 131/1 131/2 131/25 133/2 133/24 137/1 137/2 137/15 137/15 146/6 148/9 148/16 148/24 149/22 153/6 157/2 167/15 172/20 174/5 175/22 178/7 183/1 184/4 185/8 186/16 194/12 195/6 195/21 197/9 201/16 201/25 216/14 217/1 217/19 219/8 221/23 222/11 231/24 <b>while [6]</b> 14/22 24/7 46/1 76/1 127/4 204/16 <b>who [35]</b> 6/2 7/8 7/9 8/8 9/15 10/4 17/19 19/12 27/12 47/19 61/2 61/4 62/11 69/22 82/25	83/1 83/8 83/9 83/10 83/12 91/9 91/10 97/22 148/23 151/10 166/10 166/10 166/25 178/25 209/5 210/21 212/4 212/20 224/25 225/4 <b>who's [1]</b> 70/5 <b>whole [4]</b> 44/11 49/8 58/22 64/7 <b>why [37]</b> 17/2 27/21 37/10 48/16 48/16 55/16 58/19 63/13 93/12 98/2 101/5 108/4 117/7 117/21 127/12 136/6 138/9 152/15 156/22 162/16 170/25 172/5 173/6 173/15 176/7 178/20 179/15 184/19 199/8 200/5 200/15 200/23 202/7 206/25 210/10 226/6 234/22 <b>wife [4]</b> 6/4 6/4 6/21 47/4 <b>will [34]</b> 4/24 5/1 11/8 19/6 19/7 30/15 34/11 41/2 41/4 49/18 76/15 78/6 79/5 82/12 87/23 91/8 113/4 121/17 133/16 140/9 141/9 146/11 146/19 201/25 219/8 222/4 225/12 227/5 229/20 229/21 230/5 235/24 236/2 236/2 <b>WILLIAMS [2]</b> 237/12 237/16 <b>willing [1]</b> 219/13 <b>wire [4]</b> 105/13 106/3 106/11 106/13 <b>within [14]</b> 11/10 18/16 50/9 103/19 110/21 111/3 111/5 131/25 133/2 147/25 150/20 176/22 198/4 199/16 <b>without [3]</b> 19/8 145/16 236/3 <b>witness [15]</b> 4/1 28/14 29/8 34/7 34/14 44/15 46/17 46/24 49/1 90/14 90/18 90/23 102/10 105/6 113/2 <b>witnesses [4]</b> 2/3 2/6 30/14 236/19 <b>won't [1]</b> 79/12 <b>word [1]</b> 217/23 <b>words [3]</b> 34/10 34/11 34/12 <b>work [4]</b> 44/8 83/13 83/14 159/1 <b>worked [1]</b> 47/14 <b>worker [3]</b> 84/6 84/7 84/10 <b>workers [6]</b> 83/13 83/14 83/16 83/19 84/4 84/5 <b>working [7]</b> 5/16 107/19 108/21 108/24 188/25 230/23 231/16	<b>works [2]</b> 108/16 220/20 <b>worth [3]</b> 107/23 124/14 218/21 <b>would [102]</b> 4/21 4/22 8/17 9/1 9/1 21/22 26/23 26/24 29/16 30/3 30/14 31/6 31/14 31/17 41/4 41/20 41/22 42/22 46/1 46/2 46/7 48/16 48/19 53/17 55/2 56/18 57/10 57/17 58/3 59/9 66/12 69/21 74/17 91/12 92/16 94/3 94/11 94/24 94/24 101/15 106/6 106/22 106/25 111/13 114/15 117/11 128/20 129/10 132/11 135/4 138/11 145/4 152/3 156/23 157/7 158/14 162/5 162/25 164/1 165/8 165/9 166/6 170/1 172/20 172/24 182/10 183/17 190/1 190/12 195/20 196/18 196/21 202/15 202/19 205/2 206/3 206/13 208/18 208/20 213/10 214/21 215/8 215/22 216/14 219/11 221/15 221/17 221/23 222/8 222/10 223/18 224/21 225/18 226/22 227/25 230/7 231/15 231/24 232/7 234/5 234/16 234/24 <b>would've [3]</b> 23/21 58/4 216/17 <b>wouldn't [2]</b> 160/14 224/20 <b>writ [2]</b> 231/1 231/4 <b>write [2]</b> 144/19 222/15 <b>writing [8]</b> 33/5 69/16 79/4 97/7 130/17 165/11 173/4 173/12 <b>written [8]</b> 13/3 68/11 104/13 138/13 170/4 171/22 204/20 204/22 <b>wrong [5]</b> 33/13 38/23 119/4 194/20 194/21 <b>wrote [2]</b> 68/9 68/10
			<b>X</b>	
			<b>XI [2]</b> 1/6 113/18	
			<b>Y</b>	
			<b>yeah [40]</b> 5/9 11/16 16/8 19/4 21/2 32/6 39/16 44/4 50/1 54/19 57/17 62/18 62/21 65/18 67/3 67/7 73/17 89/9 107/14 124/23 125/17 132/10 134/7 136/4 136/5 146/21 158/25 179/7 192/20 214/3 215/21 226/24 228/11 228/21 229/2 229/16 231/23 234/20 235/1 236/24	

<p><b>Y</b></p> <p><b>year [21]</b> 12/7 19/17 20/9 21/8 22/9 104/7 104/16 105/25 106/5 106/15 110/18 192/20 195/8 201/20 214/5 215/5 215/21 216/13 223/20 224/18 224/18</p> <p><b>year's [3]</b> 105/7 107/1 214/23</p> <p><b>years [13]</b> 6/9 19/17 56/24 98/7 109/22 110/8 110/21 111/3 112/8 112/21 113/8 185/25 210/18</p> <p><b>yell [1]</b> 34/13</p> <p><b>yes [197]</b> 3/9 5/4 6/1 6/12 6/15 8/13 8/15 9/21 12/11 15/7 17/9 18/8 18/22 19/1 19/11 19/21 20/12 21/8 21/11 23/7 24/2 24/18 25/9 25/9 26/1 27/16 30/21 37/22 37/24 43/16 47/12 47/18 50/16 52/15 53/18 56/11 57/2 59/3 60/4 60/24 62/21 64/9 64/16 64/19 67/15 68/6 69/1 69/3 69/4 70/16 71/2 72/13 72/21 72/25 73/4 74/16 75/2 76/9 76/12 76/13 76/14 76/17 77/2 79/19 80/5 80/17 80/19 81/3 81/20 82/5 82/7 85/4 86/1 88/10 92/11 93/6 93/10 95/9 97/11 98/1 100/19 100/24 102/18 103/2 105/7 105/9 105/10 106/1 106/25 107/20 108/1 108/10 108/12 108/14 109/8 109/11 109/14 109/18 110/15 110/18 114/15 114/22 115/6 115/22 116/3 116/18 117/1 117/20 118/4 119/15 119/19 119/25 121/7 124/3 125/23 129/3 136/21 136/22 139/9 139/11 141/24 143/22 144/2 146/6 146/10 146/16 146/18 146/22 147/13 148/1 148/8 150/16 153/1 154/6 154/12 157/12 157/17 158/23 159/11 159/11 161/22 162/2 163/18 165/1 165/2 165/10 166/16 167/4 168/16 169/20 169/22 172/1 173/15 173/24 174/13 175/24 175/24 176/7 178/2 178/18 181/10 181/25 182/4 184/16 187/7 187/9 187/10 188/2 190/20 190/22 191/12 192/16 193/11 193/12</p>	<p>198/13 199/8 199/11 199/19 199/24 200/5 202/24 204/6 204/18 205/8 207/19 211/14 215/1 216/22 217/14 223/17 224/21 227/17 227/25 228/2 232/18 234/18 236/24</p> <p><b>yes-or-no [4]</b> 80/17 103/2 165/1 166/16</p> <p><b>yesterday [6]</b> 3/20 35/8 40/20 41/10 90/12 91/7</p> <p><b>yet [14]</b> 29/9 29/11 29/12 38/13 52/3 63/16 68/15 157/14 201/22 208/15 209/11 210/9 219/25 227/4</p> <p><b>yield [1]</b> 157/7</p> <p><b>you [1474]</b></p> <p><b>you'd [7]</b> 3/12 51/2 69/17 76/6 164/3 230/2 230/3</p> <p><b>you'll [2]</b> 5/7 236/22</p> <p><b>you're [67]</b> 3/7 5/5 13/8 17/8 25/1 32/15 35/22 50/20 60/11 62/16 63/15 63/17 63/22 64/10 71/22 74/2 74/4 83/1 84/20 89/16 91/4 110/25 115/21 120/23 120/24 122/6 129/16 129/16 129/18 129/18 130/17 130/18 130/18 139/8 148/4 152/20 152/23 158/10 158/11 159/13 166/12 167/17 179/20 183/10 184/5 184/19 184/21 187/9 193/17 194/23 198/23 200/8 200/15 207/3 207/6 208/6 209/2 213/20 214/8 214/17 216/18 229/10 233/13 234/11 235/25 236/15 236/19</p> <p><b>you've [21]</b> 45/6 46/19 48/4 74/9 81/12 83/15 92/8 109/7 110/16 117/3 125/14 127/6 135/19 149/12 163/10 169/6 171/13 183/17 185/14 188/20 220/14</p> <p><b>young [1]</b> 25/1</p> <p><b>your [322]</b></p> <p><b>yourself [3]</b> 15/21 156/14 157/10</p> <hr/> <p><b>Z</b></p> <p><b>zero [7]</b> 28/12 74/18 191/4 194/2 218/25 227/25 228/1</p> <p><b>zero percent [1]</b> 218/25</p>			
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# EXHIBIT “M”



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,

10 Plaintiffs,

11 v.

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.

Case No. A-20-813439-B

Dept. No.: XI

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

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)<sup>1</sup> before the Honorable Elizabeth Gonzalez beginning  
7 on February 1, 2021, February 2, 2021 , February 3, 2021,<sup>2</sup> and March 15, 2021; Plaintiffs  
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)<sup>3</sup> 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 <sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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:

13  
14  
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.<sup>4</sup>  
18

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.  
24

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

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28 <sup>4</sup> 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.<sup>5</sup>

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 Heights<sup>6</sup> which has entered into a  
23

24  
25  
26  
27 \_\_\_\_\_  
28 <sup>5</sup> The Antos have a pending motion for summary judgment.

<sup>6</sup> The manager of Spanish Heights is SJCVC.



1 written lease agreement with SJC.V.<sup>7</sup>

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 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,  
23 create, assume or permit to exist any debt secured by the real property  
24 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

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28 <sup>7</sup> 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 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 KCI<sup>8</sup> 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 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The  
13 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,  
14 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in  
15 accordance with their respective terms, and any instrument or agreement required  
16 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,  
17 valid, binding and enforceable. This Forbearance Agreement does not conflict with any  
18 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

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

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

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

26  
27 <sup>8</sup> 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.<sup>9</sup>

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

THIS PLEDGE AGREEMENT dated 27<sup>th</sup> (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

9           59.     The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.  
10 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for  
11 SJCVC appears on the Pledge Agreement.  
12

13           60.     Paragraph 17 of the Pledge Agreement contained a notice provision which  
14 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier  
15 Gutierrez & Associates.  
16

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

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

---

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

26 \*\*\*

27                   WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”)  
28 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"), SJCVC<sup>10</sup>  
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the  
17 2017 Forbearance Agreement.<sup>11</sup>

---

18 <sup>10</sup> 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 <sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>  
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 <sup>12</sup> **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 <sup>13</sup> 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                   Trustor and Guarantor each waive all benefits of the one-action  
18 rule under NRS 40.430, which means, without limitation, Trustor  
19 and Guarantor each waive the right to require Lender to (i) proceed  
20 against Borrower, any other guarantor of the Loan, any pledgor of  
21 collateral for any person’s obligations to Lender or any other  
22 person related to the Note and Loan Documents, (ii) proceed  
23 against or exhaust any other security or collateral Lender may  
24 hold, or (iii) pursue any other right or remedy for Guarantors’  
benefit.

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

27                   The rights and remedies of CBCI under this Forbearance  
28 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 6<sup>th</sup> 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 “N”

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*Attorneys for Defendant and Counterclaimants  
5148 Spanish Heights, LLC, CBC Partners I, LLC  
and Dacia, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

**ORDER GRANTING IN PART  
KENNETH ANTOS AND SHEILA  
NEUMANN-ANTOS MOTION FOR  
SUMMARY JUDGMENT**

CAPTION CONTINUES BELOW

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

5 Counterclaimants,

6 v.

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

13 Counterdefendants.

14 **ORDER GRANTING IN PART KENNETH ANTOS AND**  
15 **SHEILA NEUMANN-ANTOS MOTION FOR SUMMARY JUDGMENT**

16 This matter having come before the Court, in Chambers, on April 9, 2021, on Kenneth  
17 Antos and Sheila Neumann-Antos' Motion for Summary Judgment. As no order lifting the stay  
18 has been entered by the Bankruptcy Court, nothing in this order creates any obligations or  
19 liabilities directly related to Spanish Heights Acquisition Company, LLC; however, factual  
20 findings related to Spanish Heights Acquisition Company, LLC, are included in this decision.  
21 The Court having reviewed the related briefing and considered the pleadings and papers on file  
22 herein and being fully advised, finds as follows:

23 THE COURT FINDS that the Kenneth Antos and Sheila Neumann-Antos Trust, as the  
24 contracting party to the Forbearance Agreement and attached Spanish Heights Acquisition  
25 Company, LLC Operating Agreement, has standing to pursue the Breach of Contract claim based  
26 on a breach of the terms of the various agreements, despite the Assignment of Interest in Spanish  
27 Heights Acquisition Company, LLC.

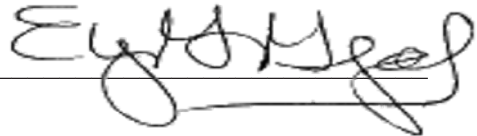
28 THE COURT FURTHER FINDS that there has been a lack of performance by

1 Plaintiff/Counterdefendant SJC Ventures Holding Company, LLC, under the Forbearance  
2 Agreement and attached Spanish Heights Acquisition Company, LLC Operating Agreement,  
3 entered into with Kenneth Antos and Sheila Neumann-Antos, Trustees of the Kenneth & Sheila  
4 Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust;

5 THE COURT FURTHER FINDS that the Court does not make any determination related  
6 to what damages are appropriate related to the granting of this relief; therefore

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Kenneth Antos and  
8 Sheila Neumann-Antos' Motion for Summary Judgment is GRANTED IN PART as to the breach  
9 of the Forbearance Agreement and attached Spanish Heights Acquisition Company, LLC  
10 Operating Agreement, and the Kenneth Antos and Sheila Neumann-Antos Trust, as the  
11 contracting party to the Forbearance Agreement and attached Spanish Heights Acquisition  
12 Company, LLC Operating Agreement, has standing to pursue the Breach of Contract claim  
13 despite the Assignment of Interest in Spanish Heights Acquisition Company, LLC.

14 Dated this 10th day of August, 2021

15   
16  
17

18 **25B E1F CCD6 2FE9**  
19 **Elizabeth Gonzalez**  
20 **District Court Judge**

21 Respectfully Submitted by:  
22 MUSHKIN & COPPEDGE

23 Read and Approved:  
24 MAIER GUTIERREZ & ASSOCIATES

25 /s/Michael R. Mushkin  
26 MICHAEL R. MUSHKIN, ESQ.,  
Nevada Bar No. 2421  
27 L. JOE COPPEDGE, ESQ.,  
Nevada Bar. No. 4954  
6070 S. Eastern Ave., Suite 270  
Las Vegas, Nevada 89119

28 Did Not Respond  
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 Defendants/Counterclaimants*

*Attorneys for Plaintiffs/Counterdefendants*



1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Spanish Heights Acquisition  
7 Company LLC, Plaintiff(s)

CASE NO: A-20-813439-B

8 vs.

DEPT. NO. Department 11

9 CBC Partners I LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Granting Summary Judgment was served via the court's  
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as  
16 listed below:

17 Service Date: 8/10/2021

18 MGA Docketing

docket@mgalaw.com

19 Karen Foley

kfoley@mccnvlaw.com

20 Michael Mushkin

michael@mccnvlaw.com

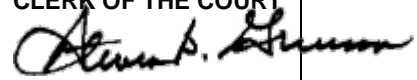
21 Kimberly Yoder

kyoder@mccnvlaw.com

22 Jady Hayes

jhayes@mccnvlaw.com

# EXHIBIT “O”



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Nevada Bar No. 2421  
L. Joe Coppedge, Esq.  
Nevada Bar No. 4954  
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Michael@mccnvlaw.com  
jcoppedge@mccnvlaw.com

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**STATUS REPORT REGARDING  
LIFTING OF BANKRUPTCY STAY**

CAPTION CONTINUES BELOW

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

4 Counterclaimants,

5 v.

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

Counterdefendants.

### 13 STATUS REPORT REGARDING LIFTING OF BANKRUPTCY STAY

14 Defendants/Counterclaimants, 5148 Spanish Heights, LLC, and CBC Partners I, LLC, by  
15 and through their attorney, Michael R. Mushkin, of the law firm of Mushkin & Coppedge, hereby  
16 submit THIS Status Report to advise the Court that the automatic stay pursuant to 11 U.S.C. §362,  
17 in Spanish Heights Acquisition Company, LLC's bankruptcy case was lifted by order of the  
18 Bankruptcy Court in Case No. BK-21-10501-nmc and entered on July 27, 2021, attached hereto  
19 as Exhibit A.

20 DATED this 28<sup>th</sup> day of July, 2021

21 MUSHKIN & COPPEDGE

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

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# EXHIBIT “A”

*Natalie M. Cox*

Honorable Natalie M. Cox  
United States Bankruptcy Judge



Entered on Docket  
July 27, 2021

Michael R. Mushkin, Esq.  
Nevada Bar No. 2421  
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*Attorneys for 5148 Spanish Heights, LLC,  
CBC Partners I, LLC & CBC Partners, LLC*

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

SPANISH HEIGHTS ACQUISITION  
COMPANY, LLC,

Debtor

Case No.: 21-10501-NMC  
CHAPTER 11

**ORDER GRANTING RELIEF FROM  
THE AUTOMATIC STAY TO  
PROCEED WITH STATE COURT  
LITIGATION AGAINST DEBTOR  
AND NONDEBTOR PARTIES**

Motion for Relief From the Automatic Stay to Proceed With State Court Litigation  
Against Debtor and Nondebtor Parties [ECF 140] filed by Secured Creditor, 5148 Spanish  
Heights, LLC, a Nevada limited liability company ("Movant" or "5148"), successor-in-interest to  
CBC Partners I, LLC, a Washington limited liability company ("Lender") came on for oral ruling  
before this Court on July 22, 2021, at 9:30 am, the Honorable Natalie M. Cox, United States



Bankruptcy Judge, presiding. Movants were represented by Michael R. Mushkin, of Mushkin & Coppedge, and Debtor Spanish Heights Acquisition Company, LLC was represented by James D. Greene, of Greene Infuso, LLP; Secured Creditor City National Bank was represented by Andrea M. Gandara, of Holley Driggs; and Secured Creditor The Northern Trust Company, successor by merger to Northern Trust Bank, FSB was represented by Blakely E. Griffith, of Snell & Wilmer. The Court having reviewed the Motion, Opposition, Declarations, and related filings and having considered the arguments of the parties, and with good cause appearing,

IT IS HEREBY ORDERED that, for the reasons stated on the record, which the Court adopts as its findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, the Motion is GRANTED.

Respectfully submitted by:

MUSHKIN & COPPEDGE

/s/Michael R. Mushkin

MICHAEL R. MUSHKIN, ESQ.

Nevada Bar No. 2421

6070 South Eastern Avenue, Ste 270

Las Vegas, NV 89119

Approved by:

HOLLEY DRIGGS

/s/Andrea M. Gandara

RICHARD F. HOLLEY ESQ.

Nevada Bar No. 3077

ANDREA M. GANDARA, ESQ.

Nevada Bar No. 12580

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Approved by:

GREENE INFUSO, LLP

/s/James D. Greene

JAMES D. GREENE, ESQ.

Nevada Bar No. 2647

3030 South Jones Boulevard, Ste 101

Las Vegas, Nevada 89146

Approved by:

SNELL & WILMER LLP

/s/Blakeley E. Griffith

BLAKELEY E. GRIFFITH, ESQ.

Nevada Bar No 12386

3883 Howard Hughes Pkwy., Ste 1100

Las Vegas, Nevada 89169

**LOCAL RULE 9021 CERTIFICATION**

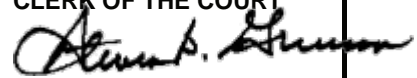
In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ 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]:

James D. Greene, Andrea M. Gandara, and Blakeley E. Griffith

☐ 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.

# EXHIBIT “P”



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SPANISH HEIGHTS ACQUISITION )  
COMPANY LLC, )

Plaintiff, )

vs. )

CBC PARTNERS I LLC, )

Defendant. )

AND RELATED PARTIES )

CASE NO. A-20-813439-B  
DEPT NO. XXXI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

MONDAY, NOVEMBER 15, 2021

**IAN HUGHES' MOTION TO QUASH SUBPOENA**

**MOTION TO QUASH TRIAL SUBPOENA AND FOR PROTECTIVE ORDER ON  
ORDER SHORTENING TIME**

APPEARANCES:

FOR SJC VENTURES,  
SPANISH HEIGHTS ACQUISITION,  
AND JAY BLOOM:

JOSEPH A. GUTIERREZ, ESQ.

FOR DEFENDANTS AND  
COUNTERCLAIMANTS:

MICHAEL R. MUSHKIN, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 15, 2021, 2:50 P.M.**

2 \* \* \* \* \*

3 THE COURT: Spanish Heights Acquisition versus CBC  
4 Partners.

5 Is anybody -- I see Mr. Mushkin, and I see  
6 Mr. Gutierrez. I also see that there is an Ian Hughes and a  
7 Jay Bloom. Of course, this is a public courtroom. So I'm  
8 going to ask the court recorder to go on the record, please.  
9 And then I can give my intro blurb, please.

10 THE COURT RECORDER: We are on the record.

11 THE COURT: We're on the record. Okay. I appreciate  
12 it. Thank you so very much.

13 Okay. We're on the record in Case Number 813439.  
14 And just as a heads up, as you can see, you all are BlueJeans.  
15 It looks like I've got a couple of people that I can see  
16 audiovisually and a couple of people that I see names  
17 underneath, but do not see themselves by picture.

18 This is a public courtroom regardless if people are  
19 here present in court, which at present there's nobody present  
20 here in court. But also it's a public courtroom.  
21 Audiovisually, if people wish to get the BlueJeans link, they  
22 are more than welcome to do so with caveats being that if  
23 parties ask for certain things to be sealed and/or redacted.

24 If there is a confidential issue under Supreme Court  
25 Rule 3, of course, the Court has to be made aware of that and

1 then would hear the reasoning for that. And then if I need to  
2 ask anybody not to be a part, then I would address that only at  
3 that time. But otherwise, as I said, everyone is welcome.  
4 It's a public courtroom.

5 And at this juncture, it is a few moments before the  
6 3:00 o'clock hour. You all know I always am on the bench  
7 early, but is anyone waiting for anyone, or should we get  
8 started in Case 813439, Spanish Heights Acquisition Company,  
9 plaintiffs, versus CBC Partners and related counterclaims?

10 Because I didn't see counsel for the receivers.

11 Is counsel for the receiver going to be a part of  
12 this? Do we know?

13 Let me go first to appearances first on behalf of SJC  
14 Ventures, Spanish Heights Acquisition Company, LLC, in the --  
15 and then a variety of different counterdefendants.

16 So, Mr. Gutierrez, do want to make your appearance,  
17 please.

18 MR. GUTIERREZ: Yes, Your Honor. Good afternoon.  
19 Joseph Gutierrez on behalf of Spanish Heights Acquisition  
20 Company, LLC, and counterdefendants SJC Ventures, LLC, and Jay  
21 Bloom in his individual capacity as a third-party defendant.

22 With me on the call as well is Mr. Bloom.

23 THE COURT: I'm sorry. I did not hear who you said  
24 was also on the call with you.

25 MR. GUTIERREZ: Jay Bloom, third-party defendant,

1 he's also on the call.

2 THE COURT: Okay. Like I said. Everyone is welcome.  
3 It's a public courtroom. Okay. Thank you.

4 Counsel on behalf of a variety of defendants and  
5 counterclaimants, would you like to make your appearance,  
6 please.

7 MR. MUSHKIN: Good afternoon, Your Honor. Mike  
8 Mushkin, Bar Number 2421 on behalf of all defendants and  
9 counterclaimants.

10 THE COURT: Okay. Wait. So you're, just so we're  
11 clear, so all defendants, what we show is -- so let's make sure  
12 we're clear because remember there was a little issue with how  
13 our records show. Let me make sure we're on the same page.

14 So it was the Kenneth M. Antos --

15 MR. MUSHKIN: We do this every time.

16 THE COURT: I know because remember they had at one  
17 point had you listed on behalf --

18 MR. MUSHKIN: I like it on both sides. That way I  
19 can control the case.

20 UNIDENTIFIED SPEAKER: I changed that, Judge.

21 THE COURT: Okay. Okay. So, you're here on behalf  
22 of all of defendants, and then you're also on behalf of  
23 counterclaimants; correct, and then also third-party plaintiff,  
24 5148 Spanish Heights, LLC; is that correct?

25 MR. MUSHKIN: That's correct, Your Honor.



1 THE COURT: Okay. Now, I saw that this does say Ian  
2 Hughes has not appeared at other hearings but is listed as a  
3 pro se.

4 So Mr. Hughes, is he still --

5 Well, I'm going to ask counsel. Mr. Mushkin, is he  
6 still a part of this case?

7 MR. MUSHKIN: Your Honor, he was subpoenaed by  
8 Mr. Gutierrez. And I believe he's here to make sure he is not  
9 needed for trial on the 17th.

10 THE COURT: Okay. So let me go. Mr. Gutierrez, as I  
11 recall, remember Mr. Hughes was here in the courtroom, and we  
12 had the procedural issue. So, Mr. Gutierrez, should we address  
13 that first? Do we need anything with regards to Mr. Hughes?

14 Go ahead, please.

15 MR. GUTIERREZ: (Video interference), Your Honor, I  
16 e-mailed Mr. Hughes and told him that we withdrew the subpoena  
17 and (video interference) appearance is no longer necessary. In  
18 light of the settlement (video interference).

19 THE COURT: Okay. So is it correct then to state  
20 that Mr. Hughes is more than welcome to stay listening in  
21 because it's a public courtroom, if he wishes to do so, but he  
22 has -- he is excused from any subpoena that would require his  
23 attendance at a trial in Case Number 813439, or is it something  
24 different?

25 Counsel, Mr. Gutierrez, please.

1 MR. GUTIERREZ: That's correct.

2 THE COURT: Okay. So, Mr. Hughes, you heard that;  
3 right? It's a public courtroom. You're more than welcome to  
4 listen in if you wish to, and if you have other things you need  
5 to do, you're also welcome not to listen in.

6 Is there anything you need address, Mr. Hughes, or  
7 should we just move forward?

8 MR. HUGHES: No, Your Honor. Thank you so much.  
9 I'll leave the hearing now. Thank you for your time, Your  
10 Honor.

11 THE COURT: Like I said, you're more than welcome to  
12 say. It is a public courtroom.

13 Okay. It looks like some, one or two people also may  
14 have additionally logged on. So let me restate what I said a  
15 moment ago.

16 And that is, as we all know, it's a public courtroom  
17 regardless of people are here in person. We have noted that  
18 nobody is in person currently in this courtroom, but it's also  
19 a public courtroom remotely. So people are more than welcome  
20 to ask us for the BlueJeans link and are more than welcome to  
21 listen into any hearing.

22 A couple of the ground rules, of course, with regards  
23 to anyone who is not counsel or a party is, of course, they  
24 have to keep themselves on mute --

25 When I say counsel or a party, that would in this

1 case also include a trustee -- I mean, a receiver and  
2 receiver's counsel.

3 -- but does need to keep themselves on mute. And, of  
4 course, everybody knows no one can record or take pictures or  
5 anything during a hearing unless there's certain exceptions if  
6 there had been a media request that had been signed. In this  
7 case, there is no media request that has been signed. So  
8 really we don't have those exceptions in this regard, but  
9 everyone is, of course, welcome to listen in or audiovisually  
10 or just audio, whatever they choose to do so.

11 So other than if we end up having a Supreme Court  
12 Rule 3 issue on sealing and/or redacting or if there's some  
13 confidentiality aspect that somebody asked the Court, after the  
14 Court would hear any said request and any basis for said  
15 request, then there may be an exception, but I don't know at  
16 this juncture. So the Court takes no position on something  
17 that has not yet been brought before me.

18 Without further ado, I'm going to go to counsel for  
19 plaintiff/counterdefendants. Are you going to be speaking with  
20 regards to this case, or is opposing counsel going to speak on  
21 regards to this case?

22 And let's just make sure we're not waiting for  
23 anybody else before we move forward. It is a few minutes after  
24 the 3:00 o'clock hour.

25 So is anybody waiting for anybody that we should be

1 waiting -- hold off for?

2 MR. GUTIERREZ: No, there is not. Nobody elsewhere  
3 waiting on. And I think at this stage Mr. Mushkin will read  
4 the 14 points for the (indiscernible) points of the settlement  
5 agreement.

6 THE COURT: Okay. And you all understand that this  
7 is a public courtroom. So at this juncture, you know,  
8 everything is available to anyone since...

9 Okay. So go ahead, Mr. Mushkin.

10 MR. MUSHKIN: Thank you, Your Honor. And we are  
11 pleased to report to the Court that we have settled the matter.

12 THE COURT: Congratulations.

13 MR. MUSHKIN: Plaintiffs --

14 THE COURT: Go ahead, please.

15 MR. MUSHKIN: I'm sorry?

16 THE COURT: I said congratulations. Please feel free  
17 to go ahead.

18 MR. MUSHKIN: Oh, thank you, Judge.

19 THE COURT: And you know everything is being  
20 recorded.

21 MR. MUSHKIN: For whatever reason, the sun is just  
22 right in my window, coming right in (indiscernible).

23 Plaintiff/counterdefendants third-party defendant SJC  
24 Ventures, LLC, Spanish Heights Acquisition Company and Jay  
25 Bloom, collectively referred to as plaintiffs, on the one

1 hand --

2 THE COURT: Wait.

3 MR. MUSHKIN: -- and defendant counterclaimant CBC I,  
4 CBC Partners, 5148, Kenneth and Sheila Antos as trustees for  
5 the Kenneth and Sheila Antos Living Trust, Kenneth and Sheila  
6 Antos trust parties, Dacia, LLC, on the other hand are referred  
7 to as defendants or 5148 parties.

8 THE COURT: Thank you. Mr. Mushkin, before you  
9 continue --

10 MR. MUSHKIN: Your Honor --

11 THE COURT: Wait. Mr. Mushkin. Mr. Mushkin. Before  
12 you continue, I just want to confirm, is nobody had requested  
13 this Court that anything be sealed or treated as confidential.  
14 So, but sometimes people do with regards to settlement terms.  
15 I did not hear anybody say that. So this is just being  
16 publicly recorded just like any other hearing, and, you know,  
17 would be available. So I just want to make sure everyone  
18 understood that just in case anyone did not hear me earlier,  
19 like I said, it's really up to you that you --

20 MR. GUTIERREZ: And, Your Honor, on behalf of the  
21 plaintiff/counterdefendant, we would prefer the terms kept  
22 outside the public realm. We just would like to put on the  
23 record that there is a settlement, and Mr. Bloom can confirm  
24 the settlement, but we have agreed upon deal points that we can  
25 submit for the Court. We'd much rather have that done (video

1 interference) off the record.

2 THE COURT: Okay. Well, the Court would have to do  
3 an analysis --

4 MR. MUSHKIN: Your Honor.

5 THE COURT: -- under --

6 Well, first let me hear from Mr. Mushkin on behalf of  
7 his clients, and then I'm going to have to address Supreme  
8 Court Rule 3.

9 Go ahead, please, Mr. Mushkin.

10 MR. MUSHKIN: Your Honor, normally, I wouldn't have  
11 an objection, but I don't think we can do so in this matter  
12 because these are stated terms of claims that will then be  
13 disclosed in the bankruptcy court as part of the claims under  
14 the plan. So while normally I would agree with Mr. Gutierrez,  
15 in this particular circumstance, these numbers are going to be  
16 public as a matter of law in the federal court. No sense in  
17 creating a burden (video interference). That would be my  
18 point.

19 THE COURT: Okay.

20 MR. GUTIERREZ: If I could just address that, Your  
21 Honor.

22 THE COURT: Sure.

23 MR. GUTIERREZ: There will be certain terms of  
24 repayment in the bankruptcy, but there are other terms in here  
25 that have no business being in the public record. And I'm

1 looking at the list of people that are on the hearing, I see a  
2 David Ferrera (phonetic), who I understand to be a reporter.

3 And at this time my client just would rather have  
4 these terms which have been agreed upon remain confidential.  
5 And whatever is publicly filed in bankruptcy court can be  
6 reported on then.

7 THE COURT: Okay. Remember, the Court has the  
8 obligation under Supreme Court Rule 3, if any party, right, is  
9 requesting something to either be sealed or redacted, which in  
10 this case, since you are on, excuse me, audiovisually and it's  
11 being recorded, it implicitly is what I'm hearing you say,  
12 Mr. Gutierrez, is that you're requesting that part of today's  
13 transcript either be sealed or recorded, or what --

14 Can you please give me the scope of your request and  
15 then give me your bases for the request, particularly in light  
16 of the fact that Mr. Mushkin said that these are going to be  
17 disclosed terms in a public proceeding in a bankruptcy court  
18 just so the Court has a full understanding because as you can  
19 appreciate, I know many things about this case, but what you  
20 all agreed upon, that I don't know yet.

21 Go ahead, please, sir.

22 MR. GUTIERREZ: There will be repayment terms as part  
23 of the settlement agreement which will be included in the  
24 bankruptcy plan as part of the final settlement.

25 THE COURT: Okay.



1 MR. GUTIERREZ: But there are other terms that have  
2 been agreed upon that we believe should remain confidential  
3 that won't be (video interference) disclosed in the bankruptcy  
4 proceeding. And, you know, at this time we'd request those be  
5 sealed or be submitted to the Court as part of the -- as part  
6 of (video interference) settlement. We're memorializing the  
7 terms of the final settlement. We've reached an agreement on  
8 every deal point, but we'd much rather have these terms not  
9 placed on the record.

10 My client can agree that he's read the deal points  
11 and is agreeable to them, but placing them on public record is  
12 not what we intend to do.

13 THE COURT: Okay. Well, let me walk through, you  
14 know, with regards to Supreme Court Rule 3. The Court has to  
15 balance, right, the public's interest in knowing, right, versus  
16 does it meet one of the qualifications for it to be in this  
17 case part of the transcript of today's hearing be sealed.

18 So is there -- while I appreciate your client's  
19 position, I have to evaluate, right, from legal bases and the  
20 factors to get considered under Supreme Court Rule 3.

21 So is there something more you wish to provide the  
22 Court?

23 MR. GUTIERREZ: There are certain terms, Your Honor,  
24 that my client (video interference) be kept confidential  
25 (indiscernible) regarding (video interference) of the property

1 until the (video interference) is made under the agreement the  
2 potential terms -- the entire agreement (video interference),  
3 and there's been some other terms (video interference) in the  
4 settlement agreement agreed upon that my client would not  
5 rather not have (video interference) publicly.

6 And alternatively the Court can have us submit this  
7 under seal (video interference) put on the record, especially  
8 with somebody who is reporting this publicly. That would be  
9 (video interference).

10 THE COURT: Okay. Well, let me get a quick point of  
11 clarification. In this case, for this hearing, the Court did  
12 not receive any media request.

13 Of course, the same thing is if you all were  
14 appearing here in person in the courtroom. Anybody is welcome  
15 as long as they are wearing a mask, right, and complying with  
16 all the county protocols, all the administration protocols,  
17 right, which is outside of this independent Court's purview.  
18 As long as all of those are complied with, a person is more  
19 than welcome to sit in any hearing with certain exceptions,  
20 right.

21 In general, this wouldn't fall within one of those  
22 exceptions, and we don't need to go into all this  
23 (indiscernible) family court exceptions and other things like  
24 that.

25 So if that's not the situation, right, then the Court

1 has to look at, and I appreciate sometimes are confidential  
2 terms and sometimes people -- the attorneys and/or litigants,  
3 if they're representing themselves determine what they wish to  
4 place, quote, on the record for purposes of a resolution.  
5 That's not a Court ordered or directed aspect of the  
6 proceedings.

7           So I'm hearing what you're saying, Mr. Gutierrez, but  
8 I'm not hearing a basis, right, with regards to the Court  
9 needing, as it needs to do to balance the confidential nature.  
10 Is there a way that you all could, A, do you need me to pause  
11 for a second and maybe you and Mr. Mushkin speak off-line for a  
12 moment. You know, call each other or e-mail or whatever you  
13 need to do and speak with your client.

14           MR. MUSHKIN: Your Honor.

15           THE COURT: Go ahead, Mr. Mushkin.

16           MR. MUSHKIN: I think that Mr. Gutierrez is concerned  
17 that the last two items on our settlement, all of the other  
18 items will be a matter of public record in the federal court.  
19 So it's not of real consequence.

20           And I think I can reword those, Joe, so that they are  
21 innocuous. In other words, I will reference that there is an  
22 agreement regarding the use of the property for a period of  
23 time and compliance with the rules and regulations but nothing  
24 more than that. If that will satisfy you, Joe, I can -- I  
25 think we can just get this on the record and be done.

1 MR. GUTIERREZ: And, Your Honor, my concern was that  
2 there (video interference), and then I'd (video interference)  
3 kind of caught off guard --

4 THE COURT: Sure.

5 MR. GUTIERREZ: I just have to check with my client  
6 as far as --

7 THE COURT: Sure.

8 MR. GUTIERREZ: -- I understand Mr. Mushkin's  
9 position that some of the repayment terms are part of the  
10 bankruptcy, and I'm fine if those are actually read (video  
11 interference) outside Points 13 and 14.

12 THE COURT: Okay. So just so this Court --

13 MR. MUSHKIN: Does that get us there, Joe?

14 THE COURT: Sorry. Just --

15 No.

16 MR. GUTIERREZ: Yeah --

17 THE COURT: Now, remember, everything you're saying  
18 now is fully being recorded on a public record. So that's why  
19 the Court was asking you.

20 The Court is fine maintaining everything perfectly  
21 fine in a public record because at this juncture the Court has  
22 not had an analysis, right. Supreme Court rules does say any  
23 person may request that the Court seal or redact the Court  
24 records for a case that's subject to these rules. Usually  
25 you're supposed to file a written motion, or the Court may upon

1 its own motion initiate proceedings to seal or redact a Court  
2 record.

3 The motion to seal or redact a Court record must  
4 disclose in its title and document code that the sealing or  
5 redaction being sought. The motion must be served on all  
6 parties NRCP 5. But here you have, in the middle of a hearing.  
7 So the hearing kind of has a little bit of a different  
8 component, right. Because you all, and I appreciate you  
9 resolved things over the weekend.

10 Did you say you resolved them over the weekend -- or  
11 whatever.

12 You resolved them before your hearing that was set  
13 today on a couple of fully noticed public matters, and so  
14 BlueJeans links are more than welcome to be given to any member  
15 of the public regardless of what they do for a living, and the  
16 media has full access to the courts.

17 Now, the access has got different rules depending on  
18 if there is a media request signed by a Court versus just a  
19 request for a BlueJeans link. Okay. So that being the case,  
20 if there is a specific --

21 Is there an agreement between the parties --

22 Sorry. Mr. Gutierrez, there's a problem with both of  
23 us talking at the same time. We just won't get you a nice  
24 clear record.

25 So is there a request under Supreme Court Rule 3, or

1 did Mr. Mushkin's proposal meet your needs, or do we need to  
2 take a brief break? What are you requesting?

3 Go ahead, sir.

4 MR. GUTIERREZ: If we can take (video interference)  
5 so I can talk to my client, but my proposal would be just to  
6 state that the parties -- and, Mr. Mushkin and I are agreeable  
7 on the exact terms of the 14 points we've agreed upon.  
8 Mr. Bloom has read them. He confirms he's agreeable to them.  
9 So we don't have to read them into the record. If that's an  
10 option, I think, if you could give us just maybe a few minute  
11 break to talk to Mr. Mushkin and Mr. Bloom.

12 THE COURT: Sure.

13 MR. GUTIERREZ: (video interference), but for  
14 purposes of this settlement, we just want to inform the Court  
15 that the case is settled. And procedurally, what would happen  
16 next in light of triggering the settlement agreement.

17 THE COURT: So --

18 MR. GUTIERREZ: (video interference) vacating the  
19 trial and if one of the benchmarks is not met, resetting it for  
20 a bench trial. So those are the types of things we were hoping  
21 to discuss in court today, not (indiscernible) terms.

22 THE COURT: Okay. So, Mr. Gutierrez, if you need a  
23 few moments to discuss something with your client, and,  
24 Mr. Mushkin, what we can do is we can mute you from our end.  
25 Make sure you mute yourself from your end, and then just you

1 come back on, just say that you've taken your few moments that  
2 you need, right, and then if you're muted on your end, you're  
3 muted on our end. I can ask Madam Court Recorder to stop  
4 recording until you let us know that you're ready to continue,  
5 okay, and then presumably you can either call each other,  
6 e-mail each other, text, whatever method of communication you  
7 wish to do. I don't even know if you're in the same location.  
8 You know, so whichever method you choose to do.

9 Does that meet your needs, counsel for plaintiff?

10 MR. GUTIERREZ: Yes, it does. Thank you, Your Honor.

11 MR. MUSHKIN: Your Honor --

12 THE COURT: Counsel for defendant, counterclaimant,  
13 does that meet your needs as well, or is there another request?

14 MR. MUSHKIN: No, that's fine, Your Honor. I'll go  
15 on mute as well.

16 THE COURT: Okay. So I'm going to ask Madam Court  
17 Recorder at this juncture please mute the Court, and then you  
18 all can mute yourselves. And if you want to take away your  
19 pictures because if you think somebody is going to lip read,  
20 you know, whatever you wish to do.

21 But when you come back on on the video, just let the  
22 Court know you're ready. Okay. You can put in the chat that  
23 you're ready, and then we'll continue the hearing. Okay.  
24 Thank you so very much.

25 Okay. Madam Court Recorder, can we put ourselves on



1 mute. Thank you so much. I appreciate it.

2 (Proceedings recessed at 3:15 p.m., until 3:23 p.m.)

3 THE COURT: We're now back on the record. We  
4 understood from a chat comment that both counsel were all  
5 ready.

6 Is that correct? Counsel for plaintiff first and  
7 then counsel for defense.

8 You're on mute still, Mr. Gutierrez.

9 MR. MUSHKIN: Yes, Your Honor, we are ready now.

10 THE COURT: Okay. I'm hearing Mr. Mushkin saying --  
11 Remember, you have to identify yourselves each time  
12 you speak. Because as much as I can see somebody's mouth  
13 moving our JAVS system does not have that voice identification  
14 capacity. Do appreciate it.

15 That was Mr. Mushkin, correct, on behalf of  
16 defendants, counterclaimants and third-party plaintiff;  
17 correct?

18 MR. MUSHKIN: Yes, Your Honor.

19 THE COURT: Okay. Thank you.

20 Go ahead, Counsel for plaintiff. Are you ready as  
21 well?

22 MR. GUTIERREZ: Yeah, we're ready. We came to an  
23 agreement with counsel. Thank you.

24 THE COURT: Thank you so very much.

25 Okay. So, Mr. Mushkin, what do you wish to place on

1 the record?

2 MR. MUSHKIN: Your Honor, yes. I want to place our  
3 basic deal points on the record. This will be followed by a  
4 formal settlement document and order -- an order for this Court  
5 as well as an order for the bankruptcy court.

6 I'm not going to recite the parties again, but this  
7 does cover all parties for this matter.

8 The parties have agreed to allow the use of an  
9 appraisal that was commissioned by my office. The appraiser  
10 was Kendall Britton (phonetic). That appraisal can be used in  
11 the bankruptcy case.

12 The 5148 parties will consent to run 1111(b) (1)  
13 treatment of their claim under the plan.

14 SJC Ventures agrees to make payments to the 5148  
15 parties, the first of which on the claim is due January 5th.

16 THE COURT: What year, please? What year, please?  
17 Counsel, January 5th. What year, please?

18 MR. MUSHKIN: I'm sorry. 2022.

19 THE COURT: Thank you so very much. Go ahead,  
20 please.

21 MR. MUSHKIN: The failure of SJC Ventures to pay that  
22 payment on or before January 5th, 2022, will trigger the  
23 resumption of foreclosure on the subject property.

24 The failure of SJC Ventures to pay the January 5th,  
25 2022, payment will allow 5148 and related parties to litigate

1 the balance of their claims in either District Court or in  
2 binding arbitration.

3 The parties agreed to an immediate stay of all  
4 claims, those before this Court as well as those before the  
5 Nevada Supreme Court.

6 The parties agree to vacate the November 17th,  
7 2021, scheduled jury trial and all associated State court  
8 hearings set in this matter and ask that the matter be reset on  
9 the Court's April 2022 stack.

10 These matters will only be heard if SJC Venture fails  
11 to make payments due herein.

12 The parties agree to execute mutual releases which  
13 will become effective upon the final payment due April 5th,  
14 2022.

15 The parties agree to immediately stay all orders of  
16 the court-appointed receiver Larry Birch (phonetic).

17 The parties agree to discharge Mr. Birch as  
18 court-appointed receiver in this case, on April 5th, 2022,  
19 assuming SJC Ventures makes the final payment.

20 The parties agree that the taxes, HOA lien, Republic  
21 service charge, the first and second mortgage payments will be  
22 made in accordance with the bankruptcy plan, and these payments  
23 will be completed on or before November 30 or two days after  
24 the entry of the bankruptcy order, whichever comes first.

25 There are certain other terms related to the use of

1 the property and the abiding of rules. We will keep those  
2 specific terms confidential today, but they'll be included in a  
3 settlement agreement, and the only other information that I  
4 have for the Court is the treatment of the claim in bankruptcy,  
5 and I will summarize that very quickly just to advise that the  
6 holder of the Class 3 secured claim which is 5148, will have a  
7 claim of a stated amount pursuant to Section 1111 (b) (1). He  
8 will have secured status.

9           The Class 3 claim will approve interest at a certain  
10 rate, and the Class 3 claim will have payments due just as I  
11 have recited in the District Court, the first payment being due  
12 January 5th, 2022. The second claim being due April 5th,  
13 2022.

14           Promptly after the entry of the confirmation order  
15 and no more than two business days thereafter, debtors shall  
16 pay all delinquent sums for real estate taxes, all sums due for  
17 the Class 1 and 2 plaintiffs, which is the first and second  
18 mortgage, sums certain to the HOA as a resolution of their  
19 Class 4 claim, and any amounts due to Republic Service for  
20 delinquent amounts there.

21           Defendant shall -- or the debtor shall also provide  
22 proof of such payment to the holder of Class 3 promptly after  
23 the payments are made.

24           And then just as with the settlement agreement in  
25 this case, Judge, any default under the terms of this paragraph

1 of the plan will constitute grounds for the holder of a Class 3  
2 claims to commence or to continue foreclosure on the property  
3 without further order of the Court, notice to the debtor SJC,  
4 or any other party save and except for statutory notice  
5 pursuant to Nevada law.

6 And, Your Honor, I believe that represents the entire  
7 basic terms.

8 And, Mr. Gutierrez, if I misread anything, please  
9 advise the Court.

10 If not, I think we're done, Judge.

11 THE COURT: Counsel for plaintiff, Mr. Gutierrez, on  
12 behalf of plaintiff and counterdefendant and all your client  
13 roles, are those terms; correct? Is there anything that needs  
14 to be added, and is there any clarification? What is your  
15 position? And then are you going to have your client confirm  
16 them as well?

17 Go ahead, please, sir.

18 MR. GUTIERREZ: Thank you, Your Honor. This is  
19 Joseph Gutierrez for the record.

20 Yes, Your Honor, Mr. Mushkin has summarized the terms  
21 of the 14 points that we agreed upon in our deal point and our  
22 e-mail correspondence today. Mr. Bloom is also on the call.  
23 He can state if he's read them and he can confirm their  
24 accuracy (indiscernible).

25 THE COURT: Are you going to ask Mr. Bloom to do so,

1 or are you asking the Court to ask him? What would you like to  
2 do, sir?

3 MR. GUTIERREZ: I'm going to ask Mr. Bloom to come on  
4 and to state (video interference).

5 MR. BLOOM: Good afternoon, Your Honor. Yes, I  
6 believe this matter is resolved with those terms.

7 THE COURT: Okay.

8 UNIDENTIFIED SPEAKER: And can he say his name?

9 THE COURT: Sorry. Once again, no voice  
10 identification, right, on our JAVS system. So I need to say  
11 who you are and whether or not you fully and knowingly agree to  
12 all the terms stated by Mr. Mushkin, confirmed by counsel for  
13 you and the various parties on your side of the Vs.

14 MR. BLOOM: Yes, Your Honor.

15 THE COURT: Okay. So your name is?

16 MR. BLOOM: I'm sorry. My name is Jay Bloom on  
17 behalf of the plaintiff, defendants and third-party defendants  
18 and I guess counterdefendants --

19 UNIDENTIFIED SPEAKER: And that's Jay Bloom?

20 MR. BLOOM: -- and I agree with the terms (video  
21 interference) this matter.

22 THE COURT: I'm sorry, sir. There's somebody else  
23 talking. I didn't hear what you said. I heard your name, and  
24 then I did not hear what you said if you wouldn't mind  
25 restating that. You're a little soft-spoken. There was some

1 cross voices if you don't mind, sir.

2 Go ahead, please.

3 MR. BLOOM: Yes. This is Jay Bloom on behalf of the  
4 plaintiffs, counterdefendants and third-party defendants. Yes,  
5 I believe that the terms as described (video interference) this  
6 matter in full.

7 THE COURT: Okay. And do you knowingly and  
8 voluntarily agree to them? That's what I heard your counsel  
9 say he was asking you to confirm.

10 MR. BLOOM: Yes.

11 THE COURT: Okay. Okay. Thank you so much.

12 Okay. Counsels, I've got a couple of quick questions  
13 because you're overlapping, as you know, proceedings that are  
14 within the jurisdiction of this Court and proceedings that are  
15 not within the jurisdiction of this Court.

16 So for purposes of the District Court Case  
17 Number 813439, slash, hyphen, B, okay, which is Spanish Heights  
18 Acquisition Company, LLC, plaintiffs et al versus CBC Partners  
19 I, LLC, et al, and related counterclaims, et cetera. A couple  
20 of questions with regards to that.

21 When you said you're asking for this case to be  
22 stayed and then placed on the April stack, I was not hearing  
23 you say that this case then -- I mean, how is that anticipated  
24 to work? Is that -- because if it's resolved, we don't set it.  
25 I mean, you all are going to trial and picking a jury on



1 Wednesday unless this case is fully and finally resolved was  
2 what was agreed at a variety of different times, including most  
3 recently at your calendar call; right? So if you're just  
4 asking for a trial continuance or you're asking it to be  
5 vacated, but then you also said stayed, so can you please  
6 explain so that this Court has a better understanding of what  
7 you're asking in the District Court case only, please.

8 MR. MUSHKIN: Sure, Judge. If I can -- again, this  
9 is Mike Mushkin.

10 What we were asking you to do is to stay all of the  
11 motion practice, including the receiver's duties. Continue the  
12 trial to your April stack. Your April stack has a call date  
13 of, I believe, either the 15th or the 17th of April. That is  
14 beyond our final trigger date. So that will allow us to know  
15 that the settlement agreement was fully performed. We will  
16 then come to you with a order of dismissal. And if we don't  
17 have an order of dismissal, we'll be coming to you asking, as  
18 any other litigant for the case to be reset for trial.

19 THE COURT: Okay. There's some challenges in what  
20 you just said. One such challenge is you are -- let's go to  
21 the receiver challenge first. Okay.

22 The receiver, it's a court-appointed receiver; right?  
23 It's not a stipulated by the parties receiver, okay. It's a  
24 court-appointed receiver. So are you asking to stay something  
25 as that of an X date? I mean, is it as of today? Is it a date

1 certain, and so that he then is compensated --

2 MR. MUSHKIN: Yes, Your Honor. It's as of  
3 (indiscernible).

4 THE COURT: So you understand we needed some clarity.  
5 So what are you asking so that the Court can evaluate it,  
6 please.

7 MR. MUSHKIN: It would be a stay as of today.

8 THE COURT: So all work that he has performed up and  
9 to 3:35 on today's date, November 15th, he is compensated  
10 for, but he's not to do further work after this date and time,  
11 or are you requesting something different?

12 MR. MUSHKIN: No, ma'am, that's exactly what we are  
13 requesting.

14 THE COURT: Okay. And let me hear from counsel for  
15 opposing counsel.

16 Mr. Gutierrez, is that your understanding, or is  
17 there something different? So I'm making sure it's the same  
18 joint request or not. If it's not -- go ahead, please, sir.

19 MR. GUTIERREZ: Thank you, Your Honor. This is  
20 Joseph Gutierrez for the record.

21 Yes, Your Honor. So the receiver who's been  
22 appointed (video interference) on Mr. Mushkin said his work  
23 would be stayed pending the release of all claims after the  
24 April payment.

25 And then procedurally, for trial, Mr. Mushkin

1 represented regarding (video interference) claims and, however  
2 the Court would vacate the trial and reset it, but we've looked  
3 at the April stack as a potential date (video interference) in  
4 April.

5 THE COURT: Okay. You understand generally when  
6 there's a settlement on the record trial dates get vacated.  
7 The case gets closed. You know, usually there's a 30 day  
8 status check on documents 45 days, you know, whatever the case  
9 may be.

10 But here you all are asking for a stay until a  
11 particular date. Is that correct? Because you still have  
12 outstanding motion practice, but then I'm hearing you say you  
13 wish to be -- the April stack for 2022 starts April 18th,  
14 2022, a five-week stack, okay.

15 So can you clarify what you're asking in that regard.  
16 Stay motion practice until a March date? Stay motion practice  
17 until the pretrial conference as the time for that April stack?  
18 Can you clarify so that the Court has a better understanding of  
19 what you're asking the Court to do, please.

20 MR. MUSHKIN: Your Honor, this is Mike Mushkin. That  
21 is exactly what we're asking you to do. To stay motion  
22 practice. We believe that we will know in much greater  
23 certainty on the 6th of January. If the first payment is made,  
24 it will be highly unlikely that the second payment would not be  
25 made. So whatever you can do for us to get this to the middle

1 of January would be very helpful.

2 THE COURT: Okay. What maybe I am hearing you all  
3 say is that you wish the Court to set a status check on  
4 Tuesday, January 11th at 8:30. And on Tuesday, January 11th  
5 at 8:30, you all will inform the Court that, A, the first  
6 payment is made. So therefore things are moving along as they  
7 need to do, or, B -- hopefully not B, but B would be, Your  
8 Honor, we have issues, and so therefore we need to reset the  
9 motions, and then the Court you need to set the trial as you  
10 deem appropriate. Is that where you're going, or is there  
11 something different?

12 MR. MUSHKIN: Your Honor, this is Mike Mushkin. That  
13 would be just perfect.

14 THE COURT: Counsel for plaintiff, would that meet  
15 your needs as well, plaintiff/counterdefendants?

16 MR. GUTIERREZ: Yes (video interference). This is  
17 Joseph Gutierrez?

18 THE COURT: Pardon. I didn't -- I'm sorry. I did  
19 not hear you, Mr. Gutierrez.

20 MR. GUTIERREZ: Yes, it does, Your Honor. Sorry.

21 THE COURT: Okay. And that's Mr. Gutierrez on behalf  
22 of -- would you mind stating your name please on behalf of the  
23 parties.

24 MR. GUTIERREZ: Yes. Joseph Gutierrez on behalf of  
25 the plaintiffs, Your Honor.

1 THE COURT: Okay. So because you know the Court can  
2 take no position with regards to anything pending in the Nevada  
3 Supreme Court or in a bankruptcy court. You all understand all  
4 of that. I can only address what's currently pending before me  
5 in Case 813439.

6 So with regards to payment of the receiver, are you  
7 all going to -- because you're asking me to stop his actions  
8 today, how would he have notice of that? Because I do not see  
9 that the receiver or receiver's counsel. Now, this was a  
10 originally appropriately scheduled hearings that were fully  
11 noticed to everyone. Everyone got e-service, but I don't know.  
12 Do you know if counsel for the receiver was aware of this  
13 change in circumstances?

14 MR. MUSHKIN: Your Honor, I believe that Tracy is on  
15 the line listening in, but I take responsibility to advise the  
16 receiver of where we're at and the timing of things --

17 THE COURT: Well, I'm sorry. I -- just if you're  
18 saying Tracy my JEA, that has nothing to do with third-party  
19 receivers. So I'm not sure who you mean, Tracy's.

20 MR. MUSHKIN: Sorry. Tracy is one of the attorneys  
21 in the receiver's counsel's office as well. I'm sorry.

22 THE COURT: I'm sorry.

23 MR. MUSHKIN: Your Honor, I'll take responsibility of  
24 getting a hold of the receiver.

25 THE COURT: Okay. Just so that you have an

1 understanding who I show is on BlueJeans, and there's no one  
2 physically here in the Court, I show on BlueJeans the labels  
3 say David Ferrero, Jay Bloom, Joseph Gutierrez, Michael Mushkin  
4 and Tracy Cordova.

5 Tracy Cordova is the JEA for Department 31. She is  
6 just on this hearing listening because, as you can appreciate,  
7 depending on what happens in this case, we may have other cases  
8 that need certain time that was originally allocated to you  
9 all. We have to coordinate with jury services for a lot of  
10 different things. So obviously she's on for purposes to  
11 understand the procedural things that the Department needs to  
12 do depending on what you all are telling me today.

13 So I am not aware of anybody else being on. I do not  
14 know who's sitting in your offices or et cetera. So if there's  
15 somebody with you, I would have no idea. I'm naming the names  
16 that we show that have logged in.

17 MR. MUSHKIN: I'll contact -- this is my motion, Your  
18 Honor. I'll contact the receiver.

19 THE COURT: Okay. So when you submit the order to  
20 the Court, okay, then what I am going to need is there's going  
21 to need to be some date that when the receiver was notified of  
22 the intention of the parties, right, because -- so that the  
23 Court can do an effective order with regards to the receiver's  
24 appointment and duties.

25 So when you're saying to stay the receiver, then we

1 have to circle back to that for a moment. To stay the  
2 receiver's duties, you're asking the Court just to ask the  
3 receiver to stop doing further collection at this moment, but  
4 you're not asking the Court to do anything with regards to the  
5 appointment of said receiver. Is that correct? Or are you  
6 asking something --

7 MR. MUSHKIN: This is Mike Mushkin. That is correct,  
8 Your Honor.

9 THE COURT: Okay. Counsel for plaintiffs,  
10 counterdefendants, is that your position as well, sir.

11 MR. GUTIERREZ: This is Joseph Gutierrez. Your  
12 Honor, yes, that's correct.

13 THE COURT: Okay. So here's what I'm hearing you  
14 asked the Court to do, and if it's something different,  
15 somebody needs to let me know because there was a lot that you  
16 all were saying.

17 What I'm understanding you're asking this Court to do  
18 is that you all said on the record under EDCR 7.50, as if it  
19 were memorialized in writing, however you are intending to  
20 memorialize your 14 points in writing, but, however, for the  
21 purposes of this hearing, what you're asking the Court to do is  
22 to take off calendar all pending motions that were set for  
23 3:00 o'clock today in regards to the OST, a regular source.

24 I understand what you're also asking the Court to do  
25 is to notify jury services that there is not a jury that's



1 needed and that you're asking that the jury selection that was  
2 set for this Wednesday, the 17th, as well as the trial that was  
3 supposed to commence immediately after jury selection be  
4 vacated.

5           You're asking that the Court instead place this case  
6 on the April 18th, five-week stack, with the understanding  
7 that the parties have all agreed that the matter has been fully  
8 resolved as to all parties, all counterclaimants, all third  
9 parties, everyone in the case. However, in an abundance of  
10 caution, since there are future payments due, you wish to keep  
11 a new trial date on.

12           Then you also are asking the Court then that means  
13 you would get a new pretrial conference and said pretrial  
14 conference would be on March 17th at 10:15. Set calendar  
15 call, at least initially, would be on April 5th.

16           And then you're also asking the Court to provide a  
17 January 11th status check, and at that status check the  
18 parties will confirm if the first payment that was pursuant to  
19 your agreement was made on January 5th, 2022; and if it was  
20 what further action the parties are going to ask the Court to  
21 do; and if it was not, what further action the parties are  
22 requesting the Court to do.

23           And then this Court, of course, would have to take no  
24 position with regards to the bankruptcy or the Nevada Supreme  
25 Court action.

1           What you're also asking in addition to this Court,  
2   once I receive the order is to ask that the receiver, the  
3   court-appointed receiver, stay any further collection, slash,  
4   records obtaining processes as of a date certain, which would  
5   be no sooner than today, the 15th at -- well, I said 3:35, but  
6   then in addition, that would be revisited also on the January  
7   11th depending on the status.

8           Is that correct? Is that incorrect? Does it need to  
9   be clarified, Counsel for plaintiffs first and then counsel for  
10   plaintiffs, counterclaimants, excuse me and then counsel for  
11   defense counter --

12           MR. GUTIERREZ: Your Honor --

13           THE COURT: -- and third-party plaintiffs.

14           Mr. Gutierrez, please.

15           MR. GUTIERREZ: This is Joseph Gutierrez. Yes.  
16   That's correct, Your Honor.

17           THE COURT: Okay. And I understand you had the full,  
18   knowing and intelligent affirmation from your client,  
19   Mr. Bloom, on behalf of all of your clients. Is that correct?

20           MR. GUTIERREZ: That is correct, Your Honor.

21           THE COURT: Okay. Thank you.

22           So, Mr. Mushkin, on behalf of all your clients, is  
23   that correct, or is there something else?

24           MR. MUSHKIN: Yes, Your Honor. That is correct.  
25   This is Mike Mushkin. You have done this just exactly what we

1 need.

2 THE COURT: Okay. So the Court is going to grant the  
3 joint oral request of the parties with respect to only the  
4 portions that impact this Court's jurisdiction, which is  
5 813439.

6 And so we ask that you submit as a very prompt order,  
7 of course, under EDCR 7.21 you do have the 14 days; however,  
8 you realize when I get the order is when things, and then  
9 notice of entry thereof is when things potentially can be  
10 effected.

11 So at this juncture, what's your anticipated time  
12 frame for getting the Court an order?

13 UNIDENTIFIED SPEAKER: (Video interference), Judge.

14 THE COURT: I'm sorry. I think you both were  
15 speaking at the same time.

16 Is that Mr. Mushkin saying how about tomorrow, Judge?

17 MR. MUSHKIN: We should be able to get you an order  
18 by the close of business tomorrow, Judge. This is Mike  
19 Mushkin.

20 THE COURT: Thank you.

21 Mr. Gutierrez, does that meet your needs or not?

22 MR. GUTIERREZ: Yes, Your Honor.

23 THE COURT: Okay. So what we'll do then is we will  
24 notify jury services as far as not needing the jury. If, for  
25 some reason, well, something happens, you know, that the Court

1 will have to address what the Court will need to address;  
2 right?

3           So at this juncture, I am going to authorize Madame  
4 Clerk that we can notify jury services that we will not need  
5 the jurors on Wednesday, that the trial date of November 17th  
6 has been vacated. Ask her to reset the trial but resetting the  
7 trial based on that that is a contingency trial if there is not  
8 compliance with the oral settlement that was entered on the  
9 record today, the 15th of November of 2021.

10           In accordance with EDCR 7.21, the Court is going to  
11 have to review how you all phrased what the receivers, and that  
12 proposed order does need to get circulated to (indiscernible)  
13 on behalf of the receiver so that we -- because she is the only  
14 one who is really going to have the information of what he is  
15 doing as of today. So we need to ensure that that is fairly  
16 and equitably inconsistent with the Court's original  
17 appointment of said receiver.

18           And is there anything else that the --

19           And the stay is only going to be effective for you  
20 all to put in your order. The stay is going to be effective to  
21 January 11th, which is your status check date. At that date  
22 then I will evaluate, right, if it makes sense to continue the  
23 stay because there's already compliance. And if there's not  
24 compliance, then we'll do the next step.

25           Does that meet your needs, or is there something

1 different you all are requesting for the time period of the  
2 stay?

3 Counsel for --

4 MR. MUSHKIN: That works for me, Your Honor. This is  
5 Mike Mushkin.

6 THE COURT: Mr. Gutierrez, does that work for you as  
7 well?

8 MR. GUTIERREZ: Yes, Your Honor.

9 THE COURT: Okay. So then you'll put that also in  
10 your proposed order.

11 Is there anything else the Court can do other than  
12 say congratulations, wish you the best of luck and look forward  
13 to hearing positive news on January 11th? Is anything else I  
14 can do for you on Case 813439?

15 Counsel for plaintiff and counterdefendants.

16 MR. GUTIERREZ: This is Joe Gutierrez. No, thank  
17 you, Your Honor. Thank you for your time.

18 THE COURT: Okay. Sorry. And, Mr. Gutierrez, let me  
19 just give one point since we're doing kind of final conclusions  
20 of everything. And I also understood what was addressed in the  
21 very beginning of the hearing that Mr. Ian Hughes, he was  
22 released from his subpoena, and you had stated that on the  
23 record; correct?

24 MR. GUTIERREZ: That is correct.

25 THE COURT: Okay. Thank you so much.

1           Go ahead, please. Counsel for defense, is there  
2 anything else the Court can do for you on Case 813439?  
3 Defendants and counterclaimants.

4           MR. MUSHKIN: No, Your Honor. No, Your Honor. On  
5 behalf of the defendant and counterclaimants, thank you very  
6 much for your time. I'm only sorry I couldn't give you the  
7 news earlier.


8           THE COURT: Do appreciate it. Well, thank you. And  
9 like I said, congratulations. Appreciate your diligence to try  
10 to get this matter resolved and wish you all the best of luck.

11           So that concludes the hearing. And thank everyone.

12           (Proceedings concluded at 3:49 p.m.)

13           -oOo-

14           ATTEST: I do hereby certify that I have truly and correctly  
15 transcribed the audio/video proceedings in the above-entitled  
16 case to the best of my ability.

17             
18           Dana L. Williams

19           Dana L. Williams  
20           Transcriber

	<b>5th [10]</b> 20/15 20/17 20/22 20/24 21/13 21/18 22/12 22/12 33/15 33/19	11/23 12/7 13/1 13/2 13/4 14/22 16/21 17/16 19/23 22/3 22/24 26/15 33/19	<b>April [16]</b> 21/9 21/13 21/18 22/12 25/22 26/12 26/12 26/13 27/24 28/3 28/4 28/13 28/13 28/17 33/6 33/15	15/21 16/8 18/19 19/12 25/13 25/24 28/11 30/1 30/7 30/8 31/6 31/22 32/15 36/13 36/23
<b>MR. BLOOM: [6]</b> 24/5 24/14 24/16 24/20 25/3 25/10	<b>6</b>	<b>agrees [1]</b> 20/14	<b>April 18th [1]</b> 33/6	<b>become [1]</b> 21/13
<b>MR. GUTIERREZ: [34]</b> 3/18 3/25 5/15 6/1 8/2 9/20 10/20 10/23 11/22 12/1 12/23 15/1 15/5 15/8 15/16 17/4 17/13 17/18 18/10 19/22 23/18 24/3 27/19 29/16 29/20 29/24 32/11 34/12 34/15 34/20 35/22 37/8 37/16 37/24	<b>6th of [1]</b> 28/23	<b>ahead [14]</b> 5/14 8/9 8/14 8/17 10/9 11/21 14/15 17/3 19/20 20/19 23/17 25/2 27/18 38/1	<b>April 2022 [1]</b> 21/9	<b>been [10]</b> 7/6 7/6 7/7 7/17 11/4 12/2 13/3 27/21 33/7 36/6
<b>MR. MUSHKIN: [39]</b> <b>THE COURT</b> <b>RECORDER: [1]</b> 2/10 <b>THE COURT: [81]</b> <b>UNIDENTIFIED</b> <b>SPEAKER: [4]</b> 4/20 24/8 24/19 35/13	<b>7</b> <b>7.21 [2]</b> 35/7 36/10 <b>7.50 [1]</b> 32/18	<b>ai [2]</b> 25/18 25/19	<b>arbitration [1]</b> 21/2	<b>before [12]</b> 1/12 3/5 7/17 7/23 9/8 9/11 16/12 20/22 21/4 21/4 21/23 30/4
-	<b>8</b> <b>813439 [8]</b> 2/13 3/8 5/23 25/17 30/5 35/5 37/14 38/2 <b>8:30 [2]</b> 29/4 29/5	<b>all [52]</b> <b>allocated [1]</b> 31/8 <b>allow [3]</b> 20/8 20/25 26/14	<b>ask [16]</b> 2/8 2/23 3/2 5/5 6/20 18/3 18/16 21/8 23/25 24/1 24/3 32/2 33/20 34/2 35/6 36/6	<b>beginning [1]</b> 37/21 <b>behalf [20]</b> 3/13 3/19 4/4 4/8 4/17 4/21 4/22 9/20 10/6 19/15 23/12 24/17 25/3 29/21 29/22 29/24 34/19 34/22 36/13 38/5
<b>-oOo [1]</b> 38/13	<b>A</b> <b>abiding [1]</b> 22/1 <b>ability [1]</b> 38/16 <b>able [1]</b> 35/17 <b>about [2]</b> 11/19 35/16 <b>above [1]</b> 38/15 <b>above-entitled [1]</b> 38/15	<b>along [1]</b> 29/6	<b>asked [2]</b> 7/13 32/14	<b>being [11]</b> 2/22 8/19 9/15 10/25 11/11 15/18 16/5 16/19 22/11 22/12 31/13
<b>1</b> <b>10:15 [1]</b> 33/14 <b>1111 [2]</b> 20/12 22/7 <b>11th [6]</b> 29/4 29/4 33/17 34/7 36/21 37/13 <b>13 [1]</b> 15/11 <b>14 [6]</b> 8/4 15/11 17/7 23/21 32/20 35/7 <b>15 [2]</b> 1/13 2/1 <b>15th [3]</b> 26/13 27/9 34/5 <b>15th of [1]</b> 36/9 <b>17th [5]</b> 5/9 21/6 33/2 33/14 36/5 <b>17th of [1]</b> 26/13 <b>18th [2]</b> 28/13 33/6	<b>abundance [1]</b> 33/9 <b>access [2]</b> 16/16 16/17 <b>accordance [2]</b> 21/22 36/10 <b>accuracy [1]</b> 23/24 <b>ACQUISITION [8]</b> 1/4 1/19 2/3 3/8 3/14 3/19 8/24 25/18 <b>action [3]</b> 33/20 33/21 33/25 <b>actions [1]</b> 30/7 <b>actually [1]</b> 15/10 <b>added [1]</b> 23/14 <b>addition [2]</b> 34/1 34/6 <b>additionally [1]</b> 6/14 <b>address [8]</b> 3/2 5/12 6/6 10/7 10/20 30/4 36/1 36/1	<b>am [5]</b> 3/6 29/2 31/13 31/20 36/3 <b>amount [1]</b> 22/7 <b>amounts [2]</b> 22/19 22/20 <b>analysis [2]</b> 10/3 15/22 <b>another [1]</b> 18/13 <b>anticipated [2]</b> 25/23 35/11 <b>Antos [4]</b> 4/14 9/4 9/5 9/6 <b>any [16]</b> 5/22 6/21 7/14 7/14 9/16 11/8 13/12 13/19 15/22 16/14 22/19 22/25 23/4 23/14 26/18 34/3 <b>anybody [8]</b> 2/5 3/2 7/23 7/25 7/25 9/15 13/14 31/13 <b>anyone [5]</b> 3/7 3/7 6/23 8/8 9/18 <b>anything [12]</b> 5/13 6/6 7/5 9/13 23/8 23/13 30/2 32/4 36/18 37/11 37/13 38/2 <b>appearance [3]</b> 3/16 4/5 5/17 <b>appearances [2]</b> 1/18 3/13 <b>appeared [1]</b> 5/2 <b>appearing [1]</b> 13/14 <b>appointed [6]</b> 21/16 21/18 26/22 26/24 27/22 34/3 <b>appointment [3]</b> 31/24 32/5 36/17 <b>appraisal [2]</b> 20/9 20/10 <b>appraiser [1]</b> 20/9 <b>appreciate [10]</b> 2/11 11/19 12/18 14/1 16/8 19/1 19/14 31/6 38/8 38/9 <b>appropriate [1]</b> 29/10 <b>appropriately [1]</b> 30/10 <b>approve [1]</b> 22/9	<b>aspect [2]</b> 7/13 14/5 <b>associated [1]</b> 21/7 <b>assuming [1]</b> 21/19 <b>at [34]</b> 2/19 3/2 3/5 4/16 5/2 5/23 7/15 8/3 8/7 11/1 11/3 12/4 14/1 15/21 16/23 18/17 19/2 22/9 26/2 26/3 28/3 29/4 29/5 30/16 32/3 33/14 33/15 33/17 34/5 35/11 35/15 36/3 36/21 38/12 <b>attendance [1]</b> 5/23 <b>ATTEST [1]</b> 38/14 <b>attorneys [2]</b> 14/2 30/20 <b>audio [2]</b> 7/10 38/15 <b>audio/video [1]</b> 38/15 <b>audiovisual [1]</b> 2/16 <b>audiovisually [3]</b> 2/21 7/9 11/10 <b>authorize [1]</b> 36/3 <b>available [2]</b> 8/8 9/17 <b>aware [3]</b> 2/25 30/12 31/13 <b>away [1]</b> 18/18	<b>believe [8]</b> 5/8 12/2 23/6 24/6 25/5 26/13 28/22 30/14 <b>bench [2]</b> 3/6 17/20 <b>benchmarks [1]</b> 17/19 <b>best [3]</b> 37/12 38/10 38/16 <b>better [2]</b> 26/6 28/18 <b>between [1]</b> 16/21 <b>beyond [1]</b> 26/14 <b>binding [1]</b> 21/2 <b>Birch [2]</b> 21/16 21/17 <b>bit [1]</b> 16/7 <b>BLOOM [17]</b> 1/20 2/7 3/21 3/22 3/25 8/25 9/23 17/8 17/11 23/22 23/25 24/3 24/16 24/19 25/3 31/3 34/19 <b>BlueJeans [7]</b> 2/14 2/21 6/20 16/14 16/19 31/1 31/2 <b>blurb [1]</b> 2/9 <b>both [4]</b> 4/18 16/22 19/4 35/14 <b>break [2]</b> 17/2 17/11 <b>brief [1]</b> 17/2 <b>Britton [1]</b> 20/10 <b>brought [1]</b> 7/17 <b>burden [1]</b> 10/17 <b>business [3]</b> 10/25 22/15 35/18 <b>but [38]</b> 2/17 2/20 3/3 3/7 5/2 5/21 6/18 7/3 7/8 7/15 9/14 9/24 10/11 10/24 11/19 12/1 12/8 12/11 14/7 14/23 16/6 17/5 17/13 18/21 20/6 22/2 26/5 27/10 28/2 28/10 28/12 29/7 30/11 30/15 32/3 32/20 34/5 36/6
<b>2</b> <b>2021 [4]</b> 1/13 2/1 21/7 36/9 <b>2022 [11]</b> 20/18 20/22 20/25 21/9 21/14 21/18 22/12 22/13 28/13 28/14 33/19 <b>2421 [1]</b> 4/8 <b>2:50 [1]</b> 2/1	<b>2</b> <b>2021 [4]</b> 1/13 2/1 21/7 36/9 <b>2022 [11]</b> 20/18 20/22 20/25 21/9 21/14 21/18 22/12 22/13 28/13 28/14 33/19 <b>2421 [1]</b> 4/8 <b>2:50 [1]</b> 2/1	<b>appeared [1]</b> 5/2 <b>appearing [1]</b> 13/14 <b>appointed [6]</b> 21/16 21/18 26/22 26/24 27/22 34/3 <b>appointment [3]</b> 31/24 32/5 36/17 <b>appraisal [2]</b> 20/9 20/10 <b>appraiser [1]</b> 20/9 <b>appreciate [10]</b> 2/11 11/19 12/18 14/1 16/8 19/1 19/14 31/6 38/8 38/9 <b>appropriate [1]</b> 29/10 <b>appropriately [1]</b> 30/10 <b>approve [1]</b> 22/9	<b>B</b> <b>back [4]</b> 18/1 18/21 19/3 32/1 <b>balance [3]</b> 12/15 14/9 21/1 <b>bankruptcy [14]</b> 10/13 10/24 11/5 11/17 11/24 12/3 15/10 20/5 20/11 21/22 21/24 22/4 30/3 33/24 <b>Bar [1]</b> 4/8 <b>based [1]</b> 36/7 <b>bases [2]</b> 11/15 12/19 <b>basic [2]</b> 20/3 23/7 <b>basis [2]</b> 7/14 14/8 <b>be [64]</b> <b>because [21]</b> 3/10 4/12 4/16 5/21 10/12 11/18	<b>calendar [3]</b> 26/3 32/22 33/14 <b>call [9]</b> 3/22 3/24 4/1
<b>3</b> <b>30 [2]</b> 21/23 28/7 <b>31 [1]</b> 31/5 <b>3:00 o'clock [3]</b> 3/6 7/24 32/23 <b>3:15 p.m [1]</b> 19/2 <b>3:23 p.m [1]</b> 19/2 <b>3:35 [1]</b> 34/5 <b>3:35 on [1]</b> 27/9 <b>3:49 p.m [1]</b> 38/12	<b>3</b> <b>30 [2]</b> 21/23 28/7 <b>31 [1]</b> 31/5 <b>3:00 o'clock [3]</b> 3/6 7/24 32/23 <b>3:15 p.m [1]</b> 19/2 <b>3:23 p.m [1]</b> 19/2 <b>3:35 [1]</b> 34/5 <b>3:35 on [1]</b> 27/9 <b>3:49 p.m [1]</b> 38/12	<b>appearances [2]</b> 1/18 3/13 <b>appeared [1]</b> 5/2 <b>appearing [1]</b> 13/14 <b>appointed [6]</b> 21/16 21/18 26/22 26/24 27/22 34/3 <b>appointment [3]</b> 31/24 32/5 36/17 <b>appraisal [2]</b> 20/9 20/10 <b>appraiser [1]</b> 20/9 <b>appreciate [10]</b> 2/11 11/19 12/18 14/1 16/8 19/1 19/14 31/6 38/8 38/9 <b>appropriate [1]</b> 29/10 <b>appropriately [1]</b> 30/10 <b>approve [1]</b> 22/9	<b>became [21]</b> 3/10 4/12 4/16 5/21 10/12 11/18	<b>C</b> <b>calendar [3]</b> 26/3 32/22 33/14 <b>call [9]</b> 3/22 3/24 4/1
<b>4</b> <b>45 [1]</b> 28/8	<b>4</b> <b>45 [1]</b> 28/8	<b>agreed [11]</b> 9/24 11/4 11/20 12/2 13/4 17/7 20/8 21/3 23/21 26/2 33/7 <b>agreement [14]</b> 8/5		
<b>5</b> <b>5148 [7]</b> 4/24 9/4 9/7 20/12 20/14 20/25 22/6	<b>5</b> <b>5148 [7]</b> 4/24 9/4 9/7 20/12 20/14 20/25 22/6			



<p><b>C</b></p> <p><b>call...</b> [6] 14/12 18/5 23/22 26/3 26/12 33/15</p> <p><b>came</b> [1] 19/22</p> <p><b>can</b> [45]</p> <p><b>capacity</b> [2] 3/21 19/14</p> <p><b>case</b> [36] 1/6 2/13 3/8 4/19 5/6 5/23 7/1 7/7 7/20 7/21 9/18 11/10 11/19 12/17 13/11 15/24 16/19 17/15 20/11 21/18 22/25 25/16 25/21 25/23 26/1 26/7 26/18 28/7 28/8 30/5 31/7 33/5 33/9 37/14 38/2 38/16</p> <p><b>cases</b> [1] 31/7</p> <p><b>caught</b> [1] 15/3</p> <p><b>caution</b> [1] 33/10</p> <p><b>caveats</b> [1] 2/22</p> <p><b>CBC</b> [6] 1/8 2/3 3/9 9/3 9/4 25/18</p> <p><b>certain</b> [11] 2/23 7/5 10/23 12/23 13/19 21/25 22/9 22/18 27/1 31/8 34/4</p> <p><b>certainty</b> [1] 28/23</p> <p><b>certify</b> [1] 38/14</p> <p><b>cetera</b> [2] 25/19 31/14</p> <p><b>challenge</b> [2] 26/20 26/21</p> <p><b>challenges</b> [1] 26/19</p> <p><b>change</b> [1] 30/13</p> <p><b>changed</b> [1] 4/20</p> <p><b>charge</b> [1] 21/21</p> <p><b>chat</b> [2] 18/22 19/4</p> <p><b>check</b> [6] 15/5 28/8 29/3 33/17 33/17 36/21</p> <p><b>choose</b> [2] 7/10 18/8</p> <p><b>circle</b> [1] 32/1</p> <p><b>circulated</b> [1] 36/12</p> <p><b>circumstance</b> [1] 10/15</p> <p><b>circumstances</b> [1] 30/13</p> <p><b>claim</b> [9] 20/13 20/15 22/4 22/6 22/7 22/9 22/10 22/12 22/19</p> <p><b>claims</b> [7] 10/12 10/13 21/1 21/4 23/2 27/23 28/1</p> <p><b>clarification</b> [2] 13/11 23/14</p> <p><b>clarified</b> [1] 34/9</p> <p><b>clarify</b> [2] 28/15 28/18</p> <p><b>clarity</b> [1] 27/4</p> <p><b>CLARK</b> [2] 1/2 2/1</p> <p><b>Class</b> [7] 22/6 22/9 22/10 22/17 22/19 22/22 23/1</p> <p><b>clear</b> [3] 4/11 4/12 16/24</p> <p><b>Clerk</b> [1] 36/4</p> <p><b>client</b> [11] 11/3 12/10 12/24 13/4 14/13 15/5 17/5 17/23 23/12 23/15 34/18</p> <p><b>client's</b> [1] 12/18</p>	<p><b>clients</b> [3] 10/7 34/19 34/22</p> <p><b>close</b> [1] 35/18</p> <p><b>closed</b> [1] 28/7</p> <p><b>code</b> [1] 16/4</p> <p><b>collection</b> [2] 32/3 34/3</p> <p><b>collectively</b> [1] 8/25</p> <p><b>come</b> [4] 18/1 18/21 24/3 26/16</p> 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<b>supposed [2]</b> 15/25 33/3	<b>this [89]</b>	<b>two [4]</b> 6/13 14/17 21/23 22/15	<b>way [2]</b> 4/18 14/10	<b>won't [2]</b> 12/3 16/23
<b>Supreme [11]</b> 2/24 7/11 10/7 11/8 12/14 12/20 15/22 16/25 21/5 30/3 33/24	<b>those [12]</b> 7/8 12/4 13/18 13/21 14/20 15/10 17/20 21/4 21/4 22/1 23/13 24/6	<b>types [1]</b> 17/20	<b>we [63]</b>	<b>words [1]</b> 14/21
<b>sure [13]</b> 4/11 4/13 5/8 7/22 9/17 10/22 15/4 15/7 17/12 17/25 26/8 27/17 30/19	<b>through [1]</b> 12/13	<b>under [12]</b> 2/24 10/5 10/13 11/8 12/20 13/1 13/7 16/25 20/13 22/25 32/18 35/7	<b>we'd [3]</b> 9/25 12/4 12/8	<b>work [5]</b> 25/24 27/8 27/10 27/22 37/6
<b>system [2]</b> 19/13 24/10	<b>time [17]</b> 1/16 3/3 4/15 6/9 11/3 12/4 14/23 16/23 19/11 27/10 28/17 31/8 35/11 35/15 37/1 37/17 38/6	<b>underneath [1]</b> 2/17	<b>we'll [4]</b> 18/23 26/17 35/23 36/24	<b>works [1]</b> 37/4
<b>T</b>	<b>times [1]</b> 26/2	<b>understand [9]</b> 8/6 11/2 15/8 27/4 28/5 30/3 31/11 32/24 34/17	<b>we're [13]</b> 2/11 2/13 4/10 4/12 4/13 7/22 12/6 19/3 19/22 23/10 28/21 30/16 37/19	<b>would [35]</b> 3/1 3/2 4/5 5/22 6/25 7/14 9/17 9/21 9/22 10/2 10/14 10/17 11/3 13/4 13/8 17/5 17/15 24/1 27/7 27/23 28/2 28/24 29/1 29/7 29/13 29/14 29/22 30/8 31/15 33/13 33/14 33/15 33/23 34/4 34/6
<b>take [9]</b> 7/4 17/2 17/4 18/18 30/2 30/15 30/23 32/22 33/23	<b>timing [1]</b> 30/16	<b>understanding [7]</b> 11/18 26/6 27/16 28/18 31/1 32/17 33/6	<b>we've [3]</b> 12/7 17/7 28/2	<b>wouldn't [3]</b> 10/10 13/21 24/24
<b>taken [1]</b> 18/1	<b>title [1]</b> 16/4	<b>understood [3]</b> 9/18 19/4 37/20	<b>wearing [1]</b> 13/15	<b>writing [2]</b> 32/19 32/20
<b>takes [1]</b> 7/16	<b>today [12]</b> 16/13 17/21 22/2 23/22 26/25 27/7	<b>unless [2]</b> 7/5 26/1	<b>Wednesday [3]</b> 26/1 33/2 36/5	
<b>talk [2]</b> 17/5 17/11		<b>unlikely [1]</b> 28/24	<b>week [2]</b> 28/14 33/6	
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<b>taxes [2]</b> 21/20 22/16		<b>up [4]</b> 2/14 7/11 9/19 27/8	<b>welcome [13]</b> 2/22 3/3 4/2 5/20 6/3 6/5 6/11 6/19 6/20 7/9 13/14 13/19 16/14	
<b>telling [1]</b> 31/12		<b>upon [9]</b> 9/24 11/4 11/20 12/2 13/4 15/25 17/7 21/13 23/21		
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<b>than [13]</b> 2/22 5/20 6/3 6/11 6/19 6/20 7/11 13/19 14/24 16/14 22/15 34/5 37/11		<b>used [1]</b> 20/10		
		<b>usually [2]</b> 15/24 28/7		

<div>W</div> <div>written [1] 15/25</div> <div>X</div> <div>XXXI [1] 1/6</div> <div>Y</div> <div>Yeah [2] 15/16 19/22</div> <div>year [3] 20/16 20/16 20/17</div> <div>yes [21] 3/18 18/10 19/9 19/18 20/2 23/20 24/5 24/14 25/3 25/4 25/10 27/2 27/21 29/16 29/20 29/24 32/12 34/15 34/24 35/22 37/8</div> <div>yet [2] 7/17 11/20</div> <div>you [174]</div> <div>you'll [1] 37/9</div> <div>you're [38] 4/10 4/21 4/22 6/3 6/5 6/11 11/12 14/7 15/17 15/25 18/2 18/2 18/4 18/7 18/22 18/23 19/8 24/25 25/13 25/21 26/3 26/4 26/7 28/15 28/19 29/10 30/7 30/17 31/25 32/2 32/4 32/17 32/21 32/24 33/1 33/5 33/16 34/1</div> <div>you've [1] 18/1</div> <div>your [95]</div> <div>yourself [1] 17/25</div> <div>yourselves [2] 18/18 19/11</div>				
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# EXHIBIT “Q”



*Natalie M. Cox*

Honorable Natalie M. Cox  
United States Bankruptcy Judge



Entered on Docket  
November 24, 2021

James D. Greene, Esq.  
Nevada Bar No. 2647  
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Attorneys for the Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:	) Case No.: BK-S-21-10501-nmc
	)
SPANISH HEIGHTS ACQUISITION	) Chapter 11
COMPANY, LLC	)
	) Hearing Date: November 23, 2021
Debtor.	) Hearing Time: 10:30 a.m.

**ORDER CONFIRMING THIRD AMENDED PLAN OF  
REORGANIZATION FOR THE DEBTOR  
UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

The Third Amended Plan of Reorganization of Spanish Heights Acquisition Company, I.L.C. Dated June 2, 2021 Under Chapter 11 of the Bankruptcy Code (ECF No. 276) ("Plan") came on for hearing at the above date and time, the Honorable Natalie M. Cox, United States Bankruptcy Judge, presiding. The Debtor was represented by James D. Greene, Esq. of Greene Infuso, I.L.P. Other appearances were noted on the record. The Court considered the Debtor's Brief in Support of Confirmation of the Plan; the Amended Declaration of James D. Greene Certifying Voting On and Tabulation of Ballots Accepting and Rejecting the Debtor's Third Amended Plan of Reorganization ("Ballot Certification"); other declarations, exhibits and documents presented to the Court at or before the hearing; and the arguments of counsel presented at the hearing. The Court being familiar

with the Plan and other relevant factors affecting this case and the Court having taken judicial notice of the entire record of the Chapter 11 case, including all pleadings and papers filed by the Debtor, creditors and parties-in-interest in the Chapter 11 case, including the order ("Disclosure Statement Order") entered by the Court on September 1, 2021 (Docket No. 187), approving the Debtor's Disclosure Statement and granting related relief and the Court having found that due and proper notice has been given with respect to the hearing, and the deadlines and procedures for objecting to the Plan and the Court having stated its findings of fact and conclusions of law on the record at the Hearing, which are incorporated herein pursuant to Federal Rule of Civil Procedure (made applicable pursuant to Federal Rule of Bankruptcy Procedure 7052); and after due deliberation thereon, and sufficient cause appearing therefore:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS,<sup>1</sup> that**

**JURISDICTION AND VENUE**

A. The Court has jurisdiction to conduct the Hearing and to confirm the Plan pursuant to 28 U.S.C. § 1334.

B. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b), and this Court has jurisdiction to enter a final order with respect thereto.

C. The Debtor is a proper debtor under section 109 of the Bankruptcy Code and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code.

D. Any and all conditions precedent to the entry of this Order have been satisfied.

**JUDICIAL NOTICE**

E. This Court takes judicial notice of the docket of the Debtor's Chapter 11 case maintained by the Clerk of the Court, and all pleadings and other documents filed, all orders entered,

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<sup>1</sup> The Findings of Fact and Conclusions of Law contained herein constitute the findings of fact and conclusions of law required to be entered by this Court pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"). To the extent any finding of fact constitutes a conclusion of law, it is adopted as such. To the extent any conclusion of law constitutes a finding of fact, it is adopted as such.

1 and evidence and argument made, proffered or adduced at, the hearings held before the Court during  
2 the pendency of the Chapter 11 case.

3 **STANDARDS FOR CONFIRMATION UNDER**  
4 **SECTION 1129 OF THE BANKRUPTCY CODE**

5 F. Section 1129(a)(1). The Plan complies with each applicable provision of the  
6 Bankruptcy Code. In particular, the Plan complies with the requirements of sections 1122, 1123,  
7 1125, and 1126 of the Bankruptcy Code.

8 G. Section 1129(a)(2). The proponent of the Plan, the Debtor, has complied with each  
9 applicable provision of the Bankruptcy Code.

10 H. Section 1129(a)(3). The Plan has been proposed in good faith and is not by any  
11 means forbidden by law. In so finding, the Court has considered the totality of the circumstances in  
12 this Case. The Plan is the result of extensive arms' length negotiations and achieves the goal of  
13 consensual reorganization embodied in the Bankruptcy Code. Further, the Plan's provisions have  
14 been negotiated in good faith, are consistent with sections 105, 1123(b)(6), 1129 and 1142 of the  
15 Bankruptcy Code, and are each necessary to the Debtor's successful reorganization, as agreed by  
16 the parties on the record during the hearing.

17 I. Section 1129(a)(4). No payment for services or costs in connection with the Chapter  
18 11 case or the Plan has been made by the Debtor other than payments that have been authorized by  
19 order of the Court.

20 J. Section 1129(a)(5). The proponent of the Plan, the Debtor, has disclosed the identity  
21 of the party that will serve as the manager of the Debtor post-confirmation (SJC Ventures Holding,  
22 LLC) which is in the best interests of the Debtor's creditors and parties in interest. The proponent  
23 has also disclosed that the manager shall receive no compensation for services rendered or to be  
24 rendered as the Reorganized Debtor's manager.

25 K. Section 1129(a)(6). This provision is not applicable to the Debtor because there is  
26 no government regulatory commission that oversees the Debtor or its operations.

27 L. Section 1129(a)(7). Each holder of an impaired Claim that is entitled to vote on the  
28 Plan has accepted the Plan and each will, on account of such Claim, receive or retain property under

the Plan having a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

M. Section 1129(a)(8). As set forth in the Ballot Certification, the Plan has been accepted by all impaired classes of Claims that are entitled to vote on the Plan.

N. Section 1129(a)(9). The Plan provides treatment for Administrative and Priority Claims ("Administrative Claims") that is consistent with the requirements of section 1129(a)(9) of the Bankruptcy Code.

O. Section 1129(a)(10). The Plan has been accepted by all classes of impaired Claims that are entitled to vote on the Plan, including Classes 1-4, determined without including any acceptance of the Plan by any insider.

P. Section 1129(a)(11). Confirmation of the Plan is feasible and not likely to be followed by the liquidation or the need for the further financial reorganization of the Debtors.

Q. Section 1129(a)(12). The Plan provides for the payment of all fees payable under section 1930, of Title 28, of the United States Code by the Debtors on the Effective Date. After the Effective Date and until this Chapter 11 case is closed, converted, or dismissed, the Plan provides for the payment by the Disbursing Agent of all such fees as they become due and payable.

R. Sections 1129(a)(13) through (16). These provisions do not apply to the Debtor.

S. Section 1129(b). The Plan is accepted by all Classes entitled to vote on the Plan, so this provision does not apply to the Plan. Nevertheless, the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to any nonvoting impaired class. Accordingly, the requirements of section 1129(b) of the Bankruptcy Code have been satisfied and the Court may "cram down" the Plan over any nonvoting impaired class.

T. Section 1129(c). The Plan (including previous versions thereof) is the only plan that has been filed in the Chapter 11 case that has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

U. Section 1129(d). No party in interest, including, but not limited to, any governmental unit, has requested that the Court deny confirmation of the Plan on grounds that the principal purpose

of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, and the principal purpose of the Plan is not such avoidance. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

#### **EXECUTORY CONTRACTS**

V. Except as otherwise provided herein, pursuant to sections 365 and 1123(b)(2) of the Bankruptcy Code, upon the occurrence of the Effective Date, the Plan provides for the rejection of each and every executory contract and unexpired lease to which Debtor was a party on the Petition Date. The Debtor's decisions regarding the assumption and rejection of executory contracts and unexpired leases are based on and are within the sound judgment of the Debtor, are necessary to the implementation of the Plan, and are in the best interests of the Debtor, its estate, holders of Claims, and other parties in interest in this Chapter 11 case.

#### **SETTLEMENTS AND INJUNCTIONS**

W. Pursuant to sections 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019(a), and in consideration of the classification, distributions, and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all the Claims and controversies resolved pursuant to the Plan.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

#### **A. General**

1. The Plan, as amended pursuant to this Order, a copy of which is attached hereto as Exhibit A, is hereby confirmed and the record of the hearing is hereby closed.

2. The "Effective Date" of the Plan shall be the fifteenth (15th) day after the date when the Court enters this Order confirming the Plan.

3. In accordance with section 1141(a) of the Bankruptcy Code and upon the occurrence of the Effective Date, the Plan shall be binding upon and inure to the benefit of (i) the Debtor and its respective successors and assigns, (ii) the holders of Claims and their respective successors and assigns (whether or not they voted to accept the Plan, whether or not they are impaired under the Plan, and whether or not any such holder has filed, or is deemed to have filed a proof of Claim), (iii) any other person or entity giving, acquiring, or receiving property under the Plan, (iv) any party to

an executory contract or unexpired lease of the Debtor and (v) each of the foregoing's respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any.

4. On the Effective Date, except as otherwise provided in the Plan, title to all property of the Debtor's bankruptcy estate shall vest in and be transferred to the Debtor in accordance with the terms of the Plan.

#### **B. Treatment of Claims**

1. The secured claim of City National Bank shall be paid as set forth in Class 1 of the Plan. Without limiting or otherwise modifying treatment of CNB, upon default as discussed in the Plan, CNB shall be entitled to pursue all rights and remedies under the CNB Loan Documents, as defined in the Plan, including without limitation foreclosure on the real property located at 5148 Spanish Heights Drive, Las Vegas NV 89148 (APN 163-29-615-007) ("Property"), without further Order of the Bankruptcy Court or relief from the automatic stay under Section 362 of the Bankruptcy Code. CNB shall only be required to issue written notice of default via email to counsel for Reorganized Debtor, James D. Greene, Esq. (jgreene@greeneinfusolaw.com) and to Reorganized Debtor's client representative, Jay Bloom (jbloom@lvem.com), of such default and, if applicable, the amount necessary to cure the default. Debtor and/or Reorganized Debtor shall have ten (10) calendar days from the date of such notice to cure said default.

2. The secured claim of Northern Trust Bank shall be paid as set forth in Class 2 of the Plan.

3. The secured claim of 5148 Spanish Heights, LLC shall be paid as set forth in Class 3 of the Plan.

4. The secured claim of the Spanish Hills Community Association (the "Association") shall be paid as set forth in Class 4 of the Plan. Without limiting or otherwise modifying treatment of the Association, upon default of ongoing assessments (regular, special, reserve, or otherwise) and/or violation of the Association's governing documents by Debtor, the Association shall be entitled to pursue all state law rights and remedies under its governing documents and NRS Chapter 116 including, without limitation, judicial or non-judicial foreclosure of the real property located at 5148



Spanish Heights Drive, Las Vegas NV 89148 (APN 163-29-615-007) ("Property"), without further Order of the Bankruptcy Court or relief from the automatic stay under 11 U.S.C Section 362 of the Bankruptcy Code. Upon default and/or violation, the Association shall only be required to send written notice via email to counsel for Reorganized Debtor, James D. Greene, Esq. (jgreene@greeneinfusolaw.com) and to Reorganized Debtor's client representative, Jay Bloom (jbloom@lvem.com), of such default and/or violation and, if applicable, the amount necessary and/or action which must be taken to cure the default and/or violation. Debtor and/or Reorganized Debtor shall have ten (10) calendar days from the date of such notice to cure said default and/or violation.

5. The Disputed Claims of remaining parties are treated as described in Classes 5-8 of the Plan.

6. All other priority, administrative and other claims not otherwise specified herein shall be paid as set forth in the Plan.

**C. Plan Implementation.**

7. The Debtor is authorized to undertake or cause to be undertaken any and all acts and actions contemplated by the Plan or required to consummate and implement the provisions of the Plan, prior to, on, and after the Effective Date, including without limitation, entering, executing, delivering, filing or recording any agreements, instruments, or documents necessary to implement the Plan. All such actions shall be deemed to have occurred and shall be in effect without any requirement or further action by the Debtor.

8. Each federal, state, commonwealth, local, foreign or other governmental agency is hereby directed and authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan and this Order.

9. Any and all transfers of Property authorized hereby or the recording of any deed or other instrument in accordance with the terms of this Order or the Plan shall be free and clear of any and all stamp, real property transfer or similar taxes imposed upon the making or delivery of any instrument of transfer pursuant to Section 1146 of the Bankruptcy Code.



10. All settlements, compromises, releases, exculpations and injunctions set forth in the Plan, shall be, and hereby are, effective and binding on all persons who may have had standing to assert such settled, released, exculpated or enjoined causes of action and no other person or entity shall possess such standing to assert such causes of action after the Effective Date.

**D. Plan Distributions.**

11. On and after the Effective Date, distributions on account of allowed Claims shall be effectuated pursuant the Plan and upon the Effective Date, issued by the Debtor.

12. In accordance with the Plan, all applications for payment of fees and reimbursement of expenses by professionals retained in these Chapter 11 Cases, as well as parties seeking compensation pursuant to section 503 of the Bankruptcy Code must be filed with the Court by the date that is no later than forty-five (45) days after the Effective Date (or, if such date is not a Business Day, by the next Business Day thereafter). Any Person or Entity that fails to file such an application or request on or before such date shall be forever barred from asserting such Administrative Claim against the Debtor or its properties, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Claim. Applications for approval of professionals' fees not previously awarded during the pendency of the Chapter 11 case may be included in such professional's final applications as set forth herein and in the Plan. Objections, if any, to Fee Claims shall be filed and served not later than fourteen (14) business days prior to the date set by the Court for the hearing to consider such requests.

**E. Executory Contracts and Leases.**

13. As of the Effective Date, all executory contracts and unexpired leases of the Debtor shall be rejected, pursuant to sections 365 and 1123 of the Bankruptcy Code, as identified and set forth in the Plan.

**F. Taxes and Transfers.**

14. The transfer of any asset under the Plan or this Order has been duly authorized, and when issued as provided in the Plan, will be validly issued, fully paid, and non-assessable.

15. Creditors seeking to protect the validity, enforceability, perfection and priority of the liens and security interests granted and/or continued under the Plan may file financing statements,

1 deeds of trust, mortgages or other documents and take any and all actions as they deem appropriate.  
2 in their respective discretion, to confirm the perfection of such security interests and liens.

3 16. All filing and recording officers are hereby directed to accept for filing or recording  
4 all instruments of transfer to be filed and recorded notwithstanding any contrary provision of  
5 applicable non-bankruptcy law. This Court retains jurisdiction to enforce the foregoing direction,  
6 by contempt proceedings or otherwise.

7 **G. Miscellaneous.**

8 17. From and after the Confirmation Date, this Court shall retain and have exclusive  
9 jurisdiction of all matters arising out of this Chapter 11 case pursuant to, and for purposes of,  
10 subsection 105(a) and section 1142 of the Bankruptcy Code, including without limitation,  
11 jurisdiction over the matters set forth in the Plan, which is incorporated herein by reference, as if set  
12 forth herein.

13 18. Except as otherwise provided in the Plan and this Order, notice of all subsequent  
14 pleadings in this Chapter 11 case shall be limited to counsel for the Debtor, the United States Trustee,  
15 and any party known to be directly affected by the relief sought.

16 19. Notwithstanding anything in the Plan or this Order to the contrary, the amount of any  
17 Priority Tax Claim for federal income taxes or state taxes, if any, and the rights of the holder of such  
18 Claim, if any, to payment in respect thereof shall: (a) survive the Effective Date and consummation  
19 of the Plan and be determined in the manner and by the administrative or judicial tribunal in which  
20 the amount of such Claim and the rights of the holder of such Claim would have been resolved or  
21 adjudicated if the Chapter 11 case had not been commenced; and (b) not be discharged, impaired or  
22 adversely affected by the Plan. In accordance with section 1124 of the Bankruptcy Code, the Plan  
23 shall leave unaltered the legal, equitable and contractual rights of a holder of such Claim.

24 20. Failure specifically to include or reference particular sections or provisions of the  
25 Plan or any related agreement in this Order shall not diminish or impair the effectiveness of such  
26 sections or provisions, it being the intent of the Court that the Plan be confirmed and such related  
27 agreements be approved in their entirety.  
28

1           21. All entities holding Claims against the Debtor that are treated under the Plan are  
2 hereby directed to execute, deliver, file, or record any document, and to take any action necessary  
3 to implement, consummate, and otherwise effect the Plan in accordance with its terms, and all such  
4 entities shall be bound by the terms and provisions of all documents executed and delivered by them  
5 in connection with the Plan.

6           22. In accordance with section 1142 of the Bankruptcy Code, the Debtor, and any other  
7 entity designated pursuant to the Plan are hereby authorized, empowered and directed to issue,  
8 execute, deliver, file and record any document, and to take any action necessary or appropriate to  
9 implement, consummate and otherwise effectuate the Plan in accordance with its terms, and all such  
10 entities shall be bound by the terms and provisions of all documents issued, executed and delivered  
11 by them as necessary or appropriate to implement or effectuate the transactions contemplated by the  
12 Plan and as set forth in the Plan.

13           23. In the event of an inconsistency between the Plan, on the one hand, and any other  
14 agreement, instrument, or document intended to implement the provisions of the Plan, on the other,  
15 the provisions of the Plan shall govern (unless otherwise expressly provided for in such agreement,  
16 instrument, or document). In the event of any inconsistency between the Plan or any agreement,  
17 instrument, or document intended to implement the Plan, on the one hand, and this Order, on the  
18 other, the provisions of the Order shall govern, except with respect to the payment of fees assessed  
19 pursuant to 28 U.S.C. § 1930(6). Fees due pursuant to 28 U.S.C. § 1930(6) shall be paid on the  
20 Effective Date of the Plan or when they come due, without the requirement that a proof of claim be  
21 filed. The Debtors shall timely file quarterly operating reports as such reports become due until this  
22 Chapter 11 case is closed.

23           24. The provisions of this Order are integrated with each other and are non-severable and  
24 mutually dependent.

25           25. This Confirmation Order is a final order and the period in which an appeal must be  
26 filed shall commence immediately upon the entry hereof.

27           26. If any or all of the provisions of this Order are hereafter reversed, modified or vacated  
28 by subsequent order of this Court, or any other Court, such reversal, modification or vacatur shall

1 not affect the validity of the acts or obligations incurred or undertaken under or in connection with  
2 the Plan prior to the Debtors' receipt of written notice of such order. Notwithstanding any such  
3 reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken  
4 pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification  
5 or vacatur shall be governed in all respects by the provisions of this Order and the Plan and all related  
6 documents or any amendments or modifications thereto.

7 Submitted by:

8  
9 GREENE INFUSO, LLP

10 By: /s/ James D. Greene

11 James D. Greene, Esq., NV Bar No.2647

12 3030 South Jones Boulevard, Suite 101

13 Las Vegas, NV 89146

14 Attorney for the Debtor

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**SUBMISSION TO COUNSEL FOR APPROVAL PURSUANT TO LR 9021**

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 in 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 case under Chapter 7 or 13, 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 this Order.

APPROVED: Andrea Gandara, Esq.; Blakely Griffith, Esq.; Michael R. Mushkin, Esq.; Karen Ayarbe, Esq.

DISAPPROVED: None

FAILED TO RESPOND: None

Submitted by:

GREENE INFUSO, LLP

By: /s/ James D. Greene, Esq.  
James D. Greene, Esq., NBN 2647  
3030 South Jones Boulevard, Suite 101  
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## EXHIBIT 1

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E-Filed: November 19, 2021

Attorneys for Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT****DISTRICT OF NEVADA**

In Re:

Case No. BK-S-21-10501-NMC

Spanish Heights Acquisition Company,  
LLC,

Chapter 11

Debtor.

**THIRD AMENDED PLAN OF REORGANIZATION OF SPANISH HEIGHTS  
ACQUISITION COMPANY, LLC DATED JUNE 2, 2021  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Spanish Heights Acquisition Company, LLC, a Nevada limited liability company, as debtor and debtor in possession ("SHAC" or the "Debtor"), proposes the following plan of reorganization (the "Plan") for the resolution of the outstanding claims against, and equity interests in, the Debtor. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code (as defined below). Reference is made to the Debtor's Disclosure Statement, which contains a discussion of the Debtor's history, business, results of operations, historical financial information, accomplishments during the Chapter 11 Case (as defined below), projections and a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents, that have been filed with the Bankruptcy Court, that are referenced in this Plan or the Disclosure Statement.

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## ARTICLE I.

### RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

#### A. *Rules of Interpretation, Computation of Time and Governing Law*

1. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

#### B. *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "Accrued Professional Compensation" means, at any given moment, all accrued, contingent and/or unpaid fees and expenses (including, without limitation, success fees and Allowed Professional Compensation) for legal, financial advisory, accounting and other services and reimbursement of expenses that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code or otherwise rendered allowable prior to the Confirmation Date by any Retained Professionals in the Chapter 11 Case, that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not been previously paid regardless of whether a fee application has been Filed for any such amount.

2. "Administrative Claim" means any Claim for costs and expenses of administration of the Estate under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code (excluding claims under section 503(b)(9) of the Bankruptcy Code), including, without limitation: (a) the actual and necessary costs and expenses incurred after the Commencement Date of preserving the Estate and operating the business of the Debtor; (b) Allowed Professional Compensation; and (c) all fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

3. "Affiliate" has the meaning set forth at section 101(2) of the Bankruptcy Code.

4. "Allowed" means, with respect to Claims or Equity Interests: (a) any Claim or Equity Interest proof of which is timely Filed by the applicable Claims Bar Date (or which by the Bankruptcy Code or Final Order is not or shall not be required to be Filed); (b) any Claim or Equity

1 Interest that is listed in the Schedules as of the Effective Date as not contingent, not unliquidated  
 2 and not Disputed, and for which no Proof of Claim or Interest has been timely Filed; or (c) any  
 3 Claim or Equity Interest Allowed pursuant to the Plan; provided, however, that with respect to any  
 4 Claim or Equity Interest described in clause (a) above, such Claim or Equity Interest shall be  
 5 considered Allowed only if and to the extent that (x) with respect to any Claim or Equity Interest,  
 6 no objection to the allowance thereof has been interposed within the applicable period of time fixed  
 7 by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or (y) such an  
 8 objection is so interposed and the Claim or Equity Interest shall have been Allowed for distribution  
 9 purposes only by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as  
 10 contingent, unliquidated or disputed, and for which no Proof of Claim has been timely Filed, is not  
 11 considered Allowed and shall be expunged without further action by the Debtor or the Reorganized  
 12 Debtor and without any further notice to or action, order or approval of the Bankruptcy Court.

13 5. "Allowed Professional Compensation" means all Accrued Professional  
 14 Compensation allowed or awarded by a Final Order of the Bankruptcy Court or any other court of  
 15 competent jurisdiction.

16 6. "Assets" means all of the Debtor's right, title and interest of any nature in property,  
 17 wherever located, as specified in section 541 of the Bankruptcy Code.

18 7. "Avoidance Actions" means any and all claims and causes of action which any of  
 19 the Debtor, the debtors in possession, the Estate, or other appropriate party in interest has asserted  
 20 or may assert under sections 502, 510, 542, 544, 545, or 547 through 553 of the Bankruptcy Code  
 21 or under similar or related state or federal statutes and common law, including fraudulent transfer  
 22 laws.

23 8. "Ballots" means the ballots accompanying the Disclosure Statement upon which  
 24 certain Holders of Impaired Claims (modified, as necessary, based on voting party in accordance  
 25 with the Disclosure Statement Order) entitled to vote shall, among other things, indicate their  
 26 acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the  
 27 solicitation process, and which must be actually received on or before the Voting Deadline.

28 9. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101-  
 1532, as applicable to the Chapter 11 Case, and to the extent of the withdrawal of any reference  
 under section 157 of Title 28 of the United States Code and/or the Order of the United States District  
 Court for the District of Nevada pursuant to section 157(a) of Title 28 of the United States Code,  
 the United States District Court for the District of Nevada.

10. "Bankruptcy Court" means the United States Bankruptcy Court for the District of  
 Nevada, having jurisdiction over the Chapter 11 Case.

11. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, as  
 applicable to the Chapter 11 Case, promulgated under 28 U.S.C. § 2075 and the general, local and  
 chambers rules of the Bankruptcy Court.

12. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday"  
 (as defined in Bankruptcy Rule 9006(a)).

13. "Cash" means the legal tender of the United States of America or the equivalent  
 thereof.

14. "Causes of Action" means all actions, causes of action (including Avoidance  
 Actions), Claims, liabilities, obligations, rights, suits, debts, damages, judgments, remedies,  
 demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity  
 claims, contribution claims or any other claims disputed or undisputed, suspected or unsuspected,  
 foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law,

1 equity or otherwise, based in whole or in part upon any act or omission or other event occurring  
2 prior to the Commencement Date or during the course of the Chapter 11 Case, including through  
the Effective Date.

3 15. "Chapter 11 Case" means the chapter 11 case pending for the Debtor under chapter  
4 11 of the Bankruptcy Code in the Bankruptcy Court.

5 16. "Claim" means any claim against a Debtor as defined in section 101(5) of the  
6 Bankruptcy Code.

7 17. "Claims Bar Date" means, as applicable, (a) June 9, 2021, as to all non-  
8 Governmental entities, (b) the Governmental Bar Date, August 2, 2021, or (c) such other period of  
9 limitation as may be specifically fixed by an order of the Bankruptcy Court for Filing such Claims.

10 18. "Claims Objection Bar Date" means, for each Claim, the later of (a) 180 days after  
11 the Effective Date and (b) such other period of limitation as may be specifically fixed by an order  
12 of the Bankruptcy Court for objecting to such Claims.

13 19. "Claims Register" means the official register of Claims maintained by the  
14 Bankruptcy Court.

15 20. "Class" means a category of Holders of Claims or Equity Interests as set forth in  
16 Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

17 21. "Commencement Date" means February 3, 2021, the date on which the Debtor  
18 commenced the Chapter 11 Case.

19 22. "Commission" means the U.S. Securities and Exchange Commission.

20 23. "Confirmation" means the entry of the Confirmation Order on the docket of the  
21 Chapter 11 Case, subject to all conditions specified in Article X hereof having been satisfied or  
22 waived as provided for in this Plan.

23 24. "Confirmation Date" means the date upon which the Bankruptcy Court enters the  
24 Confirmation Order on the docket of the Chapter 11 Case, within the meaning of Bankruptcy Rules  
25 5003 and 9021.

26 25. "Confirmation Hearing" means the hearing held by the Bankruptcy Court on  
27 Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be  
28 continued from time to time.

26. "Confirmation Hearing Notice" means that certain Notice of Confirmation Hearing  
approved by the Disclosure Statement Order.

27. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan  
pursuant to section 1129 of the Bankruptcy Code.

28. "Consummation" means the occurrence of the Effective Date.

29. "Creditor" means a Holder of a Claim.

30. "Cure Claim" means a Claim based upon the Debtor's default on an Executory  
Contract or Unexpired Lease at the time such contract or lease is assumed by the Debtor under  
sections 365 or 1123 of the Bankruptcy Code.

1 31. "Debtor" means Spanish Heights Acquisition Company, LLC, as the debtor in this  
2 Chapter 11 Case.

3 32. "Debtor in Possession" means the Debtor, as debtor in possession in this Chapter 11  
4 Case.

5 33. "Disclosure Statement" means the Disclosure Statement for Plan of Reorganization  
6 of Sunlight Properties, LLC Under Chapter 11 of the Bankruptcy Code, as amended, supplemented  
7 or modified from time to time, including all exhibits and schedules thereto and references therein  
8 that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code,  
9 Bankruptcy Rules and any other applicable law.

10 34. "Disclosure Statement Motion" means that certain Motion for Order (A) Approving  
11 the Disclosure Statement, (B) Establishing the Record Date, Voting Deadline, and Other Dates, (C)  
12 Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing  
13 Objections to the Plan and (D) Approving the Manner and Forms of Notice and Other Related  
14 Documents, filed with the Bankruptcy Court on December 15, 2017, as the Motion may be amended  
15 from time to time.

16 35. "Disclosure Statement Order" means that certain Order (A) Approving the  
17 Disclosure Statement, (B) Establishing the Record Date, Voting Deadline, and Other Dates, (C)  
18 Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing  
19 Objections to the Plan and (D) Approving the Manner and Forms of Notice and Other Related  
20 Documents, approved by the Bankruptcy Court on September 1, 2021, as the order may be amended  
21 from time to time.

22 36. "Disputed Claim" means, with respect to any Claim or Equity Interests, any Claim  
23 or Equity Interests listed on (a) the Claims Register that is not yet Allowed, or (b) Scheduled as  
24 Disputed.

25 37. "Distribution Agent" means the Debtor or any other distribution agent the Debtor  
26 may select.

27 38. "Distribution Record Date" means the date for determining which Holders of Claims  
28 are eligible to receive distributions hereunder and shall be the Voting Deadline or such other date  
as designated in an order of the Bankruptcy Court.

39. "Effective Date" means the day that is the first Business Day occurring at least 14  
days after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect; and  
(b) all conditions specified in Article X of this Plan have been satisfied or waived pursuant to the  
terms of this Plan.

40. "Entity" means an entity as defined in section 101(15) of the Bankruptcy Code.

41. "Equity Interest" means any equity security in the Debtor or membership interest in  
the Debtor, after any adjustment for any and all post-Petition Date capital calls made by or on behalf  
of the Debtor.

42. "Estate" means, as to the Debtor, the estate created for the Debtor in its Chapter 11  
Case pursuant to section 541 of the Bankruptcy Code.

43. "Exchange Act" means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, or any  
similar federal, state or local law.

44. "Executory Contract" means a contract to which the Debtor is a party that is subject  
to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.



1 45. "Fee Claim" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of  
the Bankruptcy Code for Accrued Professional Compensation.

2 46. "File" or "Filed" means file, filed or filing with the Bankruptcy Court or its  
3 authorized designee in this Chapter 11 Case.

4 47. "Final Order" means an order or judgment of the Bankruptcy Court, or other court  
of competent jurisdiction with respect to the subject matter, as entered on the docket in the Chapter  
5 11 Case or the docket of any court of competent jurisdiction, that has not been reversed, stayed,  
modified or amended, and as to which the time to appeal, or seek certiorari or move for a new trial,  
6 re-argument or rehearing has expired and no appeal or petition for certiorari or other proceedings  
for a new trial, re-argument or rehearing been timely taken, or as to which any appeal that has been  
7 taken or any petition for certiorari that has been timely Filed has been withdrawn or resolved by the  
highest court to which the order or judgment was appealed or from which certiorari was sought or  
8 the new trial, re-argument or rehearing shall have been denied, resulted in no modification of such  
order or has otherwise been dismissed with prejudice.

9 48. "General Unsecured Claim" means: (i) a Class 6 ("Allowed Unsecured Claims");  
10 and (ii) any unsecured Claim against Debtor that is not: (a) an Administrative Claim, (b) a Priority  
Tax Claim, (c) a Priority Non-Tax Claim, or (d) a Secured Claim.

11 49. "GI" means Greene Infuso, LLP.

12 50. "Governmental Bar Date" means August 2, 2021.

13 51. "HOA" shall mean the duly organized homeowners associations related to Debtor's  
14 Property, which is the Spanish Hills Community Association.

15 52. "Holder" means an Entity holding a Claim or an Equity Interest.

16 53. "Impaired" means any Claims in an impaired Class.

17 54. "Impaired Class" means an impaired Class within the meaning of section 1124 of  
the Bankruptcy Code.

18 55. "Initial Distribution Date" means the date that is as soon as practicable after the  
19 Effective Date, but no later than thirty (30) days after the Effective Date, when distributions under  
the Plan shall commence.

20 56. "New Equity Interests" means the equity in Reorganized Debtor to be authorized,  
21 issued or reserved on the Effective Date pursuant to the Plan, which shall constitute all of the direct  
or indirect equity of the Reorganized Debtor

22 57. "Periodic Distribution Date" means the first Business Day that is as soon as  
23 reasonably practicable occurring no later than approximately 180 days after the Initial Distribution  
Date, and thereafter, the first Business Day that is as soon as reasonably practicable occurring no  
24 later than 180 days after the immediately preceding Periodic Distribution Date.

25 58. "Person" means a person as defined in section 101(41) of the Bankruptcy Code.

26 59. "Petition Date" means February 3, 2021, the date on which the Debtor commenced  
the Chapter 11 Case.

27 60. "Plan" means this Plan of Reorganization of Debtor Under Chapter 11 of the  
28 Bankruptcy Code dated June 2, 2021 as amended, supplemented or modified from time to time,  
including, without limitation, the Plan Supplement, which is incorporated herein by reference

61. "Plan Supplement" means, collectively, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, all of which are incorporated by reference into, and are an integral part of, the Plan, as all of the same may be amended, modified, replaced and/or supplemented from time to time in accordance with the terms hereof and the Bankruptcy Code and the Bankruptcy Rules.

62. "Priority Non-Tax Claim" means any Claim accorded priority in right of payment pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

63. "Priority Tax Claim" means any Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

64. "Proof of Claim" means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

65. "Proof of Interest" means proof of Equity Interest filed against the Debtor in the Chapter 11 Case.

66. "Pro Rata" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

67. "Record Date" means the close of business on August 2, 2021, the date of the Governmental Bar Date.

68. "Reorganized Debtor" means the Debtor after confirmation of the Plan, or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

69. "Retained Professional" means any Entity: (a) employed in this Chapter 11 Case pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330 or 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

70. "Schedules" mean, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases and statements of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified or supplemented from time to time.

71. "Securities Act" means the United States Securities Act of 1933, as amended.

72. "Solicitation Deadline" means the close of business on September 10, 2021.

73. "Solicitation Package" means the Disclosure Statement, the Plan, all exhibits thereto, Ballots and the Confirmation Hearing Notice.

74. "Tort Claim" means any Claim that has not been settled, compromised or otherwise resolved that: (a) arises out of allegations of personal injury, wrongful death, property damage, products liability or similar legal theories of recovery; or (b) arises under any federal, state or local statute, rule, regulation or ordinance governing, regulating or relating to protection of human health, safety or the environment.

75. "Unexpired Lease" means a lease to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

76. "Unimpaired" means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

77. "Unimpaired Class" means an unimpaired Class within the meaning of section 1124 of the Bankruptcy Code.

78. "Voting Classes" means Classes 1 through 6.

79. "Voting Deadline" means October 18, 2021 at 5:00 p.m. prevailing Pacific Time for all Holders of Claims, which is the date and time by which all Ballots must be received by the Debtor in accordance with the Disclosure Statement Order, or such other date and time as may be established by the Bankruptcy Court with respect to any Voting Class.

## ARTICLE II.

### ADMINISTRATIVE AND PRIORITY TAX CLAIMS

#### A. *Administrative Claims*

Each Holder of an Allowed Administrative Claim shall be paid the full unpaid amount of such Claim in Cash (a) on or as soon as reasonably practicable after the Effective Date, (b) if such Claim is Allowed after the Effective Date, on or as soon as reasonably practicable after the date such Claim is Allowed, or (c) upon such other terms as may be agreed upon by the Debtor or the Reorganized Debtor, as applicable, and such Holder or otherwise upon an order of the Bankruptcy Court; provided, however, that Allowed Administrative Expense Claims representing liabilities incurred by the Debtor in the ordinary course of business during the chapter 11 cases, other than those liabilities constituting or relating to commercial tort claims or patent, trademark or copyright infringement claims, shall be paid in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents related to such transactions, and holders of claims related to such ordinary course liabilities are not required to File or serve any request for payment of such Administrative Claims. Notwithstanding anything to the contrary elsewhere in the plan, all fees required to be paid by 28 U.S.C. § 1930(a)(6) ("UST Fees") will accrue and be timely paid until the case is administratively closed, dismissed, converted to another chapter under the Code, or a final decree closing the case is entered. The claims of the United States Trustee for any fee arrearage shall be paid in full on or before the Effective Date of the Plan. UST Fees shall accrue and become automatically due and payable and are not subject to an allowance process.

#### 1. Bar Date for Administrative Claims

Except as otherwise provided in this Article II hereof, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than 45 days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims, including, without limitation, Holders of Claims for liabilities constituting or relating to commercial tort claims or patent, trademark or copyright infringement claims who assert that such claims constitute Administrative Claims, that do not File and serve such a request by the applicable Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtor or any Reorganized Debtor or their Estates and property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Reorganized Debtor and the requesting party by the later of (a) 120 days after the



1 Effective Date and (b) 60 days after the Filing of the applicable request for payment of  
2 Administrative Claims, if applicable, as the same may be modified or extended from time to time  
3 by the Bankruptcy Court and/or on motion of a party in interest approved by the Bankruptcy Court.

3 2. Professional Compensation and Reimbursement Claims

4 Retained Professionals or other Entities asserting a Fee Claim for services rendered before  
5 the Confirmation Date must File and serve on the Reorganized Debtor and such other Entities who  
6 are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy  
7 Court an application for final allowance of such Fee Claim no later than 60 days after the Effective  
8 Date; provided that the Reorganized Debtor shall pay Retained Professionals or other Entities in  
9 the ordinary course of business for any work performed after the Confirmation Date. Objections to  
10 any Fee Claim must be Filed and served on the Reorganized Debtor and the requesting party by 14  
11 days after the Filing of the applicable request for payment of the Fee Claim. To the extent necessary,  
12 the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy  
13 Court regarding the payment of Fee Claims. Each Holder of an Allowed Fee Claim shall be paid  
14 by the Reorganized Debtor in Cash within five (5) Business Days of entry of the order approving  
15 such Allowed Fee Claim.

11 B. *Priority Wage/Commission Claims*

12 Priority Wage/Commission claims are unsecured employee wage or sales commissions  
13 described by section 507(a)(4) of the Bankruptcy Code, which allows priority treatment, but only  
14 to the extent of \$13,650 for each individual or corporation, as the case may be, earned within 180  
15 days of the petition date. Unless the Holder of such section 507(a)(4) claim agrees otherwise, such  
16 holders with receive payment of their claim amount entitled to priority on the Effective Date of the  
17 Plan. The Debtor does not currently owe any priority wage or commission claims.

16 C. *Priority Tax Claims*

17 Each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective  
18 Date shall receive, as soon as reasonably practicable after the Effective Date, on account of such  
19 Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) Cash in  
20 an amount agreed to by the Debtor or Reorganized Debtor, as applicable, and such Holder;  
21 provided, however, that such parties may further agree for the payment of such Allowed Priority  
22 Tax Claim at a later date; or (3) at the option of the Debtor, Cash in an aggregate amount of such  
23 Allowed Priority Tax Claim payable in installment payments over a period not more than five years  
24 after the Commencement Date, plus simple interest at the rate required by applicable law on any  
25 outstanding balance from the Effective Date, or such lesser rate as is agreed to by a particular taxing  
26 authority, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed  
27 Priority Tax Claim is not due and owing on the Effective Date, such claim shall be paid in full in  
28 cash in accordance with the terms of any agreement between the Debtor and such holder, or as may  
be due and payable under applicable non-bankruptcy law or in the ordinary course of business. The  
Debtor does not have any Priority Tax Claims.

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**ARTICLE III.****CLASSIFICATION AND TREATMENT  
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS****A. Summary**

1. This Plan constitutes the chapter 11 plan of reorganization for the Debtor. Except for the Claims addressed in Article II above (or as otherwise set forth herein), all Claims against the Debtor are placed into Classes based upon the nature of their rights and interests. Class 9 consists of Equity Interests. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtor has not classified Administrative Claims and Priority Tax Claims, as described in Article II.

2. The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, voting, Confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

3. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

**B. Summary of Classification and Treatment of Classes**

Class	Claim	Status	Voting Rights
1.	Secured Claim of City National Bank ("CNB")	Impaired	Entitled to Vote
2.	Secured Claim of The Northern Trust Company, successor by merger to Northern Trust Bank, FSB ("NTB")	Impaired	Entitled to Vote
3.	Secured Claim of 5148 Spanish Heights, LLC ("5148 LLC")	Impaired	Entitled to Vote
4.	Secured Claim of Spanish Hills Community Association ("HOA")	Impaired	Entitled to Vote
5.	Disputed Secured Claim of HOA	Impaired	Not Entitled to Vote
6.	Allowed Unsecured Claims	Impaired	Empty Class
7.	Disputed Unsecured Claims	Impaired	Empty Class
8.	Disputed Judgment Lien Claims	Impaired	Not Entitled to Vote
9.	Equity Interests	Impaired	Deemed to Accept

**C. Classification and Treatment of Claims and Equity Interests****1. Class 1 - Secured Claim of City National Bank ("CNB")**

(a) *Classification:* Class 1 consists of the Secured Claim of City National Bank ("CNB") which is secured by a first priority deed of trust encumbering Debtor's real property located at 5148 Spanish Heights Drive, Las Vegas NV 89148 (APN 163-29-615-007) ("Property").

1 (b) *Treatment*: The Holder of the Allowed Class 1 Secured Claim shall be treated as  
 2 follows:

3 (i) Retention of Lien and Continuation of Indebtedness Per Loan Documents -  
 4 CNB shall retain its first priority deed of trust and all of the loan documents  
 5 associated therewith ("CNB Loan Documents") shall remain in full force and  
 6 effect and shall be binding on the Reorganized Debtor post-Confirmation.

7 a. Monthly Billing and Provision of Tax Statements by CNB.  
 8 Commencing on the first full month after the Effective Date and  
 9 continuing monthly thereafter, CNB shall issue to Reorganized  
 10 Debtor monthly billing statements, which statements shall be sent to  
 11 Reorganized Debtor at the Property in accordance with CNB's  
 12 customary business practices. At the end of each calendar year after  
 13 the Effective Date, CNB shall issue to Reorganized Debtor  
 14 appropriate tax statements indicating the amount of principal and  
 15 interest paid by Debtor and/or Reorganized Debtor to CNB during  
 16 the preceding calendar year.

17 b. Further Assurances by Reorganized Debtor. Reorganized Debtor  
 18 shall execute such documents and take such action as reasonably  
 19 requested by CNB to effectuate the CNB Loan Documents including  
 20 without limitation any Change in Terms Agreement to reflect  
 21 Reorganized Debtor as obligor under the CNB Loan Documents.

22 (ii) Payments

23 a. On or before the Effective Date, Debtor shall pay and provide proof  
 24 of payment of the following: All delinquent amounts owed to CNB  
 25 under the CNB Loan Documents, including, but not limited to (i)  
 26 accrued and unpaid principal, interest and late charges; (ii) any and  
 27 all advances made by CNB for taxes, HOA dues or other charges  
 28 related to the Property; (iii) all outstanding real estate taxes, HOA  
 dues or other liens, including liens for trash removal or other charges  
 related to the Property; (iv) CNB's reasonable attorneys' fees and  
 costs incurred in connection with the Property; and (v) any other  
 charges outstanding as of the Confirmation Date;

b. On or before the Effective Date, Debtor shall pay to CNB the sum of  
 \$165,182.40 representing nine (9) monthly loan payments due to  
 CNB under the CNB Loan Documents following entry of an Order  
 confirming this Plan; and,

c. Reorganized Debtor shall cause the payment in full of the entirety of  
 all amounts due to CNB under the CNB Loan Documents on or  
 before the ninth (9th) month after entry of an Order confirming this  
 Plan.

(c) *Default*

(i) Failure to timely tender any and every payment to CNB as discussed herein, other breach of the terms herein by Debtor and/or Reorganized Debtor, and/or breach of the CNB Loan Documents constitutes a default under the Plan.

(ii) Notice. Upon default as discussed herein, CNB shall be entitled to pursue all rights and remedies under the CNB Loan Documents including without limitation foreclosure on the Property, without further Order of the Bankruptcy Court or relief from the automatic stay under Section 362 of the Bankruptcy Code. CNB shall only be required to issue written notice of default via email to counsel for Reorganized Debtor, James D. Greene, Esq. (jgreene@greeneinfusolaw.com) and to Reorganized Debtor's client representative, Jay Bloom (jbloom@lvem.com), of such default and, if applicable, the amount necessary to cure the default. Debtor and/or Reorganized Debtor shall have ten (10) calendar days from the date of such notice to cure said default.

(iii) Survival. Notwithstanding any other provision to the contrary in this Plan, any Order confirming the Plan, dismissing the case, converting this chapter 11 case to a case under any other chapter of the Bankruptcy Code, appointing a trustee or examiner, and/or amending/altering/modifying this Plan, any other filing in this case including without limitation a filing regarding dismissal or conversion or proposing to amend/alter/modify this Plan, or any other document, CNB's rights and remedies following default as discussed herein shall survive. Moreover, no filing shall impair in any way the security interest, lien, priority claims and/or rights held by CNB under the terms of the CNB Loan Documents. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Plan shall not affect the validity or enforceability of CNB's rights and remedies following default as discussed herein, as well as its claim, lien, security interest, and priority under the CNB Loan Documents.

(d) *Voting:* Class I is an Impaired Class and the Holder of the Class I Claim is entitled to vote to accept or reject the Plan.

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1                   2.       Class 2 - Secured Claim of Northern Trust Bank ("NTB")

2                   (a)       *Classification:* Class 2 consists of the Secured Claim of Northern Trust Bank which  
3 is secured by a second priority deed of trust encumbering Debtor's Property.

4                   (b)       *Treatment:* The Holder of the Allowed Class 2 Secured Claim shall be paid as  
5 follows: Northern Trust shall retain its existing second priority deed of trust and all of the loan  
6 documents associated therewith ("Northern Trust Loan Documents") shall remain in full force and  
7 effect. The Northern Trust claim matured on March 15, 2021 and is currently in default. The  
8 unpaid principal balance of the Northern Trust loan is \$586,252.17 and interest accrued through the  
9 Petition Date was \$3,931.59; interest, fees, and costs continue to accrue post-petition, Reorganized  
10 Debtor shall make one payment of \$31,368.51 on or before the Effective Date representing nine  
11 monthly payments of \$3,485.39. The Reorganized Debtor shall not be required to make any other  
12 monthly payments to NTB until the expiration of nine months after the Effective Date. Not less  
13 than nine months (270 days) after the Effective Date, the Debtor will cause the Northern Trust claim  
14 to be paid in full pursuant to the terms of the Northern Trust Loan Documents and including any  
15 and all outstanding amounts owing, including, but not limited to, reasonable attorneys' fees and  
16 costs. The full payment of the Secured Claim of NTB, including interest, fees, and costs, will be  
17 made on or before the end of 9 months (270 days) after the Effective Date by virtue of a capital  
18 contribution from SJC Ventures Holding, LLC. The full payment to NTB may take the form of a  
19 payoff with a reconveyance of the NTB Deed of Trust or it may take the form of a purchase of the  
20 NTB Note by an affiliate of SJC Ventures Holding, LLC. Additionally, on or before the Effective  
21 Date, Debtor shall pay and provide proof of payment of the following: All outstanding real estate  
22 taxes, insurance premiums, HOA dues, or other liens, including liens for trash removal, or other  
23 charges related to the Property. The Debtor will also pay Northern Trust's reasonable attorneys'  
24 fees and costs incurred in connection with the Property and this Bankruptcy Case and any other  
25 charges outstanding as of the Confirmation Date. In the event Debtor fails to timely make any post-  
26 Effective Date payment to Northern Trust as required by this Plan ("Plan Payments") Northern  
27 Trust shall give notice of default under the Plan via regular mail and/or e-mail to Debtor and to  
28 Debtor's counsel at the notice addresses provided herein ("Plan Default Notice"). The Plan Default  
Notice shall specify the amount needed to cure the Plan Default and the deadline for curing such  
Plan Default, which deadline shall be 15 days after the date of the Plan Default Notice.

(c)       *Voting:* Class 2 is an Impaired Class and the Holder of the Class 2 Claim is entitled  
to vote to accept or reject the Plan.

22                   3.       Class 3 – Disputed Secured Claim of CBC Successor 5148 Spanish Heights

23                   (a)       *Classification:* Class 3 consists of the Secured Claim of 5148 Spanish Heights LLC  
24 (as defined above) which is secured by a third priority deed of trust encumbering Debtor's Property.

25                   (b)       *Treatment:* The holder of the Allowed Class 3 Secured Claim shall have an Allowed  
26 Secured Claim in the amount of \$7,000,000 ("Class 3 Claim") as if such Holder had made an  
27 election under Bankruptcy Code section 1111(b) to have its Secured Claim treated as fully secured  
28 and will be paid as follows:

The deed of trust securing the Class 3 Claim shall be deemed to be a valid, properly  
perfected third priority deed of trust encumbering Debtor's Property at 5148 Spanish Heights Drive,



Las Vegas, Nevada. The Holder of the Class 3 Claim shall retain its lien on the Property until all of Debtor's obligations to the Holder as provided for in this Plan have been satisfied and shall be paid as provided for herein.

The Class 3 Claim shall accrue interest at the rate of 5.5% per annum beginning on the date of entry of the Confirmation Order on the Court's docket, with such accruing interest paid on the first day of January 2022 and continuing monthly thereafter until the Class 3 Claim is paid in full.

Independent of the obligations imposed by Debtor under this Plan, Debtor's managing member, SJC Ventures Holding, LLC (SJC"), shall pay (or cause the payment) of the sum of \$4,000,000 to the Holder of the Class 3 Claim (or its designee) on or before January 5, 2022. Terms relating to SJC's obligations to the Class 3 Claimant are embodied in a separate settlement agreement entered into between SJC and other non-Debtor parties.

Debtor shall pay the full amount of the Class 3 Claim \$3,000,000, plus any accrued and unpaid interest on or before April 5, 2022.

Promptly after entry of the Confirmation Order (and in no event more than three business days thereafter), Debtor shall pay (1) all delinquent sums owed to Clark County for real estate taxes; (2) all sums due to Classes 1 and 2 as Effective Date payments pursuant to the Plan as provided for above; (3) the sum of \$10,000 to the Holder of the Class 4 Claim; and (4) any amounts owed to Republic Services for delinquent amounts relating to trash pick-up services. Debtor shall provide proof of such payments to the Holder of the Class 3 Claim promptly after the payments are made.

Any default under the terms of this paragraph III(C)(3) of the Plan ("Plan Default") shall constitute grounds for the Holder of the Class 3 Claim to commence or continue foreclosure on the Property without further order of the Bankruptcy Court, or notice of the Plan Default to the Debtor or SJC. Upon the occurrence of a Plan Default, the Class 3 Claimant shall be entitled to pursue foreclosure of the Property in accordance with all applicable state law statutory requirements.

c) *Voting:* Class 3 is an Impaired Class and the Holder of the Class 3 Claim is entitled to vote to accept or reject the Plan.

#### 4. Class 4 – Allowed Secured Claim of the HOA

(a) *Classification:* Class 4 consists of the Secured Claim of the HOA which is secured by a statutory lien on Debtor's Property.

(b) *Treatment:* The Holder of the Allowed Class 4 Secured Claim shall be paid as follows: This provision hereby incorporates by reference the terms of that certain Stipulation to Resolve Debtor's Objection to Spanish Hills Community Association's Claim and for Plan Treatment and Order to Resolve Debtor's Objection (ECF Nos. 247 and 253) which provides, in substance, as follows: On or before the Effective Date, Holder shall be paid the sum of \$10,000.00 in full satisfaction of any and all claims against Debtor arising on or before February 3, 2021. Said amount represents a good faith, arms-length compromise of issues raised in Debtor's objection to the Claim of the Class 4 Claimant. After entry of an order Confirming this Plan, Debtor shall cause the dismissal with prejudice of all causes of action in the litigation against Spanish Hills Community Association entitled Spanish Heights Acquisition Company, LLC, et al v. Tywan Davis, et al.,

1 Eighth Judicial District Case No. A-19-804768-C and a pending appeal to the Nevada supreme  
 2 Court bearing Nevada Supreme Court Case No. 82971. Promptly after payment of the amount  
 3 provided for herein and the dismissals of litigation reference herein, Claimant shall promptly release  
 4 its Notice of Delinquent Fines and Special Assessment Lien recorded against Debtor's Property on  
 5 March 12, 2020,

6 (c) *Voting:* Class 4 is an Impaired Class and the Holder of the class 4 Claim is entitled  
 7 to vote to accept or reject the Plan.

8 5. Class 5 – Disputed Secured Claim of the HOA

9 (a) *Classification:* Class 5 consists of the Secured Claim of the HOA which is allegedly  
 10 secured by a lien on Debtor's Property pursuant to a Notice of Delinquent Fines and Special  
 11 Assessment Lien recorded by the HOA on March 12, 2020 in book number 20200312-0001249.

12 (b) *Treatment:* The Claim represented by the Class 5 Disputed Secured Claim is  
 13 resolved pursuant to the terms of this Plan contained in the treatment of the Class 4 Claim above.

14 (c) *Voting:* Class 5 Claim issues are resolved pursuant to Class 4 of this Plan and the  
 15 Class 5 Claim treatment is moot. Class 5 therefore is not entitled to vote for or against the Plan.

16 6. Class 6 – Allowed Unsecured Claims

17 (a) *Classification:* Class 6 consists of Debtor's allowed Unsecured Claims.

18 (b) *Treatment:* The Holder of the Allowed Class 6 Unsecured Claims shall be paid as  
 19 follows: Claimants shall receive their pro-rata share of \$10,000.00, with payments made from the  
 20 Distribution Account within 90 days after the Effective Date. Such payment shall be in full  
 21 satisfaction of each Class 6 Claimants' allowed Claims.

22 (c) *Voting:* Class 6 is an Impaired Class, but has no members and is thus an empty Class  
 23 that is therefore deemed eliminated.

24 7. Class 7 – Disputed Unsecured Claims

25 (a) *Classification:* Class 7 consists of Debtor's Disputed Unsecured Claims.

26 (b) *Treatment:* The Holder of the Allowed Class 7 Unsecured Claims shall be paid as  
 27 follows: Claimants in Class 7, by definition, are Disputed Claims and shall therefore receive  
 28 nothing on account of their alleged Claims unless or until they become Allowed Claims, in which  
 case they will be treated as Class 6 Claims.

(c) *Voting:* Class 7 has no members and is thus an empty Class that is therefore deemed  
 eliminated.

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1           8.       Class 8 – Disputed Judgment Lien Claims

2           (a)       *Classification:* Class 8 consists of parties who have filed or recorded judgments  
3 rendered against Kenneth Antos, his spouse and/or entities owned or controlled by him and purport  
4 to constitute liens on the Property. The Class 8 Claims have been listed by Debtor as Disputed. If  
5 any Claims are filed by Class 8 Claimants, Debtor intends to object to such Claims(s). Because the  
6 Class 8 Claims are listed as Disputed, if any Holder of such a Claim fails to timely file a Proof of  
7 Claim with the Bankruptcy Court, such Holder shall be deemed to have no Claim against the  
8 Property or the Estate.

9           (b)       *Treatment:* If any Claims in Class 8 become Allowed Claims, such claim(s) shall be  
10 reclassified as Class 6 Claims and treated as such. In the event the Disputed judgment liens  
11 constitute valid liens against the Property, such claims are unsecured as defined in Bankruptcy Code  
12 section 506(a) because the amounts owed to senior creditors in Classes 1, 2 and 3, combined with  
13 secured tax and HOA claims exceed the value of the Property.

14           (c)       *Voting:* Class 8 has one member, but it is not entitled to vote to accept or reject the  
15 Plan because there is a pending objection to its Claim and there has been no estimation of the Claim  
16 for purposes of voting pursuant to Bankruptcy Rule 3018.

17           9.       Class 9 Equity Interests

18           (a)       *Classification:* Class 9 consists of the membership interests of the Debtor.

19           (b)       *Treatment:* The Holder of the Allowed Class 9 Interests (SJC Ventures Holding,  
20 LLC) will receive nothing on account of its Class 9 interest, but shall retain its membership interest  
21 in the reorganized Debtor in return for payment to the Reorganized Debtor the sum of \$325,000.00,  
22 which amount shall be the Equity Interest Holder's New Value Contribution. This Plan confirms  
23 the post-Petition Date capital structure of Debtor after any and all capital calls and the dilutive  
24 effects thereof.

25           (c)       *Voting:* Class 9 is deemed to accept the Plan and is not entitled to vote to accept or  
26 reject plan.

27                               ARTICLE IV.

28                               ACCEPTANCE OR REJECTION OF THE PLAN

A.       *Presumed Acceptance of Plan*

No Class of Claims or Interests under the Plan are unimpaired, and therefore, no Class is  
presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

B.       *Voting Classes*

Classes 1 through 8 are Impaired Classes under the Plan and those Classes shall be entitled  
to vote to accept or reject the Plan. However, there are no members of Classes 6 and 7 and the only  
member of Class 8 is not entitled to vote to accept or reject the Plan for the reasons stated above.

C. *Acceptance by Impaired Classes of Claims*

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

D. *Cramdown*

The Debtor requests Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify the Plan in accordance with Article XIII.B hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

E. *Elimination of Vacant Classes*

Any Class of Claims that is not occupied as of the date of commencement of the Confirmation Hearing by the Holder of an Allowed Claim or a Claim Temporarily Allowed under Bankruptcy Rule 3018 (i.e., no Ballots are cast in a Class entitled to vote on the Plan) shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptances or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code. Classes 6-8 are eliminated pursuant to this provision.

**ARTICLE V.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

**1. New Value Contribution**

The Debtor's sole remaining member after post-petition capital calls, is SJC Ventures Holding, LLC which will make a New Value Contribution of not less than \$350,000.00 and will therefore retain its membership interest in the Reorganized Debtor. The amount of the New Value Contribution will be finally determined promptly after Confirmation and before the Effective Date. Debtor shall file a schedule of amounts to be paid through the New Value Contribution and of post-Confirmation payments promptly after the Confirmation Date. In addition, prior to the Confirmation Hearing, SJC shall fund the sum of \$260,000, representing a partial pre-payment of rent under the Lease described below which funds are for the following purposes: (a) pre-paying nine monthly mortgage payments to CNB and to NTB; (b) providing funds for payment of nine months of real estate taxes; and (c) providing funds for payment of nine months of HOA dues.

**2. New Lease of Property**

On or before the Effective Date, Debtor shall enter into a new lease of the Property with SJC Ventures Holding Company, LLC at a rental amount of \$45,000.00 per month, which amount shall be sufficient to provide income for Debtor to pay its obligations hereunder post-Confirmation and post-Effective Date, including debt service payments, real estate taxes, HOA dues and maintenance costs.

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1           **3. Payment in Full of NTB Secured Claim**

2           The full payment of the Secured Claim of NTB, including any remaining interest, fees, and  
3 costs will be made on or before the end of nine months (270 days) after the Effective Date by virtue  
4 of a capital contribution from SJC Ventures Holding, LLC. The payment to NTB may take the  
form of a payoff with a reconveyance of the NTB Deed of Trust or it may take the form of a  
purchase of the NTB Note by an affiliate of SJC Ventures.

5           **4. General Settlement of Claims**

6           Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, in  
7 consideration for the classification, distributions, releases and other benefits provided under the  
8 Plan, and as a result of arm's-length negotiations among the Debtor and its creditors, upon the  
9 Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement  
of all Claims and Equity Interests and controversies including, but not limited to, the dilutive effect  
of any and all post-Petition Date capital calls made by or on behalf of the Debtor, which shall be  
deemed to be resolved pursuant to the Plan.

10          **5. Corporate Existence**

11          The Debtor shall continue to exist after the Effective Date as the Reorganized Debtor, a  
12 Nevada limited liability company, with all the powers of a corporation or limited liability company  
13 pursuant to laws of the State of Nevada and pursuant to the certificate of incorporation and bylaws  
(or other formation documents) in effect prior to the Petition Date, in such a manner as to preserve  
14 the Debtor's net operating losses (if any) for Federal tax purposes, except to the extent such  
certificate of incorporation or bylaws (or other formation documents) are amended by or in  
15 connection with the Plan or otherwise and, to the extent such documents are amended, such  
documents are deemed to be authorized pursuant hereto and without the need for any other  
approvals, authorizations, actions or consents.

16          **6. Post-Confirmation Operations**

17          Post-Confirmation, Debtor shall continue operating, maintaining and leasing its Property.  
18 Debtor will use the income produced by leasing its Property to make all payments required by this  
19 Plan. Following confirmation of the plan, the Reorganized Debtor will file operating reports on the  
20 20<sup>th</sup> day of the month following the end of each calendar quarter until the case is administratively  
closed, dismissed, converted to another chapter in the Code, or a final decree closing the case is  
entered.

21          **7. Vesting of Assets in the Reorganized Debtor**

22          Except as otherwise provided in the Plan, in any agreement, instrument or other document  
23 relating thereto, on or after the Effective Date, all property of the Estate (including, without  
24 limitation, Causes of Action) and any property acquired by the Debtor pursuant to the Plan, shall  
25 vest in the Reorganized Debtor, free and clear of all liens, Claims, charges or other encumbrances.  
26 Except as may be provided in the Plan and any sale all or a portion of the Debtor's Assets, on and  
27 after the Effective Date, the Reorganized Debtor may operate their businesses and may use, acquire  
28 or dispose of property and compromise or settle any Claims without supervision or approval by the  
Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other  
than those restrictions expressly imposed by the Plan and the Confirmation Order. Without limiting  
the foregoing, the Reorganized Debtor shall pay the charges that they incur after the Effective Date  
for Retained Professionals' fees, disbursements, expenses or related support services (including  
reasonable fees relating to the preparation of Retained Professional fee applications) without  
application to the Bankruptcy Court.

1           **8. Release of Liens, Claims and Equity Interests**

2           Except as provided for in this Plan and in the Settlement Agreement relating to the treatment  
3 of the Class 3 Claim, upon payment in full of the Secured Claims of Claimants in Classes 1 through  
4 3, said Claimants' deeds of trust shall be released and extinguished. Confirmation of this Plan shall  
5 constitute a release of any and all Claims creditors may have had on the Petition Date against the  
Debtor, or any of its officers, directors, members, managers or professionals (such as attorneys or  
accountants), including, but not limited to claims based upon documents filed in the case by any  
creditors or parties in interest.

6           **9. Certificate of Incorporation and Bylaws**

7           The certificates of incorporation and bylaws (or other formation documents relating to  
8 limited liability companies) of the Debtor shall be amended as may be required to be consistent  
9 with the provisions of the Plan and the Bankruptcy Code or as otherwise required by, and in a form  
reasonably acceptable to, the Reorganized Debtor. After the Effective Date, the Reorganized Debtor  
may file a new, or amend and restate its existing, certificate of incorporation, charter and other  
constituent documents as permitted by the relevant state corporate law.

10           **10. Effectuating Documents; Further Transactions; Exemption from Certain**  
11           **Transfer Taxes**

12           The Debtor or the Reorganized Debtor, as applicable, may take all actions to execute,  
13 deliver, file or record such contracts, instruments, releases and other agreements or documents and  
14 take such actions as may be necessary or appropriate to effectuate and implement the provisions of  
the Plan, including, without limitation, the distribution of the securities to be issued pursuant hereto  
in the name of and on behalf of the Reorganized Debtor, without the need for any approvals,  
authorizations, actions or consents except for those expressly required pursuant hereto. The  
secretary and any assistant secretary of the Debtor shall be authorized to certify or attest to any of  
the foregoing actions.

16           Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to  
17 the Plan that would otherwise require approval of the shareholders, directors or members of the  
Debtor shall be deemed to have been so approved and shall be in effect prior to, on or after the  
18 Effective Date (as appropriate) pursuant to applicable law and without any requirement of further  
action by the shareholders, directors, managers or partners of the Debtor, or the need for any  
19 approvals, authorizations, actions or consents.

20           Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant  
21 hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the  
United States, and the Confirmation Order shall direct the appropriate state or local governmental  
22 officials or agents to forgo the collection of any such tax or governmental assessment and to accept  
for filing and recordation instruments or other documents pursuant to such transfers of property  
without the payment of any such tax or governmental assessment. Such exemption specifically  
23 applies, without limitation, to all documents necessary to evidence and implement the provisions  
of and the distributions to be made under the Plan, including the issuance of New Equity Interests.

1 ARTICLE VI.

2 **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

3 A. *Assumption and Rejection of Executory Contracts and Unexpired Leases*

4 1. Assumption of Executory Contracts and Unexpired Leases

5 Except as otherwise set forth herein, each Executory Contract or Unexpired Lease shall be  
6 deemed automatically rejected, including Debtor's pre-paid premises lease, together with its two  
7 consecutive two year renewal options, in accordance with the provisions and requirements of  
sections 365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory  
Contract or Unexpired Lease:

- 8 (a) has been previously rejected by the Debtor by Final Order of the  
9 Bankruptcy Court;
- 10 (b) has been rejected by the Debtor by order of the Bankruptcy Court as of the  
Effective Date, which order becomes a Final Order after the Effective Date;
- 11 (c) is the subject of a motion to reject pending as of the Effective Date;
- 12 (d) is listed on the schedule of "Rejected Executory Contracts and Unexpired  
13 Leases" in the Plan Supplement; or
- 14 (e) is otherwise rejected pursuant to the terms herein.

15 The Confirmation Order shall constitute an order of the Bankruptcy Court approving such  
16 rejection pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. The  
Debtor reserves the right to amend the schedule of Rejected Executory Contracts and Unexpired  
Leases at any time before the Effective Date.

17 2. Approval of Rejections

18 The Confirmation Order shall constitute an order of the Bankruptcy Court approving the  
19 rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code  
as of the Effective Date.

20 3. Rejection of Executory Contracts or Unexpired Leases

21 All Executory Contracts and Unexpired Leases to which Debtor was a party on the Petition  
22 Date are deemed rejected upon Confirmation of this Plan. The Confirmation Order shall constitute  
23 an order of the Bankruptcy Court approving the rejections described in this Article VI pursuant to  
sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

24 B. *Claims on Account of the Rejection of Executory Contracts or Unexpired Leases*

25 All proofs of Claim with respect to Claims arising from the rejection of Executory Contracts  
26 or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be filed with the  
Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court  
(including the Confirmation Order) approving such rejection.

27 Any Entity that is required to file a Proof of Claim arising from the rejection of an Executory  
28 Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and  
enjoined from asserting such Claim, and such Claim shall not be enforceable, against any Debtor



1 or any Reorganized Debtor or their Estates and property, and the Debtor or the Reorganized Debtor  
2 and their Estates and property shall be forever discharged from any and all indebtedness and liability  
3 with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise  
4 provided herein.

5 C. *Contracts and Leases Entered Into After the Commencement Date*

6 Contracts and leases entered into after the Commencement Date by any Debtor, including  
7 any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the  
8 Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly,  
9 such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will  
10 survive and remain unaffected by entry of the Confirmation Order.

11 **ARTICLE VII.**

12 **PROVISIONS GOVERNING DISTRIBUTIONS**

13 A. *Distributions for Claims Allowed as of the Effective Date*

14 Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant  
15 parties, the Reorganized Debtor shall make initial distributions under the Plan on account of Claims  
16 Allowed before the Effective Date on or as soon as practicable after the Initial Distribution Date;  
17 provided, however, that payments on account of General Unsecured Claims that become Allowed  
18 Claims on or before the Effective Date may commence on the Effective Date.

19 B. *Distributions on Account of Claims Allowed After the Effective Date*

20 1. Payments and Distributions on Disputed Claims

21 Except as otherwise provided in the Plan, a Final Order or as agreed to by the relevant  
22 parties, distributions under the Plan on account of a Disputed Claim that becomes an Allowed Claim  
23 after the Effective Date shall be made on the first Periodic Distribution Date after the Disputed  
24 Claim becomes an Allowed Claim.

25 2. Special Rules for Distributions to Holders of Disputed Claims

26 Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by  
27 the relevant parties no partial payments and no partial distributions shall be made with respect to a  
28 Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved  
by settlement or Final Order. In the event that there are Disputed Claims requiring adjudication and  
resolution, the Reorganized Debtor shall establish appropriate reserves for potential payment of  
such Claims.

C. *Delivery and Distributions and Undeliverable or Unclaimed Distributions*

1. Record Date for Distributions

On the Distribution Record Date, the Claims Register shall be closed and any party  
responsible for making distributions shall instead be authorized and entitled to recognize only those  
Holders of Claims listed on the Claims Register as of the close of business on the Distribution  
Record Date. If a Claim is transferred twenty (20) or fewer days before the Distribution Record  
Date, the Distribution Agent shall make distributions to the transferee only to the extent practical  
and, in any event, only if the relevant transfer form contains an unconditional and explicit  
certification and waiver of any objection to the transfer by the transferor.

1           2.       Delivery of Distributions in General

2           Except as otherwise provided herein, the Debtor or the Reorganized Debtor, as applicable,  
3           shall make distributions to Holders of Allowed Claims at the address for each such Holder as  
4           indicated on the Debtor's records as of the date of any such distribution; provided, however, that the  
5           manner of such distributions shall be determined at the discretion of the Debtor or the Reorganized  
6           Debtor, as applicable; and provided further, that the address for each Holder of an Allowed Claim  
7           shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

8           3.       Distributions by Distribution Agents

9           The Debtor and the Reorganized Debtor, as applicable, shall have the authority, in their sole  
10          discretion, to enter into agreements with one or more Distribution Agents to facilitate the  
11          distributions required hereunder. As a condition to serving as a Distribution Agent, a Distribution  
12          Agent must (a) affirm its obligation to facilitate the prompt distribution of any documents, (b) affirm  
13          its obligation to facilitate the prompt distribution of any recoveries or distributions required  
14          hereunder and (c) waive any right or ability to setoff, deduct from or assert any lien or encumbrance  
15          against the distributions required hereunder that are to be distributed by such Distribution Agent.

16          The Distribution Agents, and their respective agents, employees, officers, directors,  
17          professionals, attorneys, accountants, advisors, representatives and principals (collectively, the  
18          "Indemnified Parties") shall be indemnified and held harmless by the Debtor and the Reorganized  
19          Debtor, to the fullest extent permitted by law for any losses, claims, damages, liabilities and  
20          expenses, including, without limitation, reasonable attorneys' fees, disbursements and related  
21          expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become  
22          subject in connection with any action, suit, proceeding or investigation brought or threatened  
23          against one or more of the Indemnified Parties on account of the acts or omissions of the  
24          Distribution Agents solely in their capacity as such; provided, however, that the Debtor and the  
25          Reorganized Debtor shall not be liable to indemnify any Indemnified Party for any act or omission  
26          constituting gross negligence, fraud or reckless, intentional or willful misconduct. The foregoing  
27          indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified  
28          Party from the capacity for which they are indemnified.

          4.       Minimum Distributions

          Notwithstanding anything herein to the contrary, the Reorganized Debtor shall not be  
          required to make distributions or payments of less than \$10.00 (whether Cash or otherwise) and  
          shall not be required to make partial distributions or payments of fractions of dollars. Whenever  
          any payment or distribution of a fraction of a dollar or share of New Equity Interests under the Plan  
          would otherwise be called for, the actual payment or distribution will reflect a rounding of such  
          fraction to the nearest whole dollar or share of New Membership Interests (up or down), with half  
          dollars and half shares of New Equity Interests or less being rounded down.

          No Distribution Agent shall have any obligation to make a distribution on account of an  
          Allowed Claim if: (a) the aggregate amount of all distributions authorized to be made on the  
          Periodic Distribution Date in question is or has an economic value less than \$1,000.00, unless such  
          distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an  
          Allowed Claim on such Periodic Distribution Date does not constitute a final distribution to such  
          Holder and is or has an economic value less than \$10.00, which shall be treated as an undeliverable  
          distribution under Article VII.C.5 below.



1           5.       Undeliverable Distributions

2                           (a)       Holding of Certain Undeliverable Distributions

3           If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned  
4 to the Reorganized Debtor (or its Distribution Agent) as undeliverable, no further distributions shall  
5 be made to such Holder unless and until the Reorganized Debtor (or their Distribution Agent) are  
6 notified in writing of such Holder's then current address, at which time all currently and due missed  
7 distributions shall be made to such Holder on the next Periodic Distribution Date. Undeliverable  
distributions shall remain in the possession of the Reorganized Debtor, subject to Article VII.C.5(b)  
hereof, until such time as any such distributions become deliverable. Undeliverable distributions  
shall not be entitled to any additional interest, dividends or other accruals of any kind on account  
of their distribution being undeliverable.

8                           (b)       Failure to Claim Undeliverable Distributions

9           No later than 210 days after the Effective Date, the Reorganized Debtor shall File with the  
10 Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be maintained  
11 and updated periodically in the sole discretion of the Reorganized Debtor for as long as the Chapter  
12 11 Case stays open. Any Holder of an Allowed Claim, irrespective of when a Claim becomes an  
13 Allowed Claim, that does not notify the Reorganized Debtor of such Holder's then current address  
14 in accordance herewith within the latest of (i) one year after the Effective Date, (ii) 60 days after  
15 the attempted delivery of the undeliverable distribution and (iii) 180 days after the date such Claim  
16 becomes an Allowed Claim shall have its Claim for such undeliverable distribution discharged and  
shall be forever barred, estopped and enjoined from asserting any such Claim against the  
Reorganized Debtor or their property. In such cases, (i) any Cash held for distribution on account  
of Allowed Claims shall be redistributed to Holders of Allowed Claims in the applicable Class on  
the next Periodic Distribution Date and (ii) any Cash held for distribution to other creditors shall be  
deemed unclaimed property under section 347(b) of the Bankruptcy Code and become property of  
the Reorganized Debtor, free of any Claims of such Holder with respect thereto. Nothing contained  
herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

17                           (c)       Failure to Present Checks

18           Checks issued by the Distribution Agent on account of Allowed Claims shall be null and  
19 void if not negotiated within 180 days after the issuance of such check. In an effort to ensure that  
20 all Holders of Allowed Claims receive their allocated distributions, no later than 180 days after the  
21 issuance of such checks, the Reorganized Debtor shall File with the Bankruptcy Court a list of the  
22 Holders of any un-negotiated checks. This list shall be maintained and updated periodically in the  
23 sole discretion of the Reorganized Debtor for as long as the Chapter 11 Case remains open. Requests  
24 for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the  
25 relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an  
Allowed Claim holding an un-negotiated check that does not request reissuance of such un-  
negotiated check within 240 days after the date of mailing or other delivery of such check shall  
have its Claim for such unnegotiated check discharged and be discharged and forever barred,  
estopped and enjoined from asserting any such Claim against the Reorganized Debtor or its  
property. In such cases, any Cash held for payment on account of such Claims shall be property of  
the Reorganized Debtor, free of any Claims of such Holder with respect thereto. Nothing contained  
herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

26       D.       *Compliance with Tax Requirements/Allocations*

27           In connection with the Plan, to the extent applicable, the Reorganized Debtor shall comply  
28 with all tax withholding and reporting requirements imposed on them by any governmental unit,  
and all distributions pursuant hereto shall be subject to such withholding and reporting  
requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtor

1 and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply  
 2 with such withholding and reporting requirements, including liquidating a portion of the  
 3 distribution to be made under the Plan to generate sufficient funds to pay applicable withholding  
 4 taxes, withholding distributions pending receipt of information necessary to facilitate such  
 distributions or establishing any other mechanisms they believe are reasonable and appropriate. The  
 Reorganized Debtor reserves the right to allocate all distributions made under the Plan in  
 compliance with all applicable liens and encumbrances.

5 For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be  
 6 allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid  
 interest that accrued on such Claims.

7 E. *Timing and Calculation of Amounts to Be Distributed*

8 On the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective  
 9 Date, on the date that such a Claim becomes an Allowed Claim, or as soon as reasonably practicable  
 10 thereafter), each Holder of an Allowed Claim against the Debtor shall receive the full amount of  
 the distributions that the Plan provides for Allowed Claims in the applicable Class. Except as  
 11 otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals  
 on the distributions provided for herein, regardless of whether such distributions are delivered on  
 or at any time after the Effective Date.

12 F. *Setoffs*

13 The Debtor and the Reorganized Debtor may withhold (but not setoff except as set forth  
 14 below) from the distributions called for hereunder on account of any Allowed Claim an amount  
 equal to any claims, equity interests, rights and Causes of Action of any nature that the Debtor or  
 the Reorganized Debtor may hold against the Holder of any such Allowed Claim. In the event that  
 15 any such claims, equity interests, rights and Causes of Action of any nature that the Debtor or the  
 Reorganized Debtor may hold against the Holder of any such Allowed Claim are adjudicated by  
 16 Final Order or otherwise resolved, the Debtor may, pursuant to section 553 of the Bankruptcy Code  
 or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be  
 17 made pursuant hereto on account of such Allowed Claim (before any distribution is made on  
 account of such Allowed Claim), the amount of any adjudicated or resolved claims, equity interests,  
 18 rights and Causes of Action of any nature that the Debtor or the Reorganized Debtor may hold  
 against the Holder of any such Allowed Claim, but only to the extent of such adjudicated or resolved  
 19 amount. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall  
 constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claims, equity  
 20 interests, rights and Causes of Action that the Debtor or the Reorganized Debtor may possess  
 against any such Holder, except as specifically provided herein.

21 **ARTICLE VIII.**

22 **PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED**  
 23 **CLAIMS**

24 A. *Resolution of Disputed Claims*

25 1. Allowance of Claims

26 After the Effective Date, the Reorganized Debtor shall have and shall retain any and all  
 27 rights and defenses that the Debtor had with respect to any Claim, except with respect to any Claim  
 deemed Allowed under the Plan. Except as expressly provided in the Plan or in any order entered  
 28 in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation  
 Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed

1 under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order,  
2 including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim.  
3 All settled claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy  
4 Court pursuant to Bankruptcy Rule 9019 or otherwise shall be binding on all parties.

#### 5 2. Prosecution of Objections to Claims

6 After the Confirmation Date the Debtor or the Reorganized Debtor, as applicable, shall have  
7 the exclusive authority to File objections to Claims, settle, compromise, withdraw or litigate to  
8 judgment objections to any and all Claims, regardless of whether such Claims are in a Class or  
9 otherwise; provided, however, this provision shall not apply to Fee Claims. From and after the  
10 Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without any  
11 further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtor  
12 shall have the sole authority to administer and adjust the Claims Register to reflect any such  
13 settlements or compromises without any further notice to or action, order or approval of the  
14 Bankruptcy Court.

#### 15 3. Claims Estimation

16 After the Confirmation Date the Debtor or the Reorganized Debtor, as applicable, may, at  
17 any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable  
18 law and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without  
19 limitation, section 502(c) of the Bankruptcy Code, regardless of whether the Debtor or the  
20 Reorganized Debtor has previously objected to such Claim or whether the Bankruptcy Court has  
21 ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§  
22 157 and 1334 to estimate any Disputed Claim, contingent Claim or unliquidated Claim, including  
23 during the litigation concerning any objection to any Claim or during the pendency of any appeal  
24 relating to any such objection. Notwithstanding any provision otherwise in the Plan, a Claim that  
25 has been expunged from the Claims Register but that is subject to appeal or has not been the subject  
26 of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the  
27 Bankruptcy Court. All of the aforementioned Claims and objection, estimation and resolution  
28 procedures are cumulative and not exclusive of one another. Claims may be estimated and  
subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the  
Bankruptcy Court.

#### 4. Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied or superseded may be expunged on the Claims  
Register by the Reorganized Debtor, and any Claim that has been amended may be adjusted thereon  
by the Reorganized Debtor, in both cases without a claims objection having to be Filed and without  
any further notice to or action, order or approval of the Bankruptcy Court.

#### 5. Deadline to File Objections to Claims

Any objections to Claims shall be Filed no later than the Claims Objection Bar Date.

#### B. Disallowance of Claims

All Claims of any Entity from which property is sought by the Debtor or the Reorganized  
Debtor under section 542, 543, 550 or 553 of the Bankruptcy Code or that the Debtor or the  
Reorganized Debtor allege is a transferee of a transfer that is avoidable under section 522(0, 522(h),  
544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code shall be disallowed if (i) the Entity, on  
the one hand, and the Debtor or the Reorganized Debtor, on the other hand, agree or the Bankruptcy  
Court has determined by Final Order that such Entity or transferee is liable to turnover any property  
or monies under any of the aforementioned sections of the Bankruptcy Code and (ii) such Entity or

transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

**EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM AND PROOFS OF INTEREST FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS AND EQUITY INTERESTS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS AND EQUITY INTERESTS, UNLESS SUCH LATE PROOF OF CLAIM OR EQUITY INTEREST IS DEEMED TIMELY FILED BY A BANKRUPTCY COURT ORDER ON OR BEFORE THE LATER OF (1) THE CONFIRMATION HEARING AND (2) 45 DAYS AFTER THE APPLICABLE CLAIMS BAR DATE.**

*C. Amendments to Claims*

On or after the Effective Date, except as otherwise provided herein, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtor, and, to the extent such prior authorization is not received, any such new or amended Claim Filed shall be deemed disallowed and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

**ARTICLE IX.**

**CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Confirmation*

It shall be a condition to Confirmation hereof that all provisions, terms and conditions hereof are approved in the Confirmation Order.

*B. Conditions Precedent to Consummation*

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX hereof.

1. The Plan and All Plan Supplement Documents, Including Any Amendments, Modifications Or Supplements Thereto, Shall Be Reasonably Acceptable To The Debtor.

2. The Confirmation Order Shall Have Been Entered And Become A Final Order In A Form And In Substance Reasonably Satisfactory To The Debtor. The Confirmation Order Shall Provide That, Among Other Things, The Debtor Or The Reorganized Debtor, As Appropriate, Is Authorized And Directed To Take All Actions Necessary Or Appropriate To Consummate The Plan, Including, Without Limitation, Entering Into, Implementing And Consummating The Contracts, Instruments, Releases, Leases, Indentures And Other Agreements Or Documents Created In Connection With Or Described In The Plan.

3. All Actions, Documents, Certificates And Agreements Necessary To Implement This Plan Shall Have Been Effected Or Executed And Delivered To The Required Parties And, To The Extent Required, Filed With The Applicable Governmental Units In Accordance With Applicable Laws.



1 C. *Waiver of Conditions*

2 The conditions to Confirmation of the Plan and to Consummation of the Plan set forth in  
3 this Article IX may be waived by the Debtor without notice, leave or order of the Bankruptcy Court  
or any formal action other than proceeding to confirm or consummate the Plan.

4 D. *Effect of Non Occurrence of Conditions to Consummation*

5 If the Consummation of the Plan does not occur, the Plan shall be null and void in all  
6 respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver  
or release of any claims by or Claims against or Equity Interests in the Debtor; (2) prejudice in any  
7 manner the rights of the Debtor, any Holders or any other Entity; or (3) constitute an admission,  
acknowledgment, offer or undertaking by the Debtor, any Holders or any other Entity in any  
8 respect.

9 **ARTICLE X.**

10 **SETTLEMENT, RELEASE AND RELATED PROVISIONS**

11 A. *Compromise and Settlement*

12 Notwithstanding anything contained herein to the contrary, the allowance, classification and  
treatment of all Allowed Claims and their respective distributions and treatments hereunder, takes  
13 into account the relative priority and rights of the Claims and the Equity Interests in each Class in  
connection with any contractual, legal and equitable subordination rights relating thereto whether  
14 arising under general principles of equitable subordination, section 510(b) and (c) of the Bankruptcy  
Code or otherwise. As of the Effective Date, any and all contractual, legal and equitable  
15 subordination rights, whether arising under general principles of equitable subordination, section  
510(b) and (c) of the Bankruptcy Code or otherwise, relating to the allowance, classification and  
16 treatment of all Allowed Claims and their respective distributions and treatments hereunder are  
settled, compromised, terminated and released pursuant hereto.

17 The Confirmation Order will constitute the Bankruptcy Court's finding and determination  
that the settlements reflected in the Plan are (1) in the best interests of the Debtor, its estate and all  
18 Holders of Claims and Equity Interests, (2) fair, equitable and reasonable, (3) made in good faith  
and (4) approved by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code and  
19 Bankruptcy Rule 9019. The Confirmation Order shall approve the releases by each Entity and all  
Entities, in addition to each Creditor having a Claim affected by Confirmation of the Plan of all  
20 such contractual, legal and equitable subordination rights or any and all causes of action as being  
fully satisfied, compromised and settled pursuant hereto, including claims such parties may hold  
21 against the Debtor, its manager, member(s), subsidiaries or affiliates.

22 In accordance with the provisions of this Plan, including Article VIII hereof, and pursuant  
to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, without any further notice to or  
23 action, order or approval of the Bankruptcy Court, after the Effective Date (1) the Reorganized  
Debtor may, in its sole and absolute discretion, compromise and settle Claims against them, (2) the  
24 Reorganized Debtor may, in its sole and absolute discretion, compromise and settle Causes of  
Action against other Entities, and (3) the Reorganized Debtor may, in its sole and absolute  
25 discretion, sell its properties.

B. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Reorganized Debtor shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action, whether existing as of the Commencement Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a claim or Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtor expressly reserves such claim or Cause of Action for later adjudication by the Debtor or the Reorganized Debtor (including, without limitation, claims and Causes of Action not specifically identified or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtor and the Reorganized Debtor expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

**ARTICLE XI.**

**BINDING NATURE OF PLAN**

THIS PLAN SHALL BIND ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES, OR (III) FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO REJECT THE PLAN.

**ARTICLE XII.**

**RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor and the Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any claim;

2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Confirmation Date;

3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor or Reorganized Debtor may be liable and to adjudicate and, if necessary, liquidate, any claims arising therefrom, including, without limitation, those matters related to any amendment to the Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed;

4. resolve any issues related to any matters adjudicated in the Chapter 11 Case;

5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving a Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor after the effective date, provided that the Reorganized Debtor shall reserve the right to commence actions in all appropriate forums and jurisdictions;

7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan, the Plan Supplement or the Disclosure Statement;

8. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future;

10. issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan, except as otherwise provided in the Plan;

11. enforce all provisions of the Plan.

12. enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

13. resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with the Plan or the Disclosure Statement;

14. enter an order concluding the Chapter 11 Case; and

15. awarding attorneys' fees in accordance with the terms of the Plan, including an award of attorneys' fees to the Reorganized Debtor for any legal actions filed to enforce the terms of the Plan..



ARTICLE XIII.MISCELLANEOUS PROVISIONSA. *Payment of Statutory Fees*

All fees payable pursuant to section 1930 of title 28 of the United States Code ("UST Fees") due on the Effective Date shall be paid in full on the Effective Date and all such fees accruing after the Effective Date shall be paid as they come due and prior to the closing of the Chapter 11 Case when due.

B. *Modification of Plan*

Effective as of the date hereof and subject to the limitations and rights contained in the Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtor or the Reorganized Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

C. *Revocation of Plan*

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

D. *Successors and Assigns*

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

E. *Reservation of Rights*

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by a Debtor or any other Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) any Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

F. *Section 1146 Exemption*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept

1 for filing and recordation instruments or other documents pursuant to such transfers of property  
2 without the payment of any such tax or governmental assessment. Such exemption specifically  
3 applies, without limitation, to all documents necessary to evidence and implement the provisions  
4 of and the distributions to be made under the Plan.

5 G. *Further Assurances*

6 The Debtor or the Reorganized Debtor, as applicable, all Holders of Claims receiving  
7 distributions hereunder and all other Entities shall, from time to time, prepare, execute and deliver  
8 any agreements or documents and take any other actions as may be necessary or advisable to  
9 effectuate the provisions and intent of the Plan or the Confirmation Order.

10 H. *Severability*

11 If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court  
12 to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret  
13 such term or provision to make it valid or enforceable to the maximum extent practicable, consistent  
14 with the original purpose of the term or provision held to be invalid, void or unenforceable, and  
15 such term or provision then will be applicable as altered or interpreted, provided that the Debtor,  
16 the Reorganized Debtor or any affected Entity (as applicable) may seek an expedited hearing before  
17 the Bankruptcy Court to address any objection to any such alteration or interpretation of the  
18 foregoing. Notwithstanding any such order by the Bankruptcy Court, alteration or interpretation,  
19 the remainder of the terms and provisions of the Plan shall remain in full force and effect. The  
20 Confirmation Order shall constitute a judicial determination and shall provide that each term and  
21 provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing,  
22 is valid and enforceable pursuant to its terms.

23 I. *Service of Documents*

24 Unless otherwise provided for herein, any pleading, notice or other document required by  
25 the Plan to be served on or delivered to the Debtor shall be sent by overnight mail and e-mail as  
26 follows: James D. Greene, Esq., Greene Infuso, LLP, 3030 South Jones Blvd., Suite 101, Las  
27 Vegas, NV 89146, [jgreene@greeneinfusolaw.com](mailto:jgreene@greeneinfusolaw.com).

28 J. *Return of Security Deposits*

Unless the Debtor has agreed otherwise in a written agreement or stipulation approved by  
the Bankruptcy Court, all security deposits provided by the Debtor to any Person or Entity at any  
time after the Commencement Date shall be returned to the Reorganized Debtor within twenty (20)  
days after the Effective Date, without deduction or offset of any kind.

K. *Filing of Additional Documents*

On or before the Effective Date, the Debtor may File with the Bankruptcy Court all  
agreements and other documents that may be necessary or appropriate to effectuate and further  
evidence the terms and conditions hereof.

L. *Default*

Upon the Effective Date of the Plan, in the event the Debtor fails to timely perform any of  
the obligations set forth in the Plan, the applicable creditor or party-in-interest shall notify the  
Debtor and Debtor's counsel of the default in writing in accordance with the notice provisions  
herein, after which the Debtor shall have: (i) thirty (30) calendar days from the date of the written  
notification to cure the default; or (ii) if the cure requires more than thirty (30) days, so long as the  
Debtor initiates steps to cure the default within thirty (30) days and thereafter continues and  
completes all reasonable and necessary steps sufficient to produce compliance as soon as

1 reasonably practical. If the Debtor fails to timely cure the default as provided above, the applicable  
2 creditor shall be free to pursue any and all rights it may have under the contract(s) between the  
parties and/or applicable state law, without further court order or proceeding being necessary.

3 M. *Attorneys' Fees*

4 In the event any party is required to enforce the terms of the Plan or any other act required  
5 or contemplated by the Plan, the prevailing party in any motion or action to enforce shall be entitled  
6 to recover reasonable attorneys' fees, as well as court costs and expenses, incurred in connection with  
such motion or legal action.

7 Dated: November 19, 2021

8 Respectfully submitted,

9 **Spanish Heights Acquisition Company, LLC**

10 /s/ Jay Bloom

11 By: Its Sole Manager, SJC Ventures  
12 Holding Company, LLC

GREENE INFUSO, LLP  
3030 South Jones Blvd., Suite 101  
Las Vegas, Nevada 89146  
(702) 570-6000

# EXHIBIT “R”

APN: 163-29-615-007

**RETURN TO/TRUSTEE CONTACT INFO:**

Nevada Trust Deed Services  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145  
(702)733-9900

Inst #: 20220111-0000672  
Fees: \$42.00  
01/11/2022 08:51:02 AM  
Receipt #: 4848219  
Requestor:  
Nevada Trust Deed Service  
Recorded By: OSA Pgs: 2  
Debbie Conway  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

**NOTICE OF TRUSTEE'S SALE**

**FILE NO 20-09-008-FCL**  
**DATED: January 7, 2022**

On February 1, 2022 at 09:30 AM, Nevada Trust Deed Services, as duly appointed or substituted Trustee under and pursuant to the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated December 17, 2014 recorded as Instrument No. 20141229-0002856, and as modified or amended, if applicable, in the Office of the County Recorder of CLARK County, Nevada executed by Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto in favor of 5148 Spanish Heights, LLC, a Nevada limited liability company as current beneficiary by reason of now continuing default in the payment or performance of obligations secured by said Deed of Trust, including the Notice of Breach and Election to Sell Under Deed of Trust which was recorded in the Office of the County Recorder of CLARK County, Nevada, by the beneficiary and the undersigned more than three months prior to the date thereof, WILL CAUSE TO BE SOLD AT PUBLIC AUCTION TO THE HIGHEST BIDDER FOR CASH (payable at the time of sale in lawful money of the United States of America) at the front entrance to Nevada Legal News, 930 S. Fourth Street, Las Vegas, NV 89101, all right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as:

Lot Seven (7) in Block Five (5) of Spanish Hills Estates Unit 5A, as shown by map thereof on file in Book 107, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada.

Together with any and all improvements, personal property and fixtures located thereon or otherwise described in the Deed of Trust and in any other instruments in favor of the Beneficiary, and all singular tenements, hereditaments and appurtenances thereunto belonging or appertaining, rents, issues and profits thereof.

Commonly known as: 5148 Spanish Heights Dr, Las Vegas, NV 89148, APN: 163-29-615-007

If a street address or common designation of property is shown, no warranty is given as to its completeness or correctness.

Said sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the remaining principal balance of the obligations secured by said Deed of Trust, to wit: \$2,935,001.14 together with interest, fees, premiums and charges thereon, as provided in said Secured Promissory Note and related loan documents, advances, if any, under the terms of said Deed of Trust, fees, charges and expenses of Trustee and of the Trusts created by said Deed of Trust.

NEVADA TRUST DEED SERVICES

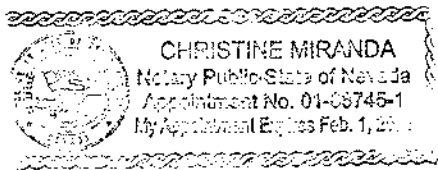
By: Michele Dobar  
Michele Dobar, Foreclosure Officer

Published in Nevada Legal News on the following dates:  
January 11, 2022, January 18, 2022, January 25, 2022

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on January 7, 2022 by Michele Dobar, as Foreclosure Officer of Nevada Trust Deed Services.

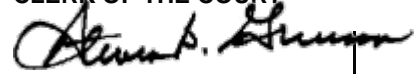
Signature Christine Miranda  
(Notary Public)



Christine Miranda  
No. 01-68745-1  
Exp. Feb. 1, 2023

# EXHIBIT “S”





TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SPANISH HEIGHTS ACQUISITION	)	
COMPANY, LLC, et al,	)	
	)	CASE NO. A-20-813439-B
Plaintiffs,	)	
	)	DEPT. NO. XXXI
vs.	)	
	)	
CBC PARTNERS I, LLC, et al,	)	
	)	<b>Transcript of</b>
Defendants,	)	<b>Proceedings</b>
	)	
<u>and related parties and actions.</u>	)	

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

FRIDAY, JANUARY 28, 2022

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND MOTION FOR PRELIMINARY INJUNCTION  
ON ORDER SHORTENING TIME

APPEARANCES: (Via BlueJeans videoconference)

FOR THE PLAINTIFFS: DANIELLE J. BARRAZA, ESQ.

FOR THE DEFENDANTS: MICHAEL R. MUSHKIN, ESQ.

FOR RECEIVER LARRY L. BERTSCH: TRACY M. O'STEEN, ESQ.

ALSO PRESENT: LARRY L. BERTSCH

RECORDED BY: LARA CORCORAN, COURT RECORDER  
TRANSCRIPTION BY: LGM TRANSCRIPTION SERVICE

1 LAS VEGAS, NEVADA, FRIDAY, JANUARY 28, 2022, 8:31 A.M.

2 \* \* \* \*

3 THE COURT: Okay. We're on the record in Case  
4 Number 813439, Spanish Heights Acquisition Company, LLC  
5 versus CBC Partners LLC, et al.

6 So, counsel for Spanish Heights, please.

7 MS. BARRAZA: Good morning, Your Honor. Danielle  
8 Barraza, Bar Number 13822, on behalf of Spanish Heights  
9 Acquisition Company and SJC Ventures.

10 THE COURT: Okay. Do you have anybody else with  
11 you?

12 MS. BARRAZA: Just me.

13 THE COURT: Okay, no worries. I just wanted to make  
14 sure we're not -- okay. On behalf of CBC Partners? Let me  
15 just go through my little listing here.

16 Okay. Mr. Mushkin, do you want to state all your  
17 clients, please? I think you need to unmute yourself, Mr.  
18 Mushkin, and then state all your clients, please.

19 MR. MUSHKIN: Sorry, Your Honor, I was muted.

20 THE COURT: No worries.

21 MR. MUSHKIN: Good morning, Your Honor. Michael  
22 Mushkin, Bar Number 2421. I represent all defendant CBC  
23 entities, the Ken Antos entities and the 5148 entities, Your  
24 Honor. There is also a company named Dacia that's been named  
25 and I appear on their behalf as well.

1 THE COURT: Okay. And you appear on behalf of  
2 the roles of defendant, counterclaimant, and third party  
3 plaintiff, is that correct?

4 MR. MUSHKIN: Yes, Your Honor.

5 COURT RECORDER: Judge, can you have him spell that  
6 last entity?

7 THE COURT: Oh, sure. Can you spell that last  
8 entity that you said? Because we were looking -- is Dacia  
9 D-a-c-i-a?

10 THE CLERK: Oh, it's on there.

11 COURT RECORDER: It's on there?

12 THE COURT: Is that the one you just said --

13 MR. MUSHKIN: Yes, Your Honor.

14 COURT RECORDER: Oh, I'm sorry. There it is. Okay,  
15 thanks.

16 THE COURT: Okay, thank you.

17 Okay. And then I believe we also have the receiver  
18 and the receiver's counsel. So counsel for the receiver,  
19 did you want to make an appearance?

20 MS. O'STEEN: Yes, Your Honor. Tracy O'Steen  
21 appearing --

22 THE COURT: Sorry, go ahead.

23 MS. O'STEEN: I apologize. Tracy O'Steen appearing  
24 on behalf of the receiver, Larry Bertsch, who is also on the  
25 line.

1           THE COURT: Okay. So today is the day we have a  
2 plaintiff's application for temporary restraining order and  
3 motion for preliminary injunction on order shortening time,  
4 Document 194 (sic). Is everybody who's appearing for this  
5 all present or is there anyone we're waiting for? If there  
6 is someone we're waiting for, feel free to speak up. Okay.  
7 So I'm going to take it, since I asked you all individually  
8 and then I asked globally, that we're not waiting for anyone,  
9 so that means I have all the parties. Nobody seemed to want  
10 any witnesses, so we're going to move forward.

11           So let's go to plaintiff's application for temporary  
12 restraining order and motion for preliminary injunction. As  
13 I mentioned, that's Document 194. So the way I'm going to do  
14 it is we're going to have ten minutes a side, not including  
15 any questions the Court may have. And if we potentially  
16 need any extra time, the Court will address that in order  
17 to balance everybody's needs and since I do have extensive  
18 briefing on this.

19           I will tell you in advance the question the Court  
20 is going to have is is this about money and how the money is  
21 injunction, but that's a two-pronged question. Is this about  
22 money and how the money aspect would be for purposes of an  
23 injunction under a TRO or a preliminary injunction standard.

24           So, counsel for movant, go ahead. First, I guess,  
25 give me your analysis under the TRO basis and then give me

1 your analysis under preliminary injunction basis, or if you  
2 want to combine your -- however you wish to do it so we can  
3 address everything. Go ahead, please.

4 MS. BARRAZA: Thank you. Good morning, Your Honor.  
5 Danielle Barraza on behalf of plaintiffs. To be brief,  
6 because a lot of this is in the briefs, just to kind of  
7 summarize --

8 THE COURT: You're very difficult to hear. Wait.  
9 You're very difficult to hear. Can you either turn up your  
10 volume or go closer to your microphone, please?

11 MS. BARRAZA: Is that better?

12 THE COURT: Yeah, it's better.

13 COURT RECORDER: I can hear her.

14 THE COURT: Okay. Go ahead, please.

15 MS. BARRAZA: Okay. All right. So, to kind of  
16 summarize, there was a settlement agreement back in November  
17 of 2021. It's been conceded by everybody that the plaintiffs  
18 missed a payment for that settlement agreement in January  
19 2022, and as a result the defendants are allowed to proceed  
20 with a foreclosure of the property.

21 None of that changes the fact that defendants still  
22 have to follow the foreclosure laws in doing so. And part of  
23 the disclosure -- I mean, the foreclosure law is NRS 107.0805,  
24 which states that the beneficiary under the trust is required  
25 to send the borrower a written statement which includes the

1 amount in default, the amount of accrued interest and late  
2 charges, and a good faith estimate of all fees imposed in  
3 connection with the exercise of the power of sale. So the  
4 only fees that are allowed per statute to be included in that  
5 written statement are the fees that are imposed in connection  
6 with actually noticing and conducting the sale.

7           And the problem that we have with the payoff demand  
8 that was received is it goes far beyond including just fees  
9 for the sale. It includes fees -- all of the fees, apparently,  
10 for this underlying matter, and it includes all of the fees  
11 from the property owner's bankruptcy matter, which has  
12 absolutely nothing to do with conducting the foreclosure sale.

13           We also have concerns because the January 2021  
14 notice of default indicated that a good faith estimate of  
15 all the fees is between \$9,000 and \$25,000. Fast-forward one  
16 year, we're receiving a payoff demand and now they're saying  
17 that the fees associated with just conducting the foreclosure  
18 sale are actually -- those fees and costs are actually  
19 \$54,000. So we have concerns about the legitimacy of those  
20 numbers and we've asked for a breakdown of those numbers and  
21 we did not receive anything back.

22           And this is not about money, it's about a property,  
23 a unique property. And the problem that's going to happen is  
24 this could potentially set a precedent. You don't get to just  
25 do a payoff demand for, you know, a million dollars and the

1 property owner is forced to pay it off if they want to survive  
2 and keep their property and then they have to litigate later.  
3 That makes no sense. The payoff demand needs to actually be  
4 accurate per the statute and the property owner shouldn't  
5 be required to massively overpay by millions and millions  
6 of dollars just to preserve this property that they can then  
7 litigate later. That's just not feasible and it's not per  
8 the statute.

9           The only reason there's been a delay here -- I mean,  
10 I'm assuming what's going to happen is we're going to hear  
11 arguments from the defendants that this is a delay tactic,  
12 but the only reason there's a delay is because they didn't  
13 properly notice these documents. You've got to actually --

14           THE COURT: Counsel, I'm going to need you to  
15 reference what exhibit you are saying is not proper, right?  
16 Okay?

17           MS. BARRAZA: Okay. Understood. So I'm going  
18 to refer to our motion, initial motion, and that would be,  
19 I believe, Exhibit 2.

20           THE COURT: I'm sorry, counsel. You dropped off.  
21 You said our initial motion and then I didn't hear what you  
22 said right after that.

23           MS. BARRAZA: Oh, sorry. I said Exhibit 2, Your  
24 Honor.

25           THE COURT: Okay.



1 MS. BARRAZA: So the initial motion, Exhibit 2.

2 THE COURT: Okay. Hold on one second. Let me  
3 get to that document number. Looking for 194. Wait, that's  
4 not 194. Hold on, that's the notice of hearing. That's the  
5 wrong document. Just one second, please.

6 Okay. So, Document 294 filed on 1/19/2022, your  
7 Exhibit 2 of the 73 pages. And I will remind you all again,  
8 and this was brought up even at the bench bar conference,  
9 business court bench bar conference yesterday and it's been  
10 brought up at civil bench bar conferences, if you don't number  
11 your exhibits, under EDCR 2.27, it's as if they don't exist;  
12 right? Courts aren't supposed to consider them unless they  
13 comply with 2.27, folks.

14 So the Court for today's purpose is going to --  
15 so your Exhibit 2 is that chart.

16 MS. BARRAZA: Correct. Apologies for the errors  
17 in submitting it. It is that chart, Your Honor. So that's  
18 the chart that was submitted to us pursuant to -- that they  
19 submitted pursuant to NRS 107.0805. That's their duty to send  
20 us a written statement laying out exactly all of the -- the  
21 principal, the accrued interest, the fees, the costs.

22 But the problem that they have is they've lumped  
23 together all of the fees from this matter, all of the fees and  
24 costs from the bankruptcy matter, and under the statute you're  
25 not allowed to do that. It's a good faith estimate of all

1 the fees imposed in connection with the exercise of the power  
2 of sale. So it does not cost -- obviously if you add up all  
3 of these fees and costs, they're at nine hundred some thousand  
4 dollars. It does not cost that much money to notice and  
5 conduct a foreclosure sale.

6 And that's the issue we have here, and we've also  
7 gone into the reply. There's just issues that you have  
8 whenever you're trying to lump all of these fees from this  
9 underlying matter into this payoff demand because, number one,  
10 a lot of the fees were incurred, you know, due to defendants'  
11 failed motions and stuff like that and their attempt to  
12 foreclose on this matter, on the property during the pandemic  
13 in violation of Governor Sisolak's foreclosure moratorium.

14 THE COURT: Okay. Sure.

15 MS. BARRAZA: And number two --

16 THE COURT: Counsel. Counsel, can I ask you a  
17 question; right?

18 MS. BARRAZA: Sure.

19 THE COURT: This document -- and that's what was a  
20 little unclear when I saw your application and saw the reply.  
21 This document, your Exhibit 2 -- unnumbered, so I can't  
22 reference it to a page number, didn't come by itself; right?  
23 It came with something; correct?

24 MS. BARRAZA: So -- and Mr. Mushkin can clarify,  
25 but my understanding is this document was emailed to us by

1 Mr. Mushkin when we asked for the statement pursuant to the  
2 statute. And it's kind of corresponding to the notice of  
3 sale, which is Exhibit 1. If Mr. Mushkin wants to clarify  
4 -- if that's incorrect, he can let me know.

5 THE COURT: Okay. So here's my other question.  
6 This Court had understood from both your pleadings, as well  
7 as prior statements to the Court when the trial was vacated  
8 because you all said that the matter had been resolved, is it  
9 accurate that the sale is going forward pursuant to the terms  
10 of the settlement agreement rather than a standard foreclosure  
11 sale?

12 MS. BARRAZA: So it's our understanding that it's  
13 both. It's actually both and there's no conflict with that.  
14 Yes, they're allowed to do a sale. However, it needs to be  
15 following all the foreclosure rules. And there's nothing  
16 in the settlement terms that were put before this Court that  
17 goes against that. Yes, they're allowed to do a sale. We  
18 all agree. But it still has to follow -- they still have to  
19 follow the foreclosure rules in doing so.

20 And there is nothing, you know, on the record in the  
21 settlement agreement that says when they notice up the sale  
22 they can collect and try to tack on the fees and costs from  
23 this matter and from the SHAC bankruptcy matter onto their  
24 payoff demand. That wasn't put on the record, so that's the  
25 issue that we have.

1           THE COURT: Okay. So -- okay, anything else you  
2 want to go through with your standards of how you meet a TRO  
3 or a preliminary injunction or anything?

4           MS. BARRAZA: And then just to wrap up, I was kind  
5 of on my point. My second point is the problem with trying  
6 to incorporate all of the fees from this underlying matter.  
7 As we just went over a couple minutes ago, there are numerous  
8 defendants and the only defendant actually doing this  
9 foreclosure sale is 5148 Spanish Heights. And so we would  
10 have to parse out the attorney's fees from -- that's only  
11 associated with 5148 Spanish Heights. If -- even if this  
12 Court agrees that the fees can get lumped in here, it still  
13 needs to be parsed out further.

14           So that's the issue we have. We kind of went over  
15 in the brief the specific elements for the injunctive relief  
16 as far as it is going to cause irreparable damage, irreparable  
17 harm. This is a unique property. And this isn't a money  
18 matter and it's not something where the property owner should  
19 be required to overpay by over a million dollars in order to  
20 preserve his property. That just makes no sense and it's  
21 going to set a bad precedent for other kinds of cases like  
22 this where there's a foreclosure action happening and there's  
23 an incorrect payoff demand that does not follow the statute.

24           And I'll answer any questions if the Court has any  
25 questions.

1           THE COURT: Sure, I do have a couple. Attached  
2 to the pleadings, right, was the January 4th, 2021 letter  
3 and that letter that was from -- via certified mail and USPS  
4 Postal Service. First I want to make sure it was 2021 not  
5 2022. But that point three had the same amount if it's 2021;  
6 right? 2,935,001.14 that is listed in the notice of trustee  
7 sale dated 1/11/2022, 8:51 a.m., which is Exhibit 1 to the  
8 motion. So I'm hearing what you're saying, but is it because  
9 the letter is dated wrong that you're saying that there's the  
10 difference in the year, or can you explain, please, a little  
11 bit more?

12           MS. BARRAZA: Yeah, I'll try. So I think the Court  
13 is referring to Exhibit 6, which is that January 4th, 2021 --

14           THE COURT: Uh-huh.

15           MS. BARRAZA: -- letter, which is considered the  
16 notice of default. And I'm seeing how, yes, the -- there's  
17 a number in here, \$2,935,000, and that's the unpaid principal  
18 amount. So that number has remained the same, but the problem  
19 is there's been numbers that have been drastically changed,  
20 including number seven on that letter. It says a good faith  
21 estimate of all the fees imposed in connection with the  
22 exercise of the power of the sale is between \$9,000 and  
23 \$25,000.

24           THE COURT: Uh-huh.

25           MS. BARRAZA: So that was their good faith estimate

1 in January of 2021. And now fast-forward now, their apparent  
2 good faith estimate is over \$50,000 just for conducting the  
3 sale. And, plus, they've also tacked on all the fees and  
4 costs from this action and the bankruptcy action. And this  
5 isn't a matter of, you know, \$20,000. This is \$900,000 of  
6 what's accumulated with what they've ended up tacking on.

7 THE COURT: Okay. So the dispute is the \$900,000,  
8 not the underlying 2,935,001.14 --

9 MS. BARRAZA: Right. The dispute is --

10 THE COURT: -- or the amount in default from January  
11 4th, 2021 that said \$5,578,459.15. Is that correct?

12 MS. BARRAZA: Correct in part. Mostly. Because,  
13 yes, it's the attorney's fees and costs in order to conduct  
14 the sale and it's also the accrued interest. We included  
15 argument as far as the accrued interest. They're indicating  
16 in their January 2021 letter that the accrued interest is  
17 on number four, \$1,305,000.

18 THE COURT: Uh-huh.

19 MS. BARRAZA: And then now they're saying that  
20 the accrued interest, if you add it up, they put it in two  
21 separate --

22 THE COURT: Two separate boxes. Right.

23 MS. BARRAZA: Exactly, two separate boxes. So it's  
24 nearly -- it's over two million dollars. And so we're arguing  
25 that that accrued interest is also miscalculated, wrongly

1 calculated. But with respect to the other categories, there  
2 is no dispute as to, you know, just the basic principal owed.  
3 Those categories are fine.

4           However, because there was not following the statute  
5 completely regarding the attorney's fees and costs and there's  
6 a dispute over the accrued interest amount, that's why we're  
7 arguing that there should be a hearing to determine the  
8 accurate numbers so that the property owner has a right to --  
9 can exercise his right to redeem the property prior to the  
10 foreclosure sale.

11           THE COURT: Okay. Let me hear from opposing  
12 counsel. Mr. Mushkin, do you wish to be heard on behalf of  
13 your clients?

14           MR. MUSHKIN: Yes, Your Honor, very briefly,  
15 actually. The Court hit the nail right on the head from  
16 the very first question you posed. Is this about money?  
17 Yes, it is. There's several problems with their motion,  
18 most important of which they have yet to refute any of the  
19 calculations that were made on the -- if you will, the box  
20 that we're referring to. There's no argument about --

21           THE COURT: The Exhibit 2 to their motion? Is that  
22 correct?

23           MR. MUSHKIN: I'm sorry?

24           THE COURT: Box meaning their exhibit, the Exhibit 2  
25 which was your attachment; is that correct? Exhibit 2 that



1 has the calculation breakdowns?

2 MR. MUSHKIN: That's correct.

3 THE COURT: Okay. Go ahead, please.

4 MR. MUSHKIN: Yes. And it's updated because of the  
5 passage of time, Your Honor. But if you look at page 11 of  
6 my opposition, I put the box --

7 THE COURT: Okay, just one moment. Your opposition  
8 is Document 296, filed on 1/25. Go ahead, please.

9 MR. MUSHKIN: Thank you, Your Honor. I'm sorry.  
10 I've tried to be as specific as I can. And these numbers in  
11 this box, I've tried to give the Court the citations for those  
12 numbers. Principal, accrued interest and advances. And the  
13 advances are broken up only so that the Court can see, again,  
14 the passage of time. The interest that is owed is from the  
15 date of the default to January 25th of 2022. And no one has  
16 provided this Court a scintilla of evidence that refutes  
17 those numbers. They are directly tracked from the forbearance  
18 agreement, which has a copy of the note and a copy of the  
19 deed of trust. I do not argue the rest are attorney's fees  
20 and costs, but I submit to this Court and we have briefed  
21 exactly why they are included.

22 And the notion that the plaintiff would argue that  
23 this is a simple foreclosure is shocking. There are three  
24 separate appeals. There's a bankruptcy case. There were  
25 contempt hearings. There was a trial heard on legal issues.

1 Every single step in challenge, in defense to the challenge  
2 to the note and deed of trust. The production of documents.  
3 The depositions. Every step of the way Mr. Bloom has gamed  
4 the system and frustrated the process. We provided the Court  
5 with the contractual provisions. Summary judgment has been  
6 granted in this matter. The contract --

7 THE COURT: But, counsel, has summary judgment been  
8 granted -- I need you to break down your box, okay. I need  
9 to break down -- are you asserting that summary judgment was  
10 granted on the attorney's fees for foreclosure of \$42,572.50,  
11 or any of the ones from that number down below?

12 MR. MUSHKIN: Your Honor, it is my position that  
13 as a result of the findings that this Court has made both in  
14 summary judgment in favor of Ken Antos and the elimination  
15 of the spurious claims of the one action rule, the merger  
16 doctrine -- and again, Your Honor, the plaintiffs' plead  
17 that somehow these findings are void. That's a direct  
18 misrepresentation to this Court. They sought that relief in  
19 the bankruptcy court and the bankruptcy court specifically  
20 found the state court judge will decide about those findings  
21 because it was only a partial granting of their motion for  
22 violation of the automatic stay. And for the record, Your  
23 Honor, none of the findings as they relate to SJCV are stayed  
24 because SJCV is not the debtor. And this has been a dance  
25 to avoid what will and should happen on February 1st.

1           With that said, Judge, I want the Court to remember  
2 that they came before you claiming interest was a problem,  
3 but they cannot tell you why. They just don't want to count  
4 the time properly. We've provided a detailed breakdown.

5           With respect to the attorney's fees, there's no need  
6 for an evidentiary hearing or anything of the sort. If this  
7 Court believes that those fees should not be charged, then  
8 the beneficiary statement will not reflect them. That simple.  
9 And our sale can go forward.

10           Your Honor, I just have a couple other items I'd  
11 like to address in regards to the application for TRO. The  
12 application itself and the allegations are false. I provided  
13 emails that showed you if they have a problem with the  
14 calculation of interest, show me, and they never responded.  
15 I left phone messages. They don't respond. This is Mr. Bloom  
16 and counsel's repeated attempts to frustrate this process.

17           And, Judge, they have not -- this is not a  
18 residential sale. This is a commercial transaction amongst  
19 LLCs, also in the findings of the Court. And there's been no  
20 tender of funds. If they wanted to come to this Court and say  
21 here's seven million, then we might have something to talk  
22 about. But they've still not made any tender towards payment  
23 of anything. My clients haven't been paid on this property  
24 since March 31st of 2020; not one dime.

25           THE COURT: Okay. I've got a couple questions.

1 MR. MUSHKIN: So, Your Honor, if you have any  
2 questions, I'd be happy to answer them.

3 THE COURT: I do. I have a couple questions.  
4 So, break -- and here's what I need to have an understanding.  
5 The Court is looking at this both in the parameters of a TRO  
6 and the parameters of a preliminary injunction and who has  
7 the burden in both of those, but I have some factual questions  
8 I need to get clarified.

9 Since there is the difference -- and I appreciate  
10 passage of time means there may be some difference, okay,  
11 but the January 4th, 2021 had the \$5,578,459.15 versus the  
12 \$7,548,450.29 for the 2022 statement. So, Mr. Mushkin, I need  
13 you to walk through what your -- what you are viewing would  
14 happen under the current scenario if the Court did not grant  
15 the pending motions, meaning, would the house be for sale on  
16 February 1 and therefore there is -- for the amount of what?  
17 And would that be automatically disbursed, it would be  
18 escrowed, etcetera? Please walk through what you're intending  
19 and then I'm going to hear from opposing counsel, please.

20 MR. MUSHKIN: So, Your Honor, if -- when we conduct  
21 the sale on the 1st, the first information that will be  
22 provided is the existing mortgages that the sale is subject  
23 to. And that's approximately --

24 THE COURT: Which is in the amount of -- go ahead.  
25 Thank you, yes.

1 MR. MUSHKIN: That's approximately 3.6 million  
2 dollars; 3 million dollars to City National and \$600,000 to  
3 Northern Trust.

4 THE COURT: Okay. Go ahead.

5 MR. MUSHKIN: The next obligation is the principal  
6 amount of 2,935,001.14 that appears in the forbearance  
7 agreement, as referenced on my chart on page 11 of 14. The  
8 accrued interest, again, at the time of 2017 is calculated  
9 and in that agreement and the advances as of 2017 are in that  
10 document.

11 THE COURT: Okay.

12 MR. MUSHKIN: The next item are the advances that  
13 were made from September 1 of 2017 to March 1 of 2020. As  
14 a part of the forbearance agreement, my client, CBC, and its  
15 successor, 5148, made additional payments on the first and  
16 second mortgage, as well as some taxes and other payments;  
17 specifically some HOA payments.

18 THE COURT: Okay.

19 MR. MUSHKIN: That's calculated at 928,871.90.  
20 The next category is the interest owed from the date of  
21 default until March -- until January 25th of 2022, and that  
22 date of default is April 1 of 2020. And that's the  
23 calculation of interest for that and it's \$1,608 a day and  
24 some change.

25 The next item is the actual attorney's fees for

1 the foreclosures. The next one is --

2 THE COURT: Okay. I'm going to stop you for the  
3 actual -- excuse me. I'm going to let you finish and then  
4 I'm going to circle back and have you break down the actual  
5 attorney's fees. But, continue please, okay. Actual  
6 attorney's fees for the foreclosure.

7 MR. MUSHKIN: No, no. Your Honor, it's very self-  
8 explanatory. I'll answer whatever questions you have.

9 THE COURT: Okay, \$42,000 for a foreclosure. What's  
10 bundled in there? Because it's not just doing the notice of  
11 foreclosure.

12 MR. MUSHKIN: So, Judge, this has actually been  
13 going on now for over two years, and that is the notice and  
14 renote and renote and the fees associated with this  
15 foreclosure, making sure that all of the calculations from  
16 the forbearance agreement and all of that is communicated and  
17 handled through the foreclosure company, Nevada Trust Deed  
18 Services. And then there's a few other items in there which  
19 were associated with this notion that -- and I want to be  
20 clear, Judge. There's never been an injunction against this  
21 foreclosure.

22 THE COURT: Uh-huh.

23 MR. MUSHKIN: There is no such order. The issue  
24 that was dealt with in the very beginning of the case was a  
25 claim of eviction when no eviction was pending. So the judge

1 gave a very limited injunction to not violate the Emergency  
2 Directive 08 as it relates to evictions.

3 THE COURT: Right. Okay.

4 MR. MUSHKIN: So anyway, there was a whole series of  
5 activities that took place at the very beginning. Then we've  
6 had to go back and restart twice. The costs of the foreclosure  
7 are there. And then the other items are --

8 THE COURT: Are those costs -- wait. Counsel, are  
9 those costs attorney costs or are those independent third  
10 party costs? What's the cost number bundled into?

11 MR. MUSHKIN: Those are attorney costs associated  
12 with this foreclosure.

13 THE COURT: Okay. Go ahead, please.

14 MR. MUSHKIN: Then the next category is the  
15 attorney's fees for the state court. The next one is costs  
16 for the state court. The next one is attorney's fees for  
17 the bankruptcy court and then the last one is costs for the  
18 bankruptcy court.

19 And the reason that they are there, Your Honor, is  
20 because under the deed of trust they are chargeable. Every  
21 single step in this case was done in defense of a challenge  
22 to the note and deed of trust. Mr. Bloom has made allegation  
23 after allegation that has been completely unsupported. The  
24 findings in April you may remember, we've quoted them, that  
25 not a bit of evidence was presented by the plaintiff in



1 support of their claims. We provided you the language that  
2 the Court would have granted my directed verdict, but for the  
3 fact that she had to hear Mr. Bloom testify, and so we had  
4 to finish and then we got it.

5 THE COURT: Okay. So, counsel --

6 MR. MUSHKIN: And for them to come before you now  
7 and try and stop the sale, Judge, is just wrong.

8 THE COURT: Okay. Counsel, I appreciate people's  
9 perception arguments. Remember, I have to focus on the prongs  
10 for a TRO and a preliminary injunction because that's before  
11 me and the propriety of the applicable case law that ties into  
12 the TRO standard and the injunction standard, which it's all  
13 the NRS, etcetera.

14 So the estimated value of the house at foreclosure  
15 sale, do you all agree at least there's a ballpark it's  
16 between X and Y what it will sell for?

17 MR. MUSHKIN: Yes, Your Honor. In fact, as a part  
18 of the settlement agreement, they adopted the appraisal that  
19 I had done on the property at 7.6 million. So assuming --  
20 you asked to go through the process.

21 THE COURT: Uh-huh.

22 MR. MUSHKIN: My clients have the luxury of credit  
23 bidding and all this number does is give me the level that  
24 I can credit bid to. If the Court wants to -- it is our  
25 intention to credit bid up to the value of the house. There

1 is other collateral that's pledged for this loan. If Mr.  
2 Bloom is the bidder, we might bid up the entire amount that's  
3 owed to us. But that is an option that we have, that's not  
4 something that's happened. The parties have said the house  
5 is worth 7.6 --

6 THE COURT: Okay. So --

7 MR. MUSHKIN: -- which is about half of what --  
8 there will be about 3 million in a deficiency claim against  
9 the other collateral.

10 THE COURT: Which is not before me today. Okay.

11 MR. MUSHKIN: No. But, Your Honor, my final  
12 comment, if I could make it.

13 THE COURT: Uh-huh.

14 MR. MUSHKIN: In obtaining a TRO the standard is  
15 pretty clear. The only harm that could happen is that there  
16 could be an overbid to what they think is owed. There could  
17 be an overbid to what they think is owed.

18 THE COURT: Uh-huh.

19 MR. MUSHKIN: If they were genuine about this,  
20 they would come to this Court and say, Your Honor, here's the  
21 amount we think is owed, we want to make a tender. And then  
22 we'd have something to talk about because they would have  
23 done what they had to do. But they haven't. And they've now  
24 provided bank statements and nowhere in those bank statements,  
25 because I've canvassed the receiver, is there seven million

1 dollars. So this is just another move to stop the process  
2 from going forward.

3 THE COURT: Okay. Counsel, I appreciate --

4 MR. MUSHKIN: Respectfully, Judge, there's no --

5 THE COURT: I appreciate you each have your  
6 frustrations on what your perceptions --

7 THE COURT: No likelihood of success.

8 THE COURT: The Court's got to focus on the facts  
9 and the law.

10 MR. MUSHKIN: Your Honor, they have established no  
11 irreparable harm, no likelihood of success on the merits, and  
12 the public policy is well established that people's contract  
13 rights matter. Thank you, Your Honor.

14 THE COURT: Okay, thank you.

15 Okay, you get the last word for movant. Go ahead,  
16 please.

17 MS. BARRAZA: Danielle Barraza for the plaintiffs.  
18 Just to correct some of the factual misstatements that were  
19 made. This is a residential property, number one. It's not  
20 a commercial property, in case there's any confusion there.  
21 This is a residential property where a family lives. Number  
22 two --

23 THE COURT: Counsel. Counsel, while it physically  
24 is a residential property, has it not been utilized as  
25 collateral in business transactions?

1 MS. BARRAZA: So, it's been utilized as collateral  
2 in business transactions, but not by this -- not by this  
3 property owner. This property owner bought the property for  
4 use for his personal property. And he agreed to take on the  
5 debt which was, you know, previously a commercial action,  
6 but that's kind of a separate issue.

7 THE COURT: Keep going.

8 MS. BARRAZA: The bottom line is it's a residential  
9 property. And it really just comes down to you have to still  
10 follow the foreclosure statute when you're noticing a sale and  
11 you're doing a notice of default and you're giving a payoff  
12 demand. You still have to follow all the rules. You don't  
13 get to just short-circuit everything because you want to do  
14 your sale really fast. And we've seen this happen again and  
15 again from the defendants, starting from the very beginning  
16 when they tried to foreclose.

17 THE COURT: Counsel. Counsel, same thing that I  
18 said to opposing counsel. You all's perception of what each  
19 other may or may not have done is not before the Court. The  
20 Court looks at the facts and the evidence and applies the  
21 appropriate rules and law. Thank you. Please go ahead.

22 MS. BARRAZA: Okay, so here's a fact. They're  
23 saying that all of the fees and costs for conducting the  
24 foreclosure sale encompasses all of the prior notices that  
25 they've done. And that's part of the problem that we have,

1 is their prior notices have been improper. They've previously  
2 done notices and recordings during the pandemic when they were  
3 not allowed to be doing that. So they're trying to include  
4 all of their defective, invalid notices into their fees and  
5 costs for conducting the sale and that is improper.

6 It should only be the notices that actually apply to  
7 conducting the sale, because they've done numerous. It should  
8 only be the ones that actually apply and it should only be  
9 the fees and costs for actually conducting the sale. And it  
10 absolutely should not be the fees and costs incurred from this  
11 underlying action, from the bankruptcy action. You know, a  
12 property owner should not be punished because they're filing  
13 for bankruptcy. It doesn't mean that all their bankruptcy  
14 fees and costs get tacked on to a payoff demand in a  
15 foreclosure proceeding. It just makes no sense.

16 So what we're arguing here is we agree they can do  
17 the foreclosure sale, but they have to follow the foreclosure  
18 rules. And there is no delay. I mean, the property owner  
19 has prepaid on the first and second mortgage months in advance  
20 pursuant to the bankruptcy plan. The property owner has paid  
21 almost a million dollars pursuant to the bankruptcy plan in  
22 order to keep and preserve his property. So the property  
23 owner has been making payments to keep this property and the  
24 property owner has every intent of redeeming the property  
25 prior to the sale.

1           But nothing -- that doesn't change the fact that  
2 there still needs to be a following of the foreclosure  
3 statute, including a correct payoff demand amount so that  
4 that amount can actually get paid. The property owner wants  
5 to pay, has every intention to pay, but there needs to be an  
6 actual correct amount in the payoff demand. And, you know,  
7 saying here last minute, oh, we'll just take this off, we'll  
8 just take this off, that's not really how it works. You have  
9 to properly notice everything, give the proper notice with  
10 the correct numbers and then you can do your sale.

11           And so --

12           THE COURT: Sure. What evidence does the Court  
13 have before it that these numbers are incorrect? I looked  
14 throughout the entirety of all the pleadings. I did not see  
15 anything that was any other number presented to this Court,  
16 other than the numbers presented -- well, attached as exhibits  
17 to the motion, the application/motion as well as the documents  
18 attached to the opposition. Are you stating that there is  
19 another number that has been presented to this Court as  
20 evidence of what is the correct number or that somehow their  
21 number is incorrect?

22           MS. BARRAZA: So what we're saying is that the  
23 reason we're asking for an evidentiary hearing is to actually  
24 get to the bottom line of what the actual number is for a  
25 good faith estimate of what it's going to take for them to

1 exercise the power of sale, which is one of the elements under  
2 NRS 107.0805. So we're saying that --

3 THE COURT: So, counsel, as of today. I've got to  
4 focus you in, right? As of today does the Court have a number  
5 in evidence that's anything different than the number provided  
6 via Mr. Mushkin, the \$7,548,450.29?

7 MS. BARRAZA: So, does the Court have anything in  
8 evidence? No. That's why we're asking for an evidentiary  
9 hearing to get to the numbers. You know, we don't know what  
10 -- we have no idea what their attorney's fees and their costs  
11 that they're claiming, what that all encompasses, and if  
12 it encompasses Dacia LLC's fees and costs, if it encompasses  
13 the Antos Trust fees and costs, CBC Partners fees and costs.  
14 Because none of that would ever be appropriate for 5148  
15 Spanish Heights' foreclosure action.

16 You know, and we can't make up numbers that we don't  
17 have. We don't have those numbers because they're solely in  
18 Mr. Mushkin's capacity as far as the attorney's fees and  
19 costs, and they're solely in Mr. Mushkin's capacity as far as  
20 what it's actually going to cost to conduct this foreclosure  
21 sale. And that's kind of why, you know, we're asking for an  
22 evidentiary hearing, so we can actually get actual numbers  
23 here so that the property owner can pay this off. He wants  
24 to pay it off.

25 But the reality is there hasn't been a following



1 of the statute, especially when it comes to the good faith  
2 estimate of all the fees imposed in connection with the  
3 exercise of the power of sale. That's what they're required  
4 to do, no more, and they've already admitted in their  
5 pleadings that the fees and costs that they're asking for is  
6 contract fees and costs. And you can't tack on contract fees  
7 and costs onto a foreclosure payoff demand. It's just not  
8 in the statute. You're only allowed to do the fees and costs  
9 included for conducting the sale.

10 So, you know, that's our argument. It's an  
11 improperly noticed sale, an improper payoff demand that needs  
12 to be corrected and there's no harm in setting a hearing so  
13 we can get the correct number and then proceed with the sale.

14 THE COURT: So, wait. So the answer to the Court's  
15 question is there is no number in evidence, is that correct,  
16 by the movant?

17 MR. MUSHKIN: That is correct, Your Honor.

18 MS. BARRAZA: So, to my understanding of the  
19 question, the answer is yes because we cannot make up numbers  
20 as far as what these costs are going to entail. And what we  
21 have seen --

22 THE COURT: Okay. Counsel, realistically what I'm  
23 just -- the same thing as I asked Mr. Mushkin. Refer me to  
24 a page in one of the pleadings; right? The same thing as I  
25 asked for him, refer me to a page in the pleadings that has

1 the number. Is there a number that you can refer me to in  
2 one of the pleadings, please?

3 MS. BARRAZA: So, I'm doing my best to answer your  
4 question, Your Honor. What I can point you to is the January  
5 2021 letter.

6 THE COURT: Okay.

7 MS. BARRAZA: The motion at Exhibit 6.

8 THE COURT: Sure. That's the January 4th letter,  
9 is that correct?

10 MS. BARRAZA: Yes. So, again, this may not be what  
11 the Court is asking for. I understand. But we do need to  
12 point to this number in evidence, which is on number seven,  
13 where they're saying right here the good faith estimate of  
14 the fees and costs is between \$9,000 and \$25,000. So there's  
15 a number in evidence right there that Mr. Bloom relied on,  
16 and now we're seeing a year later that number has been  
17 extrapolated to nearly a million dollars.

18 THE COURT: Wait, wait. Wait, wait, counsel. I'm  
19 reading paragraph seven and maybe -- it says, "A good faith  
20 estimate of all fees imposed in connection of the exercise  
21 of the power of sale is between \$9,000 and \$25,000, an amount  
22 that will be added and which you may ultimately be responsible  
23 for" was on the January 4th, 2021. It didn't say that was all  
24 attorney's, right, attorney's fees? It says with the exercise  
25 of the power of sale. So are you saying that it was inclusive

1 of all attorney's fees to date or just the power of sale  
2 difference, the \$42,572.50 versus the \$9,000 to \$25,000?  
3 Could you clarify that point, please?

4 MS. BARRAZA: Yes. So kind of what we're arguing  
5 is that it was -- it was, you know, potentially correctly  
6 done in January of 2021 because they only included the fees  
7 and costs associated with the power of sale and they followed  
8 the statute in that respect. And now what they've done is not  
9 only have they increased it, including these fees and costs  
10 from this action in bankruptcy, but the fees and costs from  
11 just the power of the sale have increased, too. If you add  
12 up the two boxes, the \$42,000 and the \$12,000, that comes to  
13 \$54,000. So our concern is how you're getting from \$9,000  
14 to \$25,000 to \$54,000, and how you're tacking on over \$800,000  
15 in other fees and costs, which is not allowed by the statute  
16 at all.

17 THE COURT: Okay. So I'm going to have to ask the  
18 question for you, Mr. Mushkin. And before I do, I'm going to  
19 just circle around with the receiver. The receiver, I did  
20 receive your brief, but since you took no substantive position  
21 with regards to the sale, is there anything you wish to state  
22 at the hearing? If not, I'm going to ask Mr. Mushkin a  
23 question on behalf of his clients.

24 MS. O'STEEN: No, Your Honor. We'll save everything  
25 for next week at the hearing on February 3rd.

1 THE COURT: Okay. So now let's go to Mr. Mushkin.  
2 Please point to me the document that was -- because we've got  
3 the notice of trustee sale, right, which is dated 1/11/2022,  
4 okay, which does mention the \$2,935,001.14. So where are the  
5 other numbers been presented to Spanish Heights?

6 MR. MUSHKIN: Your Honor, it's, simply put, not  
7 required. If you look at Document 187, which is the findings,  
8 at page 18, Item Number 12, it is specifically found --

9 THE COURT: Hold on just one second. Let's make  
10 sure we give everyone a quick second to make sure we're all  
11 on the same document and page. So let's go to 187, please;  
12 187. Just a second. Okay. What page number, please, so that  
13 everyone is on the same page, literally and figuratively.

14 Go ahead.

15 MR. MUSHKIN: It's page 18 of 21.

16 THE COURT: Okay.

17 MR. MUSHKIN: NRS 107.500 and also NRS 107.0805 by  
18 its very nature do not apply. This is not an owner-occupied  
19 residence. This is an LLC that owns the property and SHAC  
20 doesn't live there. There's another lease, allegedly, with  
21 SJCV. And then Mr. Bloom, as the manager of SJCV, enjoys the  
22 benefit of the house.

23 THE COURT: Okay.

24 MR. MUSHKIN: So all of this reliance that they've  
25 made does not apply.

1 THE COURT: Okay. So --

2 MR. MUSHKIN: This is a commercial loan, properly  
3 noticed for sale. The fees have been broken out. We did so  
4 as a courtesy because they asked. And then they have now  
5 come before you with nothing to support the claim of interest  
6 on a transaction that they've not made a tender for.

7 So, respectfully, Judge, they haven't come close  
8 to the standard for a TRO and their motion should be denied.

9 THE COURT: Okay. Since it is their motion, I'm  
10 going to give the very last word to Ms. Barraza on behalf of  
11 Spanish Heights if you have anything else. If not, the Court  
12 is going to make its ruling.

13 MS. BARRAZA: So just very briefly. We've said it  
14 numerous times. I'm sure the Court knows our position, but  
15 the April 2021 findings of fact and conclusions of law, that  
16 was the result of the defendants violating the bankruptcy stay  
17 and continuing on with an evidentiary hearing in violation of  
18 the bankruptcy laws. And they were sanctioned for doing so  
19 by the bankruptcy court and the bankruptcy court did rule  
20 that they violated it. And everything except for the specific  
21 rulings on the one action rule and the doctrine of merger is  
22 void. And so we have concerns about --

23 THE COURT: Hold on a second. Give me the pleading  
24 that you're referencing that you're saying states that,  
25 because --

1 MR. MUSHKIN: That's just purely false, Your Honor.

2 THE COURT: Counsel, let's -- each party is given  
3 an opportunity for making a statement that you say is relied  
4 upon by a document until you provide me the document or the  
5 information with the record. So the same thing for both  
6 sides, folks, fair and equal.

7 So, counsel for Spanish Heights, what pleading are  
8 you referencing?

9 MS. BARRAZA: All right. So I'm referencing a  
10 pleading, our reply, and it's Exhibit 3, the bankruptcy order.

11 THE COURT: Because I had read that I hadn't seen  
12 it that way, but let's go back and let's go to -- one second,  
13 your reply, which is -- I think it's Document 300. I'll  
14 double check the date. Okay. So let's go to your Exhibit 3.  
15 It's going to take a minute because of it not being in  
16 accordance with EDCR 2.27, so one second. Okay. Exhibit 3.

17 MS. BARRAZA: So I just want to --

18 THE COURT: Document 119 from the federal court,  
19 dated 5/26/2021. Is that, counsel, what you're referencing?

20 MS. BARRAZA: Yes. So I want to just kind of  
21 explain it. It says that they violated the automatic stay  
22 with respect to issues A, B and C of the findings of fact and  
23 conclusions of law. So you have to kind of cross-reference to  
24 the findings of fact and conclusions of law as to what those  
25 issues are. And we set forth that those issues are -- those

1 issues are a contractual interpretation of the documents, the  
2 forbearance agreement, the promissory note. It's basically --  
3 and the deed of trust. It's the actual interpretation of  
4 these documents.

5 THE COURT: Okay. Hold on a second.

6 MS. BARRAZA: And the only thing that's not included  
7 as far as violating the stay were the findings on the doctrine  
8 of merger and the one action rule because those were I think  
9 D and E. And so --

10 THE COURT: Wait. Counsel, have you attached ECF  
11 79-2, page 3, to any pleading for this Court to review?

12 MS. BARRAZA: Have I attached -- I'm sorry, Your  
13 Honor. You're saying --

14 THE COURT: You're making an interpretation; right?

15 MS. BARRAZA: Yes.

16 THE COURT: So, but there's a specific reference  
17 in the order as issues A, B, and C --

18 MS. BARRAZA: Okay.

19 THE COURT: -- on ECF Number 79-2, page 3, note 1,  
20 lines 17 through 20; right? So the Court, in order to read  
21 that, has to have that.

22 MS. BARRAZA: Okay. Understood. We did not attach  
23 that. I don't think there's any dispute as to what A, B,  
24 and C say from the findings of fact and conclusions of law,  
25 that first footnote on the April 6, 2021 findings of fact and



1 conclusions of law. So, understood, it was a mistake. The  
2 reason we didn't do it is because there is no dispute as to  
3 what those three sections are. Everyone agrees what they say.

4 THE COURT: I'm hearing -- well, Mr. Mushkin, do  
5 you agree what they say and that this was violated, so  
6 therefore --

7 MR. MUSHKIN: Your Honor, the sections --

8 THE COURT: Sorry. Go ahead.

9 MR. MUSHKIN: Your Honor, I agree what the sections  
10 say, but I do not agree what counsel is trying to reference,  
11 and that is somehow that the findings don't apply to SJCVC.

12 THE COURT: SJC --

13 MR. MUSHKIN: This is a quantum leap that is made.  
14 SJCVC is not the debtor. SJCVC is the party to the forbearance  
15 agreement.

16 THE COURT: Right. And that's why the Court was --  
17 that's why the Court keeps on asking. We've got to keep the  
18 parties separate.

19 MR. MUSHKIN: Thank you.

20 THE COURT: We've got to get the parties correctly  
21 identified. So let me circle back.

22 Counsel, are you asserting that the reference was  
23 to a party that was not in bankruptcy, which is the party at  
24 issue in today's hearing with relationship to your motion for  
25 TRO and injunction? Are you saying it's the same party?

1 MS. BARRAZA: So the ruling is in reference to --  
2 it still affects SHAC, the property owner.

3 THE COURT: But doesn't the footnote in the findings  
4 of fact and conclusions of law, doesn't Judge Gonzalez  
5 specifically say that it doesn't apply? So this Court --  
6 that's the law of the case. It does not apply to the party  
7 that was in bankruptcy. It only applies to all the other  
8 parties.

9 MS. BARRAZA: So, we understand that's what it says,  
10 and then that's exactly how the defendants attempted to try  
11 to get around a finding that they had violated the bankruptcy  
12 stay, and the bankruptcy court ruled otherwise. And this  
13 Court had asked for briefing before the settlement agreement,  
14 had asked for briefing for everybody on the applicability of  
15 those April 2021 findings of fact and conclusions of law. We  
16 briefed it fully and then we came to the settlement agreement.  
17 So there was no actual ruling from this Court as to which  
18 portions of the April 2021 findings of fact and conclusions  
19 of law are void as a result of the bankruptcy court's ruling.

20 So I just want to provide the full background. We  
21 had done that briefing and this Court was kind of due to make  
22 a decision but didn't have to do it because the parties came  
23 to a settlement agreement. And so it's kind of premature at  
24 this point to be pointing to what the findings of fact and  
25 conclusions of law say when this Court hasn't made a ruling

1 on what portions of that apply.

2 THE COURT: Wait, wait, wait. Okay, so let's circle  
3 back. The sale, notice of sale is as to which -- since you  
4 all are saying different things and I can read it the way  
5 I'm reading it, but the notice of trustee sale is as to what  
6 entity? Are you saying it's Spanish --

7 MS. BARRAZA: The property owner, which is SHAC.

8 THE COURT: Are you saying it's Spanish Heights  
9 Acquisition Company, counsel?

10 MS. BARRAZA: Correct. That's what I'm saying,  
11 Your Honor.

12 MR. MUSHKIN: And, Your Honor, there's been a lift  
13 of stay. Don't be distracted. There's now a lift of stay in  
14 the case. There's a confirmed plan and a settlement agreement  
15 on the record in this matter. There is no valid impediment  
16 to the sale scheduled for the 1st. The only arguments they've  
17 made today is about money.

18 THE COURT: Okay. The Court is going to make its  
19 ruling. Let's go directly to the standards, folks; right?  
20 I have before me two different motions. The motion for a  
21 temporary restraining order -- I gave you the opportunity to  
22 argue both on the motion for a temporary restraining order and  
23 gave you the opportunity to argue on behalf of the preliminary  
24 injunction. So the Court having the full opportunity to now  
25 have read all the briefing, has read all the briefing, has

1 heard oral argument, has even asked the parties to pinpoint  
2 particular evidence they think supports their arguments with  
3 regards to each of the issues that are raised.

4           So now we have to look at going to the standards.  
5 One second, please. First we're going to address the  
6 application for a temporary restraining order standards.  
7 The application for a temporary restraining order standards --  
8 give me one second.

9           So let's go first to the generalized NRS 33.010  
10 provides cases in which injunctions may be granted. "An  
11 injunction may be granted in the following cases. 1. When it  
12 shall appear by the complaint that the plaintiff is entitled  
13 to the relief demanded and such relief or any part thereof  
14 consists in restraining the commission or continuance of  
15 the act complained of, either for a limited purpose or  
16 perpetually." 2. When it shall appear by the complaint or  
17 affidavit that the commission or continuance of some act  
18 during the litigation would produce great or irreparable  
19 injury to the plaintiff. 3. When it shall appear during the  
20 litigation that the defendant is doing or threatens or is  
21 about to do or is procuring or suffering to be done some act  
22 in violation of the plaintiff's rights respecting the subject  
23 action and tending to render the judgement ineffectual."

24           Then you go to NRCP 65. NRCP 65; one second.  
25 It provides -- okay. So, NRCP 65 provides injunctions and

1 restraining orders. Preliminary injunctions, subpart (a).  
2 "The court may issue a preliminary injunction only on notice  
3 to the adverse party." Well, obviously you have notice  
4 because you're both here. "2. Consolidating the hearing  
5 with the trial on the merits." That has not been asked, so  
6 the Court is only addressing the preliminary injunction and  
7 the temporary restraining order standard. "Before or after  
8 beginning the hearing on a motion for a preliminary  
9 injunction, the court may advance the trial on the merits and  
10 consolidate it with the hearing. Even when consolidation is  
11 not ordered, evidence that is received on the motion and that  
12 would be admissible at trial becomes part of the trial record  
13 and need not be repeated at trial. But the court must  
14 preserve a party's right to a jury trial."

15           The Court is not providing this with any trial on  
16 the merits, nobody requested it, the Court is not doing it  
17 sua sponte. I'm treating it as a preliminary injunction and  
18 temporary restraining order as specifically stated in the  
19 papers by the movant.

20           So, temporary restraining order. This is not a  
21 temporary restraining order without notice, so I'm not  
22 going to read that because this is a hearing and the Court  
23 specifically set this for a hearing.

24           So then you look at the aspects of what needs to be  
25 done when you have a contested hearing, which really circles

1 you back to the NRS standard. So, temporary restraining  
2 order; right? You all agree what the standards are with a  
3 temporary restraining order. You have to show that there  
4 is activities that need to be enjoined; irreparable harm.  
5 And let me go to -- one second, please. The likelihood of  
6 success on the merits to grant a preliminary injunction and  
7 also need to show irreparable harm. You all have cited a  
8 variety of different cases, both state cases and federal  
9 cases.

10 So the Court looks first at the aspect of likelihood  
11 of success on the merits of their claim. The Court does not  
12 find that the movant has met their burden on likelihood of  
13 success on the merits of the claim. The Court does take into  
14 account law of the case in this case. The Court has not been  
15 provided any evidence that the law of the case is inapplicable  
16 to the instant situation.

17 The Court is very clear, as the law of the case has  
18 shown, and even all the records presented for this specific  
19 hearing have shown this is not a standard residential property  
20 where you have like a bank trying to foreclose and it's kind  
21 of a home situation. This has been a property that's been  
22 utilized in a commercial-like context, and what I mean by that  
23 is whether you go for the LLCs, it's been used as collateral  
24 in business transactions, etcetera.

25 It does not have that unique aspect that the Court

1 would look at in an general house that somebody is being  
2 foreclosed on that's lived in that house and doesn't have  
3 these unique aspects that apply to this property. While  
4 this property is, quote, "a residence" in that it is in a  
5 residential community and it is a house, it does not have  
6 those unique aspects that the typical quote, "house" has  
7 because of the way that this property has been utilized in  
8 the various aspects which is clearly throughout the record.

9           So, like I said, looking at the merits. The merits  
10 are that the assertions that certain things needed to be  
11 followed and were not followed has not been established, even  
12 for a likelihood that it would have some merit on that claim.

13           The Court has asked specifically was there any  
14 alternative number, was there any payoff, was there anything  
15 to show that there is any evidence that the numbers asserted  
16 by the defendant is inaccurate. The Court has not been  
17 provided anything. The only thing the Court (sic) said is,  
18 well, we need an evidentiary hearing to see if we can prove  
19 to find out what these numbers are.

20           But given the date of the notice and given this is  
21 the second notice because there was a notice back in 2011  
22 (sic), the Court notes there was no contesting, even if  
23 there was some issue with regards to a difference between the  
24 current \$7,500,000 et al number versus the number from January  
25 4th, 2021 of a default of \$5,578,459.15. That \$5,578,459.15



1 isn't disputed, so that in and of itself would show there's  
2 not a likelihood of success on the merits on the ability to  
3 move forward with the foreclosure, which is the action being  
4 requested to be restrained, okay.

5           And, in fact, counsel has even conceded that there  
6 can be a foreclosure. The issue isn't whether there can be  
7 a foreclosure and the foreclosure sale can take place on  
8 February 1. The issue really is what is potentially -- if  
9 there's a credit bid concept or what is the amount that is  
10 owed to the party that is doing the sale. That is a monetary  
11 amount. That does not fall even within an injunction because  
12 it's contesting a monetary amount, okay.

13           So this is not the issue of the foreclosure.  
14 Everybody agrees it can be foreclosed under the forbearance  
15 agreement. It can be foreclosed by law of the case. It can  
16 be foreclosed by even the parties' initial settlement that  
17 was not complied with when the funds were not paid. Those  
18 independently -- so they're not in conjunction, independently  
19 all provide these bases.

20           The nature of the property, how it's been utilized  
21 also allows this foreclosure to take place. And there really  
22 is a monetary disagreement between the parties. Whether it's  
23 \$900,000 or some other amount, it's a monetary amount and that  
24 would not be for purposes of foreclosure under the applicable  
25 case law, incorporating the cases that are cited in each of

1 the pleadings; right?

2           So likelihood of success on the merits has not been  
3 met. So now you look at the next prong. Will the plaintiff  
4 suffer irreparable injury if the injunction is not issued?  
5 Well, here, because the injunction really is being asked for  
6 the Court to hold an evidentiary hearing to decide a monetary  
7 issue, the Court really doesn't see that there's going to be  
8 any irreparable harm because realistically if somebody wanted  
9 some hearing, this could have been done differently. That,  
10 itself, could have been done on OST.

11           This notice came out and it looks like at least  
12 there's communications back to, well, early January, at least  
13 January 5th by some of the attachments. So if somebody wanted  
14 said relief, that could have been requested earlier. It's  
15 not the subject of an injunction. But if there was a dispute  
16 over the monetary amount, then that could have been addressed.  
17 It was not.

18           But once again, when you look at irreparable injury,  
19 since the parties agree the foreclosure can go forward because  
20 a foreclosure is allowed under the forbearance agreement and  
21 all the contractual documents for this particular piece of  
22 property, then the Court doesn't see that there is irreparable  
23 injury because it's really a matter of who has to pay what to  
24 potentially either retain the house or credit bid the house  
25 or some third party wants to bid on the house. Who knows?

1 That monetary issue, there's not irreparable harm because  
2 nobody is saying that somebody is being precluded from even  
3 bidding on the house. So if the movant wished to bid on the  
4 house, that's not being precluded by anybody. It's whether  
5 they want to or not.

6           So there really isn't any irreparable injury for  
7 this piece of property that's been utilized for business  
8 purposes, so there's no irreparable injury with regards to  
9 Hamm v. Arrowcreek Homeowners Association, 124 Nev. 28,  
10 2008. This is not an issue where the property is unique and  
11 interference with real property rights leads to irreparable  
12 harm. This is not a Dixon v. Thatcher case. This is very  
13 distinguishable, as not only set forth in the record but  
14 the Court has also stated here today based on what has been  
15 presented to this Court.

16           So now you look at the balance of hardships and  
17 public interest. They weigh in favor of the defendants. This  
18 is a forbearance agreement. It's a contractual agreement that  
19 has been able to move forward. Now, there's been some issues  
20 with Covid. There's been some other intervening bankruptcies,  
21 but that does not in any way take away from the initial  
22 opportunity that in a business transaction that the business  
23 party can move forward to have their rights adjudicated and  
24 funds paid to them. Once again, the Court mentions again that  
25 this is about money and so it is not about unique property.

1 So when I have to look at that, really the balance of  
2 hardships and the public interest weigh heavily in favor  
3 of the party who is moving forward with the foreclosure,  
4 the defendant parties.

5 Okay. So now you look at -- and realistically then  
6 we go to the preliminary injunction standard. So with regards  
7 to a temporary restraining order, there's no basis for a  
8 temporary restraining order. So now we see in the absence  
9 of the Court granting a temporary restraining order or even  
10 independently if this was not sought as a TRO and then a  
11 preliminary injunction, you go to the standards with regards  
12 to a preliminary injunction.

13 While the purpose of a preliminary injunction is  
14 to preserve the status quo until a trial on the merits can be  
15 held, Ottenheimer v. Nevada Real Estate Division, 91 Nev. 338.  
16 So here the Court doesn't see that there is any harmful action  
17 that there needs to be, quote, "a status quo" because the  
18 foreclosure under contractual agreements can take place.  
19 Like I said, it really goes to the monetary amount.

20 So let's go to the standards for a preliminary  
21 injunction. The standards for a preliminary injunction, as  
22 set forth in the pleadings, which you all at least agree  
23 what the standards are, let's walk through. One second.  
24 I'm pausing for one second. I'm just going to get to the  
25 citation. One second. Okay. So most of the standards with

1 regards to a temporary instruction (sic) is also looked for  
2 preliminary injunction. Plaintiffs are asserting that they're  
3 going to have irreparable harm for which no money damages are  
4 adequate. However, as the Court has already stated and as  
5 plaintiff really has conceded, it is monetary damages. This  
6 is nothing unique about this piece of property that's been  
7 used for a business transaction and collateral thereon, this  
8 is monetary damages; the dispute of \$900,000, etcetera.

9           So the Court wouldn't find that the -- you're  
10 looking at the injunction standards -- hold on one second.  
11 Okay. So we're going back to the likelihood of success on  
12 the merits. The Court would incorporate its analysis under  
13 a temporary restraining order. Those equally apply under a  
14 preliminary injunction standard because it really is a breadth  
15 and depth concept.

16           So it does not find that plaintiff has demonstrated  
17 a likelihood of success on the merits. There's no assertion  
18 that plaintiff can even pay the amount, wants to pay the  
19 amount; didn't even assert that they are tending any said  
20 amount. Really, they're just asserting that they're  
21 disagreeing with -- and they haven't even shown that they paid  
22 the underlying amount from 2021, even that as the undisputed  
23 amount could have been paid. Once again, it's money. So the  
24 likelihood of success on the merits, the plaintiff has not  
25 met their burden there.

1           Irreparable harm. There you have to look at if  
2 there's no adequate remedy of law and damages are not  
3 adequate. Well, here it's a damages issue. It's a calculation  
4 of money, so it really doesn't apply. There really isn't  
5 any irreparable harm because while it's asserted that an  
6 individual, Mr. Bloom, who is not the party which this is  
7 being against, he is an individual. He may be part of that  
8 entity, may reside in the location, this is not a personal  
9 residence, as has been -- because it's been used in different  
10 actions as part of business transactions. So there is no  
11 irreparable harm because, once again, the parties agree that  
12 the forbearance agreement allows the house to be sold if the  
13 monies haven't been paid. So, really, it's just a dispute  
14 over money. There is no irreparable harm.

15           The Court looks at the totality of the exhibits that  
16 were attached and there's been notice of foreclosures back in  
17 2020 and 2021. The Court takes no position as to whether or  
18 not those could have moved forward because of bankruptcy stays  
19 or pandemic issues, but I'm just going from a notice concept,  
20 even taking the most recent one that it is not shown that it  
21 was improper.

22           So now we go to relative hardships of the parties.  
23 Here, the Court really sees the relative hardships of the  
24 parties is not as large of a factor because I don't see that  
25 plaintiff has met their burden that they're going to have a

1 huge hardship because the aspect of the foreclosure taking  
2 place is allowed under the forbearance agreement. It really  
3 is the hardship is would they potentially have to pay more  
4 money because of what's being demanded versus the money they  
5 feel that they should have to pay, but yet have not provided  
6 any evidence that the money being sought is an inaccurate  
7 amount, has not sought any court ruling on that previously to  
8 the pending motion. Has not said that there is any evidence  
9 that there is a different amount. There's been no alternative  
10 calculation, etcetera.

11 So the Court can't find that there is a hardship  
12 on behalf of plaintiff, other than of course -- the plaintiff,  
13 other than of course that the resident who's currently  
14 residing in the house may have to move, depending on who bids  
15 on the house at the foreclosure. It's not saying it's going  
16 to one person. It's a matter if it goes up for bid.

17 When I look at the hardship of the defendant movant,  
18 if it doesn't happen, given the dissipation of assets and  
19 even independent of the dissipation of assets, looking at the  
20 length of the loan, the amount and how it's accruing, the  
21 Court does find that a business transaction party is being  
22 implicated and impacted and has a hardship by not receiving  
23 funds that they are owed. And the Court when its saying funds  
24 are owed is not necessarily saying the attorney's fees, which  
25 I'll get to in a second.



1           Now look at the public interest. The impact on non-  
2 parties. Public policy doesn't really -- the public policy for  
3 a personal family residence does not apply here because this  
4 house has been utilized in so many business-type transactions,  
5 used as collateral, part of the forbearance agreement,  
6 etcetera. So the Court doesn't find that those factors for  
7 a physical residence would be appropriate. And remember, the  
8 individual who is actually residing in the house is a manager  
9 of an LLC. This is an LLC who owns the house and this is not  
10 one of those LLCs that has been shown to this -- excuse me.  
11 And that LLC is engaged in business transactions which they  
12 determined to utilize the house as collateral or from a  
13 successor relationship and successor contracts, etcetera.  
14 This was all part of business transactions in a more global  
15 context.

16           So the public interest is really in favor of having  
17 the needs met in business transactions. The business  
18 transactions can go forward. So the public interest goes to  
19 the party of defendants.

20           So then we go to the citation that's really -- it's  
21 consistent with all the cases cited in each of your respective  
22 pleadings, and so therefore the Court would find that neither  
23 the standard of a temporary restraining order nor the standard  
24 of a preliminary injunction have been met for all the reasons  
25 stated, and therefore the motion -- plaintiff's application

1 for temporary restraining order and motion for preliminary  
2 injunction are both denied without prejudice. The Court  
3 taking no position; did not combine this as a trial on the  
4 merits.

5 With regards to the Court's ruling, that is the  
6 Court's ruling. It is so ordered. However, the Court has  
7 one caveat question. The caveat question really is because  
8 of various issues going on independent with the financial  
9 aspects. What is the current determination after the  
10 foreclosure sale takes place with regards to tendering any  
11 proceeds in escrow, etcetera? Counsel for defendants, what's  
12 going to happen there? Because you said it may be a credit  
13 bid or -- we don't know who is going to purchase it.

14 MR. MUSHKIN: Your Honor, I do not expect --

15 THE COURT: Go ahead.

16 MR. MUSHKIN: I do not expect there to be any  
17 proceeds. If there are proceeds in excess of our bid, those  
18 proceeds would be held by Nevada Trust Deed Services and  
19 tendered to the record owner of the property.

20 THE COURT: Okay. So the Court's ruling today,  
21 remember, is purely on the standards of a TRO and a  
22 preliminary injunction. The Court is not independently  
23 authorizing anything else to be done; right? The narrow  
24 ruling -- and don't take that one way or another by any  
25 side. It's just the only issue before this Court today was

1 a temporary restraining order and a preliminary injunction,  
2 and combined in said application and motion, while not any  
3 separate motion with any points and authorities that one  
4 potential way to do it is that the preliminary injunction  
5 and/or temporary restraining order would remain in effect  
6 until after an evidentiary hearing, but that is not a separate  
7 relief request. And even if it were a separate relief  
8 request for an evidentiary hearing, there was no points and  
9 authorities or anything that would say that the evidentiary  
10 hearing could not go forward after the foreclosure.

11 The Court takes no position on that, whether it  
12 could or could not, because that's not before me. The Court  
13 -- only before me was the temporary restraining order and  
14 preliminary injunction. For all the reasons stated, the Court  
15 does not find that those standards have been met by the  
16 movant. And so therefore, like I said, for all the reasons  
17 stated the Court denies it.

18 That means counsel for defendant, you're going to  
19 be writing a very detailed findings of fact -- an order  
20 consistent with the Court's ruling today.

21 And is there anything else the Court can do for the  
22 parties? Because I now have --

23 MR. MUSHKIN: No, Your Honor. Thank you very much.  
24 Have a very nice weekend.

25 THE COURT: Thank you. Counsel on behalf of

1 plaintiff, anything else from your end?

2 MS. BARRAZA: No. Thank you, Your Honor.

3 THE COURT: I appreciate it. Thank you. The  
4 receiver, you're not on today, you're on for next week, so  
5 is there anything we need for today or just next week?

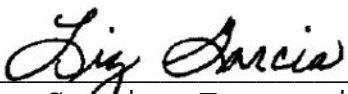
6 MS. O'STEEN: Next week, Your Honor. Thank you.

7 THE COURT: Okay. Then wish everyone a great rest  
8 of your week. Thank you so very much.

9 (PROCEEDINGS CONCLUDED AT 9:47 A.M.)

10 \* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly  
transcribed the audio/video proceedings in the above-entitled  
case to the best of my ability.

  
\_\_\_\_\_  
Liz Garcia, Transcriber  
LGM Transcription Service

# EXHIBIT “T”

APN: 163-29-615-007

R.P.T.T.: \$15,300.00

RETURN/MAIL TAX STATEMENTS TO:  
5148 Spanish Heights, LLC  
6070 S Eastern Ave., Ste 270  
Las Vegas, NV 89119

Inst #: 20220202-0002358  
Fees: \$42.00  
RPTT: \$15300.00 Ex #:  
02/02/2022 02:12:02 PM  
Receipt #: 4876091  
Requestor:  
Nevada Trust Deed Service  
Recorded By: BGN Pgs: 4  
Debbie Conway  
CLARK COUNTY RECORDER  
Src: ERECORD  
Ofc: ERECORD

### TRUSTEE'S DEED UPON SALE

FILE NO. 20-09-008-FCL

THIS INDENTURE, made February 1, 2022 between NEVADA TRUST DEED SERVICES, as Trustee as hereinafter stated, herein called Trustee under the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") (as defined below), and

5148 Spanish Heights, LLC, a Nevada limited liability company, herein called Grantee

#### WITNESSETH:

WHEREAS, Kenneth M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and Sheila Antos Living Trust dated April 26, 2007, and any amendments thereto, by Deed of Trust dated December 17, 2014, and recorded on December 29, 2014, as Instrument No. 20141229-0002856, in the Office of the County Recorder of CLARK County, State of Nevada as modified or amended, if applicable (the "Deed of Trust"), did grant and convey to said Trustee, upon the trusts therein expressed, the property hereinafter described, among other uses and purposes to secure the payment of that certain obligation and interest according to the terms thereof, and other sums of money advanced, with interest thereon, to which reference is hereby made; and,

WHEREAS, pursuant to that certain Substitution of Trustee recorded September 15, 2020 as Instrument No. 20200915-0001404, of Official Records, Beneficiary did substitute in place and stead of Original or Successor Trustee, NEVADA TRUST DEED SERVICES,

WHEREAS, breach and default was made under the terms of said Deed of Trust in the particulars set forth in the Notice of Breach and Election to Sell Under Deed of Trust hereinafter referred to, to which reference is hereby made; and,

WHEREAS, the Beneficiary or holder of said obligation did execute and deliver to the Trustee written Declaration of Default and Demand for Sale and thereafter there was filed for record on September 15, 2020 in the Office of the County Recorder of Clark County, Nevada, a Notice of Breach and Election to Sell Under Deed of Trust to cause the Trustee to sell said property to satisfy the obligations secured by said Deed of Trust, which said Notice was recorded as Instrument No. 20200915-0001405, in the Office of the County Recorder of CLARK County, Nevada; and,

WHEREAS, Trustee, in consequence of said election, declaration of default, and demand for sale, and in compliance with said Deed of Trust and with the statutes in such cases made and provided, made and

published three (3) times, once each week for three (3) consecutive weeks, before the date of sale therein fixed in a newspaper of general circulation in the county and state in which the premises to be sold are situated, Notice of Sale as required by law, containing a correct description of the property to be sold and stating that the Trustee would under the provisions of said Deed of Trust sell the property therein and herein described at public auction to the highest bidder for cash in lawful money of the United States on February 1, 2022, at the hour of 09:30 AM of said day, at the front entrance to Nevada Legal News, 930 S. Fourth Street, Las Vegas, NV 89101, County of Clark, State of Nevada; and.

WHEREAS, a similar copy of said Notice of Sale was posted in a public place in the county where the property is situated twenty (20) days successively before the date of sale therein fixed; and,

WHEREAS, compliance having been made with all of the statutory provisions of the State of Nevada and with all of the provisions of said Deed of Trust as to the acts to be performed and notices to be given, and in particular, full compliance having been made with all requirements of law regarding the service of notices required by statutes, and with the Servicemembers Civil Relief Act (108 P.L. 189; 117 Stat. 2835; 2003 Enacted H.R. 100), said Trustee, at such time and place did then and there at public auction sell the property hereinafter described to said Grantee for the sum of THREE MILLION (\$3,000,000.00) dollars, in partial satisfaction of the indebtedness secured by said Deed of Trust, said Grantee being the highest and best bidder therefore. There may be a deficiency of the proceeds of the sale and a balance remaining due to the Beneficiary of said Deed of Trust, and said Beneficiary reserves all rights with respect to such deficiency and remaining balance, including, without limitation, all rights under NRS 40.451 thru 40.459.

NOW, THEREFORE, Trustee, in consideration of the premises recited and the sum herein mentioned bid and paid by the Grantee, the receipt of which is hereby acknowledged, and by virtue of these premises, does GRANT AND CONVEY, but without warranty or covenants, express or implied, unto said Grantee all right, title and interest under said Deed of Trust in that certain property situated in the County of Clark, State of Nevada, described as follows:

Lot Seven (7) in Block Five (5) of Spanish Hills Estates Unit 5A, as shown by map thereof on file in Book 107, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada.

Together with any and all improvements, personal property and fixtures located thereon or otherwise described in the Deed of Trust and in any other instruments in favor of the Beneficiary, and all singular tenements, hereditaments and appurtenances thereunto belonging or appertaining, rents, issues and profits thereof.



IN WITNESS WHEREOF said Nevada Trust Deed Services, as duly appointed Trustee, has this day, caused its corporate name to be affixed hereto and this instrument to be executed by its Manager.

Nevada Trust Deed Services

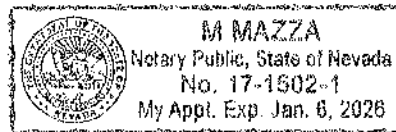
By: Michael F. Bohn  
Michael F. Bohn, Manager

STATE OF NEVADA  
COUNTY OF CLARK

This instrument was acknowledged before me on February 1, 2022 by Michael F. Bohn, Manager of Nevada Trust Deed Services, whose name is subscribed to the above instrument and acknowledged that he executed it.

Signature

[Signature]  
(Notary Public)



**State of Nevada**

**Declaration of Value Form**

1. Assessor Parcel Number(s)

a) 163-29-615-007  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

2. Type of Property:

- a. ☐ Vacant Land      b. ☒ Sgl. Fam. Residence  
c. ☐ Condo/Twnhse      d. ☐ 2-4 Plex  
e. ☐ Apt. Bldg.      f. ☐ Comm'l/Ind'l  
g. ☐ Agricultural      h. ☐ Mobile Home  
☐ Other: \_\_\_\_\_

**FOR RECORDER'S OPTIONAL USE  
ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3. a. Total Value/Sale Price of Property: \_\_\_\_\_

\$3,000,000.00

b. Deed in Lieu of Foreclosure Only (value of property) \_\_\_\_\_

\$0.00

c. Transfer Tax Value: \_\_\_\_\_

\$3,000,000.00

d. Real Property Transfer Tax Due: \_\_\_\_\_

\$15,300.00

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per NRS 375.090, Section: \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage Being Transferred: 100.00%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. **Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature: Michelle Dobson

Capacity: TRUSTEE SALE OFFICER

Signature: \_\_\_\_\_

Capacity: Foreclosing Beneficiary

**SELLER (GRANTOR) INFORMATION**  
**(REQUIRED)**

**BUYER (GRANTEE) INFORMATION**  
**(REQUIRED)**

Print Name: Nevada Trust Deed Services

Print Name: 5148 Spanish Heights, LLC, a Nevada limited liability company

Address: 10161 Park Run Drive, Suite 150

Address: 6070 S Eastern Ave., Ste 270

City: Las Vegas

City: Las Vegas

State: NV Zip: 89145

State: NV Zip: 89119

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**

Print Name: Nevada Trust Deed Services File #: 20-09-008-FCL

Address: 10161 Park Run Drive, Suite 150

City: Las Vegas State: NV Zip: 89145

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

# EXHIBIT “U”

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. .  
. Friday, February 11, 2022  
. 9:31 a.m.  
. . . . .

TRANSCRIPT OF OST RE: MOTION FOR ORDER TO SHOW CAUSE FOR  
VIOLATION OF CONFIRMED CHAPTER 11 PLAN AND RELATED RELIEF  
WITH PROPOSED ORDER FILED BY JAMES D. GREENE ON BEHALF OF  
SPANISH HEIGHTS ACQUISITION COMPANY, LLC [290]  
BEFORE THE HONORABLE NATALIE M. COX (VIA TELECONFERENCE)  
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtor: Greene Infuso, LLP  
By: JAMES D. GREENE, ESQ.  
3030 South Jones Blvd., Suite 101  
Las Vegas, NV 89146  
(702) 570-6000

Maier Gutierrez & Associates  
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1 (Proceedings commence at 9:31 a.m.)

2 THE COURTROOM DEPUTY: And the matter on the Court's  
3 calendar this morning is Spanish Heights Acquisition Company  
4 LLC, Case Number 21-10501. May we have appearances, please.

5 MR. GREENE: Good morning, Your Honor. This is James  
6 Greene on behalf of the reorganized debtor, and I believe my  
7 state court co-counsel is also on the line in case there are  
8 any issues relating to the state court matters, Danielle  
9 Barraza.

10 MS. BARRAZA: That's correct. Danielle Barraza's  
11 here, Bar Number 13822.

12 MR. MUSHKIN: Good morning, Your Honor. Mike  
13 Mushkin, Bar Number 2421, for 5148 and related parties.

14 THE COURT: All right, good morning. I certainly was  
15 not really happy to see this case come up again on the docket.  
16 Unfortunately, we find ourselves here today. Mr. Greene and  
17 Mr. Mushkin, be aware that I have read everything to include  
18 the exhibits. but I'm going to let you both argue.

19 And so let's go ahead, Mr. Greene, and you go ahead  
20 and start. This is the motion for order to show cause for  
21 violations of the confirmed Chapter 11 plan for seeking related  
22 relief. Please proceed, Mr. Greene.

23 MR. GREENE: Thank you, Your Honor. And thank you  
24 for hearing this matter on shortened time. Like you, I wish we  
25 weren't here at this point, but we don't feel like there's any



1 choice but to, frankly, try to protect the integrity of the  
2 Court's confirmation order.

3 I'm not going to go into a lot of background. I know  
4 Your Honor's very familiar with this case, in both good and bad  
5 ways. But essentially, it boils down to this. The terms of  
6 the plan that all of the parties entitled to vote voted in  
7 favor of confirmation of provide that as to secured creditor  
8 5148, that they -- that that entity has an allowed secured  
9 claim in the amount of \$7 million, and that that amount is to  
10 bear interest at five and a half percent per annum from the  
11 date of entry of the confirmation order until it is paid.

12 The plan provided for an interest payment on January  
13 1 and on the first of each month thereafter until the full  
14 amount was paid, the full amount of the \$7 million, and for  
15 payment of \$4 million on January 5th, and the balance due on, I  
16 believe it was, April 5th, \$3 million, at which time the full  
17 amount would be paid. Admittedly, the debtor, despite having  
18 made in excess of half a million dollars, somewhere between 5-  
19 and \$600,000 in payments to other secured creditors, taxing  
20 authorities, et cetera, in enacting -- implementing the plan,  
21 the debtor was not able to make the payments due to 5148 in  
22 January.

23 The plan has very specific provisions. It says that  
24 in the event of a default by the debtor in making payments to  
25 5148, 5148 is entitled to foreclose consistent with provisions



1 of Nevada law without further order of the Court. There's  
2 nothing, not a word, in the plan that says that the amount that  
3 5148 is entitled to claim in the foreclosure process is in  
4 excess of or different from the amount of its allowed secured  
5 claim in the plan, \$7 million plus five and a half percent  
6 interest. Nevertheless, when the foreclosure process started,  
7 the demand that was made by 5148 was for in excess of seven and  
8 a half million dollars. And we have evidence of that in, for  
9 example, the January 7 email from Mr. Mushkin to Ms. Barraza  
10 and other parties, where he says "Attached is the breakdown hot  
11 off the presses," and that refers to the breakdown of the  
12 amount of the demand for payment of the 5148 claim.

13           And this, Your Honor, is at --it's actually in  
14 Exhibit 2 filed in support of Mr. Mushkin's opposition, and  
15 that is ECF Document Number 295, and we're looking, or I'm  
16 looking at least, at Page 124. And then, 125 is the breakdown,  
17 and it's making a demand. It has a number of different items,  
18 making a demand for 7,519,502.33.

19           Well, Your Honor, as of this date, the amount that  
20 was due under the confirmed plan was about \$7,050,000. Ms.  
21 Barraza responded, which is the next page of the exhibit, ECF  
22 295, Page 126, and questions a number of the items in the  
23 breakdown and ask for explanations or for support for those  
24 documents. Looking further at the email string at ECF 295,  
25 Page 133 -- or excuse me, Page 1 -- ECF 295, Page 131, Mr.





1 Mushkin basically brushes Ms. Barraza off. "I have no  
2 obligation to do as you requested," and he refuses to provide  
3 any breakdown or analysis.

4 A few days later, now we're at ECF 295, Page 133,  
5 Ms. Barraza again reaches out to Mr. Mushkin and asked for an  
6 explanation of the figures and challenges the figures. That  
7 resulted in no response from Mr. Mushkin supporting that they  
8 do.

9 So what we have at that point, Your Honor, is we have  
10 5148 asserting that it is owed roughly -- I did the  
11 calculation, I think it's a little over \$450,000 more than it  
12 is entitled to under the plan. So it's essentially ignoring,  
13 disregarding the terms of plan and the plan confirmation order  
14 and a copy of the plan, as always attached to the plan  
15 confirmation order and incorporated therein. And that -- so  
16 they're simply ignoring and violating the plan confirmation  
17 order and making a demand for payment of far more than they are  
18 entitled to under the plan.

19 That put the debtor the position of having to seek  
20 relief from the state court, and so the debtor filed on, I  
21 think it was January 19th, a motion for a temporary restraining  
22 order. And that is attached, Your Honor, as Exhibit 3 to our  
23 motion, which is ECF 990-1, and it starts at Page 56. And  
24 then, Mr. Mushkin filed an opposition to that motion, which is  
25 Exhibit 4 to our motion, and includes in that opposition a



1 breakdown of the amount that 5148 is claiming is due. And now,  
2 I'm looking at ECF 290-1, Page 141, and there's a breakdown,  
3 and the amount sought now appears to be -- it appears to be  
4 going back to the original documents, the original promissory  
5 note, the forbearance agreement. It's got three different  
6 categories of attorneys' fees and costs. I note that the  
7 bankruptcy attorneys' fees and costs are nearly \$200,000, which  
8 is amazing to me given that my fees were far less than that.  
9 But in any event, it's not based on the plan. It's ignoring  
10 the plan, and it's asking for \$7,548,450.29.

11           The state court ultimately did not grant relief. The  
12 hearing was held on the Friday before the Tuesday foreclosure.  
13 They did seek emergency relief from the Nevada Supreme Court,  
14 and for whatever reason, of course, in that very short  
15 timeframe, was not able to obtain relief. That court declined  
16 to grant the debtor relief and stay the foreclosure. So the  
17 foreclosure went forward on Tuesday, February 1st.

18           The points that I would make in looking at these  
19 calculations, Your Honor, is not only are they not based on  
20 what the terms of the plan provide, but I think that everybody  
21 on this call knows, or at least the bankruptcy people, that the  
22 terms of the plan supersede the preexisting loan documents.  
23 Here, we have a situation where there was a set amount  
24 determined that 5148 was going to be entitled to be paid.  
25 Nothing in the plan allowed -- provided that if there's a



1 default, we're throwing that number out, you can go back to the  
2 original loan documents, you can add additional amounts. The  
3 amount that 5148 should have been seeking was \$7 million plus  
4 five and a half percent interest through whatever the date is,  
5 and the debtor was able to pay that, would have been willing to  
6 pay that, but it was not able or willing to pay an additional  
7 450- or \$500,000.

8           And in the opposition, it's interesting because 5148  
9 says, well, we took the property at the foreclosure sale with a  
10 credit bid of \$3 million. If they had the ability to pay this  
11 off, they should have shown up and bid.

12           But, Your Honor, in the context of the emails and in  
13 the context of the opposition to the TRO and the demands that  
14 were being made for payment, I think we all on this call  
15 understand that they started out with a credit bid of  
16 \$3 million, but they could have credit bid up to whatever  
17 amount they were claiming. So it would have been a futile act  
18 for -- excuse me, for the debtor to show up and make a bid,  
19 knowing that 5148 was simply going to increase its bid up to  
20 \$7,458,000 or whatever the figure was on that February 1st  
21 date.

22           So it's basically saying making a sort of ridiculous  
23 argument, if you ask me. Show up, pay far more than you're  
24 obligated to pay under your confirmed plan, and then maybe  
25 you'll be able to recover it at some point down the road. That



1 is not how the law works. That's not how the plan works. We  
2 have a blatant violation of the plan and an excessive demand.

3 THE COURT: Mr. Greene?

4 MR. GREENE: Yes, Your Honor.

5 THE COURT: Why -- didn't the state court hear that  
6 argument? I mean, they didn't -- nobody appears, from the  
7 transcript, to have brought up the plan treatment, but didn't  
8 the -- wasn't it presented to the court that this was an issue  
9 regarding the credit bid, at least that was in part one of the  
10 arguments, and the court rejected that, didn't they? Hasn't  
11 this already been ruled on by the state court?

12 MR. GREENE: Well, I don't think so, Your Honor,  
13 because you're right, it wasn't brought up in the state court.  
14 What was brought up in the state court is the fact that these  
15 numbers seem to be coming out of thin air. And that was the  
16 argument made.

17 THE COURT: But, Mr. Greene, these --

18 MR. GREENE: Yeah.

19 THE COURT: -- the plan certainly was already  
20 confirmed prior to the state court hearing. It could have been  
21 brought up. And -- correct? Do you agree with that?

22 MR. GREENE: I do agree with that, Your Honor. And -

23 -

24 THE COURT: Right. Because what it --

25 MR. GREENE: -- it was not. I think the thought



1 process was -- and I was not involved in the briefing in the  
2 state court, Your Honor, but I think the thought process was  
3 that the state court didn't have jurisdiction to rule on a plan  
4 confirmation issue, that that would be the province of this  
5 Court. But time was getting so short. As I say, the hearing  
6 on the motion for the temporary restraining order was on a  
7 Friday, and the foreclosure sale was the subsequent Tuesday.  
8 And in between, there was the crush of trying to get to the  
9 Supreme Court to obtain relief, and the relief was being based  
10 basically on the Nevada foreclosure laws as opposed to the plan  
11 confirmation order.

12 THE COURT: But, Mr. Greene, you would agree you've  
13 been a bankruptcy attorney for a long time, a very good one.  
14 You would agree that the plan is simply a contract at this  
15 point, right? It's a confirmed plan. Why would the court, the  
16 state court, not have jurisdiction to look at an issue of,  
17 essentially, the contract it sounds like what would be asserted  
18 or something similar. This Court doesn't have exclusive  
19 jurisdiction over that. At this point, it's just a contract.  
20 Right?

21 MR. GREENE: That is correct, Your Honor. That is  
22 well-established law in the bankruptcy world that once  
23 confirmed, a plan is essentially a contract. And as I say, I  
24 was not involved in the state court briefing, but I don't think  
25 the state court has ruled on the issue of whether the plan was



1 violated. And that was -- and as Your Honor notes, that was  
2 not brought up with the state court.

3 THE COURT: Is --

4 MR. GREENE: So -- yes, Your Honor.

5 THE COURT: My thoughts on all of this, and I'm going  
6 to use the word "ripe" loosely and not necessarily the legal  
7 version of "ripe." To me, there is an issue of ripeness in  
8 terms of the dispute. There's no dispute that the plan, the  
9 contract, allowed for a foreclosure. Nobody seems to be  
10 disputing that, nor does anybody seem to be disputing that  
11 there was a default, which would have triggered the right for  
12 foreclosure.

13 So then we get to the payoff amount issue, and there  
14 was a demand made for an amount that was more than what the  
15 allowed claim was for. But there hasn't been, at this point, a  
16 determination that they are entitled to more, that 5148 that  
17 has been made whole, I don't believe there's been any type of  
18 deficiency actions. I don't believe your client has been  
19 forced, at this point, to pay more. And with respect to the  
20 state court, while they weren't looking -- Judge Thayer was not  
21 looking specifically at the plan in terms of what the allowable  
22 claim was because it wasn't presented to her, she did have in  
23 front of her an argument that the amounts being asserted were  
24 disputed, the amounts were disputed, and that -- excuse me --  
25 that would have an effect on your client's ability to credit



1 bid and would -- and you made -- and the same argument,  
2 essentially, that you've made here earlier, that it would be  
3 ridiculous for your client to have to come out of pocket to  
4 make a credit bid and then have to try to get the money back.

5           So those were all arguments, even though we weren't  
6 talking about the allowed claim, that were considered by the  
7 court, and that allowed claim, as you've admitted, would have  
8 been allowed to have been brought up. The plan was already  
9 confirmed at that point. It certainly could have been brought  
10 to the attention of the state court.

11           So to me, that issue of how much is owed and whether  
12 that's a violation is not only a contract issue, which can  
13 certainly be brought in the state court, but it's also one that  
14 maybe hasn't even -- it's not ripe at this point. Those are my  
15 thoughts. That's -- those are my concerns when I've read this  
16 motion and have read all of the exhibits are those things, Mr.  
17 Green. So I appreciate the issue that you've brought up, but  
18 I'm still struggling, as you could tell, with finding how these  
19 are issues that would allow me to find the other side in  
20 contempt, to unwind the foreclosure sale that was involved in  
21 the state court action. Those are all issues I have. There's  
22 potentially Rooker-Feldman issues. There may be issue  
23 preclusion issues. I mean, these are all things that I think  
24 face you as an uphill battle in terms of winning this argument.

25           Now, I know I have interrupted you. If there's any





1 more you want to add, you can.

2 MR. GREENE: This James is Greene for the reorganized  
3 debtor. Thank you, Your Honor for your thoughts. Most of them  
4 have crossed my mind, but I think what I would say is that  
5 although the state court did look at the issue of the disputed  
6 amount of the debt, that court did not look at -- and I don't  
7 know if Rooker-Feldman really applies because I don't think  
8 you're sort of reversing a state court decision or interfering  
9 with a state court action. You know, what we're trying to  
10 achieve here is to have a declaration that, in fact, from the  
11 various pieces of evidence that are in the record before you  
12 today, we do have a party who simply ignored your order, your  
13 confirmation order and sought nearly half a million dollars, or  
14 roughly half a million dollars, in excess of what it was  
15 entitled to owe -- to collect, and that effectively prevented  
16 the debtor from saving its property by redeeming the property  
17 and paying the amount due under the plan because it was obvious  
18 with the demands that were being made via email and in state  
19 court filings that the amount due under the plan was not going  
20 to stay the foreclosure sale.

21 As I say, the other alternative the debtor was faced  
22 with was, well, go ahead and pay the seven-million-and-seventy-  
23 something thousand dollars that was actually due at the  
24 foreclosure sale and hope that sale doesn't go forward. And if  
25 it does go forward, well, then we're still right where we are



1 now. And so the debtor was really in an untenable situation.  
2 And I think that the issue that the state court did not  
3 consider the issue in the context that we're discussing it.  
4 The state court was looking at a dispute between two parties  
5 over a calculation of an amount.

6 And I was not at the hearing, I've reviewed most of  
7 the transcript. And I'm not sure about the state court's  
8 thinking. I think, certainly, there was irreparable harm any  
9 time you have a foreclosure of a new unique asset like real  
10 property.

11 But in any event, I do think that this Court has  
12 jurisdiction to enforce its own order, to protect the integrity  
13 of the confirmed chapter 11 plan and avoid this sale. Whether  
14 you choose to hold 5148 or its counsel in contempt, of course,  
15 is within your discretion. But we understand that 5148 is  
16 simply going to notice up another foreclosure, and at that  
17 point, they'll be presumably complying with the confirmation  
18 order and making a demand based on the terms of the plan.

19 And so I understand your concerns. I get them. But  
20 I do think that this Court, in order to protect its own  
21 jurisdiction and enforce and protect the integrity of this  
22 Court's order, has the authority to do what we're asking and  
23 simply make 5148 go back and play by the rules of the plan that  
24 it voted for and that this Court confirmed.

25 So I would rest on that.



1 THE COURT: Okay, thank you, Mr. Greene.

2 Mr. Mushkin, you want (audio interference) --

3 MR. MUSHKIN: Your Honor, if the Court would like to  
4 hear from me, I'll be very brief.

5 First, in their opposition, they talk about a demand  
6 for cure. There was no demand for cure. The debtor never had  
7 to buy it at the sale. The debtor could have tendered at any  
8 time. The debtor never made a tender, not of one dime.

9 SJCV pledged collateral. All fees were disclosed to  
10 set up the claim of deficiency that the Court referenced.  
11 Counsel says that there is nothing in the plan that calls for  
12 this. Unfortunately, he is wrong. My client's claim was to be  
13 treated under 1111(b), and upon the default of the settlement  
14 agreement, that's exactly what should have happened and did.  
15 The sale is one to the public. And in order to release the  
16 collateral pledge by SJCV, the entirety of their claim was put  
17 in the demand. What you have before you, Judge, is a debtor  
18 who admits to default. And then, in this court says, we would  
19 have paid, and in state court, never so much as a hint of that.

20 And this afternoon at two o'clock, Mr. Bloom and the  
21 debtor face sanction and contempt hearing, an evidentiary  
22 hearing, because they haven't provided the documents to prove  
23 that they have any chance or could have paid. There's a  
24 significant amount of money that's still due. The disclosures  
25 were open. There's no one trying to violate this Court's order



1 in any way. The integrity of the confirmation order was  
2 affected by the conduct of the debtor.

3 Your Honor, this debtor has challenged interest,  
4 costs, attorneys' fees, the existence of the note, the  
5 existence of the deed of trust. My clients have not received  
6 any payments, including adequate protection that was promised,  
7 since March -- I'm sorry, since April 1 of 2000. I  
8 respectfully request that this motion be denied and that the  
9 Court consider awarding fees to 5148 for having to defend this.

10 The Court is 100 percent correct. The state court  
11 looked at it. The Supreme Court looked at it. And for counsel  
12 to come before you today and say for whatever reason, the state  
13 court's denied relief, but in the pleading, make the  
14 affirmative allegation that the state courts were unable to  
15 complete their analysis is simply not true. What showing have  
16 they made that the state courts didn't adequately address this  
17 matter?

18 Thank you very much for your time, Your Honor. I'd  
19 appreciate that you'd submit an -- that we could submit an  
20 order denying this application.

21 THE COURT: All right. Thank you, Mr. Mushkin.

22 Mr. Greene, I'll let you have the last word.

23 MR. GREENE: Your Honor, I don't really have anything  
24 new to add, except one point I did want to make is that there  
25 is certainly irreparable harm that has occurred here, and I



1 think the Court is in a position to prevent that harm. I don't  
2 really understand the 1111(b) notion. The plan is quite clear.  
3 It says that 5148 has an allowed secured claim for -- whether  
4 there's an 1111(b) election or not, it says that 5148 has an  
5 allowed secured claim for \$7 million and interest at five and a  
6 half percent per annum.

7           As Your Honor noted, the plan is, at the end of the  
8 day, a contract, and this contract supersedes all the other  
9 contracts that preceded it. And 5148 was entitled to the  
10 \$7 million whether or not it was making an 1111(b) election or  
11 not. That has no impact on the secured -- the amount of the  
12 secured -- allowed secured claim as defined in the plan. So  
13 they were limited to the \$7 million and the five and a half  
14 percent interest. And as I say, it was clear.

15           You know, Mr. Mushkin, brings up the issue with  
16 tender. Well, the debtor didn't tender money. Well, tendering  
17 what we thought was owed would have been a futile effort  
18 because they would have said no, you still owe another half-  
19 million dollars, we're going to sale, and it was simply  
20 untenable to tender the full amount that was being claimed and  
21 then hope that at some point there was some way to recover it  
22 down the road.

23           So I think the Court does have the right and  
24 jurisdiction to enforce and protect the (indiscernible) order,  
25 the confirmation order, and so I would ask the Court to grant



1 the motion and I'll rest on that.

2 THE COURT: All right. Thank you. All right. I'm  
3 prepared to give my oral ruling.

4 The Court has reviewed and considered the motion,  
5 opposition, reply, all related exhibits, and counsels'  
6 arguments at today's hearing. Pursuant to Federal Rule of  
7 Evidence 201, the Court has also taken judicial notice of all  
8 pleadings in the bankruptcy docket. Pursuant to Federal Rule  
9 of Civil Procedure 52, made applicable herein pursuant to  
10 Federal Rule of Bankruptcy Procedure 7052, the Court hereby  
11 enters the following findings of fact and conclusions of law.

12 On November 24th, 2021, the Court entered an order  
13 confirming the debtor's Chapter 11 plan at ECF Number 280.  
14 Page 6, Paragraph 3, of the confirmation order stated that the  
15 secured claim of 5148 Spanish Heights, LLC shall be paid as set  
16 forth in Class 3 of the plan. Class 3 of the attached plan  
17 stated that 5148 Spanish Heights was entitled to an allowed  
18 secured claim in the amount of \$7 million, required  
19 interest-only payments beginning January 1st 2022, required a  
20 \$4 million payment on January 5th, 2022, and further stated  
21 that any default, quote, "shall constitute grounds for the  
22 holder of the Class 3 claim to commence or continue foreclosure  
23 on the property without further order of the bankruptcy court  
24 or notice of the plan default to the debtor or SJC. Upon the  
25 occurrence of a plan default, the Class 3 claimant shall be



1 entitled to pursue foreclosure of the property in accordance  
2 with all applicable state law statutory requirements."

3           On Page 3, Lines 20 through 22, the debtor admits  
4 that it defaulted under the plan by failing to make the  
5 January 1st interest payment and the January 5th \$4 million  
6 payment. As reflected in ECF Number 295 at Exhibit E, counsel  
7 for the reorganized debtor and for 5148 Spanish Heights engaged  
8 in email communications regarding an impending foreclosure and  
9 the correct payoff amount. Although these emails have not been  
10 authenticated by declaration, the reorganized debtor has not  
11 objected to the authenticity of the emails. The Court observed  
12 that no reference to the confirmation order or the confirmed  
13 plan were made by the organized debtor's counsel in the emails.

14           Thereafter, 5148 Spanish Heights noticed a  
15 foreclosure sale, which the reorganized debtor does not allege  
16 violated the Court's order. On January 11th, 2022, 5148  
17 Spanish Heights filed a motion for the writ of possession and  
18 order to vacate pursuant to NRS 40.255 in state court Case  
19 Number A-20-813439-B, which I shall refer to throughout this  
20 ruling as the state court case. A copy of this motion for writ  
21 of possession as Exhibit 2 to the debtor's current motion -- is  
22 Exhibit 2 to the debtor's current motion at ECF 290.

23           In pertinent part, 5148 Spanish Heights stated the  
24 following on Page 6 of their motion for writ.

25           "The foreclosure sale date has been set for





1 February 1, 2022. With an amount owing of over  
2 \$7,500,000, counterclaimants anticipate that the  
3 property will revert back to them. As such  
4 counterclaimants are requesting an order for SJCV and  
5 Bloom to vacate the property on April 4, 2022."

6 This was the sole reference to 7,500,000 in the  
7 motion for writ, and the only relief requested in the motion as  
8 stated on Page 7, Lines 20 through 21, was for an order that  
9 SJCV and Bloom vacate the subject property on April 4, 2022.

10 On January 19th, 2022, the reorganized debtor and SJC  
11 Ventures filed an application for temporary restraining order  
12 and motion for preliminary injunction in the state court case.  
13 A copy of this TRO application was attached as Exhibit 3 to the  
14 reorganized debtor's motion. On Page 2, Lines 3 through 5, of  
15 the TRO application, the reorganized debtor again acknowledged  
16 its default under the confirmed plan by stating that the  
17 trustee sale was noticed, quote, "as a result of plaintiffs  
18 being unable to timely make a settlement payment on January  
19 5th, 2022." In the remainder of page 2 of the TRO application,  
20 the reorganized debtor and SJC Venture state, in pertinent  
21 part, the following.

22 "Although plaintiffs do not take issue with the  
23 trustee sale itself, plaintiffs are entitled to  
24 redeem the property before the foreclosure sale,  
25 which defendants have acknowledged. However,



1 defendants have issued a defective payoff demand  
2 which includes an interest amount that is overstated  
3 by at least \$410,000, \$410,096.10.

4 "The payoff demand also includes an additional  
5 approximately \$904,000. Nearly \$1 million of fees  
6 and costs for a simple foreclosure sale is beyond  
7 unreasonable. As such, plaintiffs are entitled to an  
8 evidentiary hearing to determine the correct payoff  
9 amount so that plaintiffs can make such payment in  
10 order to avoid the foreclosure of the property  
11 pursuant to NRS 107.080. It is therefore imperative  
12 that the court issue a TRO enjoining the defendants  
13 from foreclosing on the property until the correct  
14 payoff demand amount can be adjudicated."

15 The Court observes that the TRO application did not  
16 reference the confirmation order or otherwise contend that the  
17 confirmation order capped the claim of 5148 Spanish Heights.  
18 Instead by the TRO application, the reorganized debtor and SJC  
19 Ventures appeared to only take issue with excessive  
20 calculations of interest rate charges, foreclosure fees, and  
21 attorneys' fees and costs associated with the foreclosure sale  
22 that they contend were inflated.

23 After carefully reviewing this motion and all other  
24 pleadings filed with the state court in great detail, the  
25 Court, based on the arguments made by the reorganized debtor



1 and SCJ [sic] Ventures, is not left with the impression that  
2 the confirmation order or this Court's interpretation of the  
3 same relates in any manner to this purely post-confirmation  
4 default scenario. Instead, the dispute centered around an  
5 interpretation of Nevada foreclosure laws and the reorganized  
6 debtor's right to redeem under Nevada state law. This is  
7 reflected throughout the TRO application, including in the  
8 following paragraph at Pages 10 and 11.

9           "Plaintiffs acknowledge that defendants have a right  
10           to initiate foreclosure proceedings as a result of  
11           the default in the settlement agreement. The  
12           defendants need to follow Nevada foreclosure laws  
13           when doing so. The unaccounted for interest figures  
14           in the payoff demand along with a completely  
15           unreasonable figure being demanded in legal fees and  
16           costs suggest serious errors in the payoff demand.  
17           Because plaintiffs have a statutory right to pay off  
18           the balance due and redeem the property prior to the  
19           foreclosure, which they fully intend on doing, this  
20           court should order that defendants be enjoined from  
21           proceeding on the notice of sale and from engaging in  
22           any further foreclosure activities regarding the  
23           property until an evidentiary hearing has been held  
24           on the payoff figure and the court has adjudicated  
25           the payoff amount."



1           On January 28 2022, Judge Kishner presided over the  
2 TRO application in the state court case. A copy of the  
3 transcript is attached at ECF Number 295. At Exhibit C, in  
4 finding that the likelihood of success on the merits prong had  
5 not been satisfied, Judge Kishner stated in pertinent part the  
6 following at Page 42, Line 13, through Page 43, Line 25.

7           "The court has asked specifically was there any  
8 alternative number, was there any payoff, was there  
9 anything to show that the numbers asserted by the  
10 defendant is inaccurate. The court has not been  
11 provided anything. The only thing she said is, well,  
12 we need an evidentiary hearing to see if we can prove  
13 to find out what these numbers are. But given the  
14 date of the notice, and given this is a second notice  
15 because there was a notice back in 2011, the court  
16 notes there was no contesting even if there was some  
17 issue with regards to a difference between the  
18 current \$7.5 million et al. number versus the number  
19 from January 4, 2021 of a default of \$5,578,459.15.  
20 That \$5,578,459.15 isn't disputed. So that, in and  
21 of itself, would show there is not a likelihood of  
22 success on the merits on the ability to move forward  
23 with the foreclosure, which is the action being  
24 requested to be restrained. Okay

25           "And in fact, counsel has even conceded that there



1 can there can be a foreclosure, the issue isn't  
2 whether there can be a foreclosure and the  
3 foreclosure sale can take place on February 1st. The  
4 issue really is what is potentially if there's a  
5 credit bid concept, or what is the amount that is  
6 owed to the party that is doing the sale. That is a  
7 monetary amount. That does not fall even within an  
8 injunction because it's contesting a monetary amount.  
9 Okay?"

10 "So this is not the issue of the foreclosure.  
11 Everybody agrees it can be foreclosed under the  
12 forbearance agreement, it can be foreclosed by law of  
13 the case, it can be foreclosed by even the parties'  
14 initial settlement that was not complied with when  
15 the funds were not paid. Those independently, so  
16 they're not in conjunction, independently all provide  
17 these bases.

18 "The nature of the property, how it's been utilized,  
19 also allows this foreclosure to take place, and there  
20 really is a monetary disagreement between the  
21 parties. Whether it's \$900,000 or some other amount,  
22 it's a monetary amount, and that would not be for the  
23 purposes of foreclosure under the applicable case  
24 law."

25 In finding that the irreparable injury prong had not



1 been satisfied, Judge Kishner stated in pertinent part the  
2 following at Page 45, Line 5, through Page 45 [sic], Line 5.

3 "Well, here, because the injunction really is being  
4 asked for the court to hold an evidentiary hearing to  
5 decide a monetary issue, the court really doesn't see  
6 that there's going to be any irreparable harm  
7 because, realistically, if somebody wanted some  
8 hearing, this could have been done differently. That  
9 itself could have been done on OST. This notice came  
10 out, and it looks like at least there's a  
11 communication back to, well, early January, at least  
12 January 5th by some of the attachments. So somebody  
13 wanted said relief. That could have been requested  
14 earlier. It's not the subject of an injunction. But  
15 if there was a dispute over the monetary amount, then  
16 that could have been addressed. It was not. But  
17 once again, when you look at irreparable injury,  
18 since the parties agreed a foreclosure sale can go  
19 forward because a foreclosure is allowed under the  
20 under the forbearance documents, forbearance  
21 agreement and all the contractual documents for this  
22 particular piece of property, then the court doesn't  
23 see that there is irreparable injury because it's  
24 really a matter of who has to pay what to potentially  
25 either retain the house or credit bid the house or



1           some third party wants to bid on the house. Who  
2           knows?

3           "That monetary issue, there's not irreparable harm  
4           because nobody is saying that somebody is being  
5           precluded from even bidding on the house. So if the  
6           movants wish to bid on the house, that's not being  
7           precluded by anybody, it's whether they want to or  
8           not."

9           Relevant to the reorganized debtor's contention  
10          before this Court and in the TRO application is the following  
11          statement by Judge Kishner, Page 47, Lines 17 through 23.

12                 "There's no assertion that plaintiff can even pay  
13          that amount, wants to pay that amount, didn't even assert that  
14          they are attending" -- and I think that was actually supposed  
15          to be tendering -- "any set amount. Really, they're just  
16          asserting that they're disagreeing with, and they haven't even  
17          shown that they've paid the underlying amount 2021. Even that  
18          undisputed amount could have been paid."

19                 And finally, in further support of this Court's  
20          earlier statement that this matter involves a purely  
21          post-confirmation state law foreclosure issue, Judge Kishner  
22          stated the following at Page 49, Lines 2 through 10.

23                 "It really is the hardship is -- would they  
24          potentially have to pay more money because of what's  
25          being demanded versus the money they feel they should



1           have to pay, but yet have not provided any evidence  
2           that the money being sought is an accurate amount,  
3           has not sought any court ruling on that previously to  
4           the pending motion, has not said that there is any  
5           evidence that there's a different amount. There's  
6           been no alternative calculations, et cetera."

7           As the Court alluded to earlier, if as the  
8 reorganized debtor currently asserts in the motion before this  
9 Court that the confirmation order is definitive, this Court  
10 would have expected to see some sort of reference to the  
11 confirmation order and its provision at some point in either  
12 the state court pleadings or in the state court transcript.  
13 However, the Court did not see any such reference. Judge  
14 Kishner, therefore, denied the TRO application. According to  
15 5148 Spanish Heights, the reorganized debtor and SCJ [sic]  
16 Ventures then sought a petition for writ of mandamus or  
17 prohibition, which the Nevada Supreme Court denied on  
18 February 1st, 2022. Thereafter, 5148 Spanish Heights  
19 successfully purchased the property via credit bid, as  
20 reflected by a trustee's deed upon sale recorded with the Clark  
21 County Recorder on February 2nd 2022, a copy of which is  
22 available at ECF Number 295 at Exhibit D.

23           This prompted the reorganized debtor to file the  
24 current motion before the Court on February 4th 2022 and seek a  
25 hearing on shortened time, which the Court allowed. By the



1 motion, the reorganized debtor asks for the following forms of  
2 relief: finding 5148 and its counsel in contempt for violating  
3 the confirmation order and the binding terms of the Chapter 11  
4 plan; declaring the nonjudicial trustee's foreclosure sale of  
5 the property to be void; declaring the trustee's deed based on  
6 the foreclosure so void; awarding the reorganized debtor  
7 attorneys' fees and costs for enforcing the plan; setting an  
8 evidentiary hearing to consider an award of punitive damages  
9 against 5148 and its counsel for their willful violation of the  
10 confirmation order and plans.

11           The applicable post-confirmation standard was  
12 recently discussed in In re Skyline Ridge LLC, 2021 WL 1733163,  
13 Pages 3-4, (Bankr. D. Ariz. April 30, 2021).

14           When there's a confirmed bankruptcy plan in the  
15 administrative case, the bankruptcy court's related to  
16 jurisdiction is somewhat limited. In re Pegasus Gold Corp,  
17 394 F.3d 1189 (9th Cir. 2005)

18           In the Ninth Circuit, the close nexus test determines  
19 the extent to which a bankruptcy court retains related to  
20 post-confirmation jurisdiction. The essential inquiry is  
21 whether there is a close nexus to the bankruptcy plan or  
22 proceeding sufficient to uphold bankruptcy jurisdiction over  
23 the matter. Matters affecting the interpretation,  
24 implementation, consummation, execution, or administration of a  
25 confirmed plan will typically have the required -- will have



1 the requisite close nexus.

2           As reflected during the Court's findings of fact, the  
3 dispute between the reorganized debtor and 5148 Spanish Heights  
4 are purely post-confirmation state law foreclosure issues that  
5 do not involve the interpretation, implementation,  
6 consummation, execution, or administration of the current  
7 affirmed plan, and otherwise do not have a close nexus with the  
8 confirmed plan for purposes of this Court's jurisdiction.  
9 Indeed, as far as the Court can tell from its review of the  
10 state court case pleadings and transcripts, the confirmation  
11 order was never even raised in relation to 5148 Spanish  
12 Heights's claim for purposes of foreclosure.

13           To the extent the issue needed to be raised for  
14 purposes of redemption, Judge Kishner informed the reorganized  
15 debtor that it should have raised that issue with her before an  
16 order shortening time. The -- should have -- sorry, excuse me,  
17 that the debtor should have raised the issue with her before on  
18 an OST instead of via a temporary restraining order and  
19 injunction.

20           As Judge Kishner found, no party disputed 5148  
21 Spanish Heights's ability to seek foreclosure, and indeed the  
22 debtor concedes that foreclosure was an appropriate remedy,  
23 even under the confirmation order and confirmed plan. The  
24 reorganized debtor's issues, as expressed by Judge Kishner,  
25 involved the reorganized debtor's contention 5148 Spanish



1 Heights had double counted interests and inflated related  
2 foreclosure fees, including attorneys' fees. Again, all these  
3 fees were discussed without reference to any sort of cap  
4 provided in the confirmation order, which the reorganized  
5 debtor -- apparently, this is apparently their new argument in  
6 the motion before this court.

7           Simply put, this Court does not have  
8 post-confirmation jurisdiction over this issue because it lacks  
9 the requisite close nexus to the confirmation order in the  
10 confirmed plan. Furthermore, even if this Court had  
11 jurisdiction, issues of preclusion and/or issues arising under  
12 the Rooker-Feldman doctrine would arguably preclude this Court  
13 from making any determination.

14           Finally, and for the avoidance of doubt, a confirmed  
15 plan constitutes a contract under applicable state law. To the  
16 extent that a creditor is requesting an amount during the  
17 post-confirmation period greater than what the reorganized  
18 debtor believes is allowed under the plan, the issue is not one  
19 of contempt of the confirmation order but of a potential breach  
20 of a post-confirmation contract. Indeed, the Court never  
21 ordered 5148 Spanish Heights to not assert fees related to the  
22 foreclosure costs. Instead, the Class 3 treatment stated that  
23 5148 Spanish Heights shall be entitled to pursue foreclosure  
24 property in accordance with all applicable state law statutory  
25 requirements. Based on my prior comments and my review of the



1 pleadings and transcripts in the state court case, it appears  
2 the reorganized debtor did not dispute 5148 Spanish Heights's  
3 ability to assert fees and expenses under state law beyond what  
4 was provided in the confirmed plan but only disputed what it  
5 believes were the excessive amounts asserted.

6           For all these reasons, the Court -- let me back up.  
7 For all these reasons and those that I stated earlier during  
8 the hearing, the Court denies the motion. And, Mr. Mushkin,  
9 I'm also going to deny your oral requests for attorney fees,  
10 but I'm going to ask that you prepare the order and please  
11 circulate it to Mr. Greene.

12           MR. MUSHKIN: Thank you very much, Your Honor. I  
13 will do so. And just for the record, my request was in my  
14 motion, as well, but I understand (indiscernible).

15           THE COURT: All right. Then, I'm denying both the  
16 written request and the oral request. All right.

17           MR. MUSHKIN: I hope we don't have to come back  
18 again, Judge. Thank you very much.

19           MR. GREENE: Thank you, Your Honor.

20           THE COURT: All right. Thank you, Mr. Greene. All  
21 right. We can go ahead and go off record.

22           THE COURTROOM DEPUTY: Thank you, Your Honor. Off  
23 record.

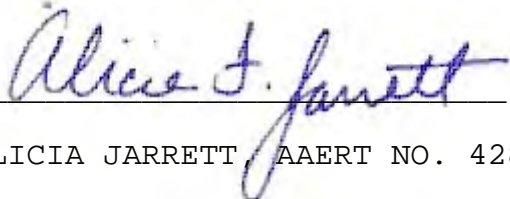
24           (Proceedings concluded at 10:19 a.m.)

25                           \* \* \* \* \*



C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.



ALICIA JARRETT, AAERT NO. 428

DATE: February 22, 2022

ACCESS TRANSCRIPTS, LLC

