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

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FIRST 100, LLC; and 1st ONE HUNDRED HOLDINGS, LLC, Appellants,

v.

TGC/FARKAS FUNDING, LLC, Respondent.



---

Supreme Court No. 83177

Eighth Judicial District Court
Case No. A-20-822273-C

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# RESPONDENT'S APPENDIX IN SUPPORT OF RESPONDENT'S ANSWERING BRIEF VOLUME V of V

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ERIKA PIKE TURNER
NVBN 6454
DYLAN T. CICILIANO
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7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
*Attorneys for Respondent*
*TGC/Farkas Funding, LLC*

## CHRONOLOGICAL INDEX OF RESPONDENT'S APPENDIX

| Date | Description | Bates No. | Vol. |
|---|---|---|---|
| 12/12/2012 | Exhibit 07, First Amended Operating Agreement of First 100, LLC (PLTF_032 - 059), admitted on 3/3/2021 | SA0001 - 0028 | I |
| 10/21/2013 | Exhibit 20, TGC Farkas Funding LLC Agreement (PLTF_150 - 172), admitted on 3/10/2021 | SA0029 - 0051 | I |
| 12/4/2013 | Exhibit 08, 1st One Hundred Holdings, LLC Operating Agreement (PLTF_060 – 090), admitted on 3/3/2021 | SA0052 - 0082 | I |
| 4/18/2017 | Exhibit 21, Email to First 100 (PLTF_173 - 178), admitted on 3/3/2021 | SA0083 - 0088 | I |
| 5/2/2017 | Exhibit 01, Demand for Production from TGC Farkas Funding, LLC (PLTF_001 – 004), admitted on 3/3/2021 | SA0089 - 0092 | I |
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| 9/9/2019 | Exhibit 26, First 100, LLC Secretary of State Entity Detail (PLTF_212 – 228), admitted on 3/10/2021 | SA0110 - 0126 | I |
| 10/29/2019 | Exhibit 27, 1st One Hundred Holdings, LLC Secretary of State Entity Detail (PLTF_229 – 239), admitted on 3/10/2021 | SA0127 - 0137 | I |
| 8/1/2020 | Exhibit 23, TGC Farkas Funding, LLC Amendment to Operating Agreement (PLTF_196 - 202), admitted on 3/3/2021 | SA0138 - 0144 | I |

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|---|---|---|---|
| 9/15/2020 | Exhibit 02, Arbitration Award (PLTF_005 - 010), admitted on 3/10/2021 | SA0145 - 0150 | I |
| 12/30/2020 | Declaration of Service to Jay Bloom of Notice of Entry of Order Granting Plaintiff's Ex-Parte Application for Order to Show Cause Why Defendants and Jay Bloom Should Not Be Held in Contempt of Court | SA0151 | I |
| 1/5/2021 | Declaration of Service to Jay Bloom of Subpoena Duces Tecum served upon Maier Gutierrez and Associates | SA0152 | I |
| 1/6/2021 | Exhibit 13, Settlement Agreement (PLTF_106 – 108), admitted on 3/10/2021 | SA0153 - 0155 | I |
| 1/14/2021 | Exhibit 11, Correspondence from Raffi Nahabedian, Esq. re Substitution of Counsel (PLTF_096 – 101), admitted on 3/3/2021 | SA0156 - 0161 | I |
| 1/15/2021 | Exhibit 25, Email from Dylan Ciciliano to Raffi Nahabedian (PLTF_209 – 211), admitted on 3/3/2021 | SA0162 - 0164 | I |
| 1/23/2021 | Exhibit FF, Declaration of Matthew Farkas (FIRST0506-0509), admitted on 3/3/2021 | SA0165 - 0168 | I |
| 1/24/2021 | Exhibit 17, Email from Jay Bloom to Matthew Farkas re Matthew Farkas Affidavit (PLTF_123 - 128), admitted on 3/10/2021 | SA0169 - 0174 | I |

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| 1/26/2021 | Appendix of Exhibits to Opposition to Defendants' Motion to Enforce Settlement and Vacate Post-Judgment Discovery proceedings; and Countermotion 1) To Strike the Affidavit of Jason Maier, and 2) For Sanctions | SA0175 - 0397 | II |
| 2/22/2021 | Plaintiff's Motion to Compel and For Sanctions; And Application for Ex-Parte Order Shortening Time | SA0398 - 0526 | III |
| 3/3/2021 | Exhibit 30, Nahabedian Call Log (PLTF_569), admitted on 3/10/2021 | SA0527 | III |
| 3/3/2021 | Exhibit 28, Nahabedian Emails (PLTF_240 - 567), admitted on 3/3/2021 | SA0528 - 1018 | III,IV,V |
| 3/3/2021 | Exhibit 29, Nahabedian Texts with Bloom (PLTF_568), admitted on 3/10/2021 | SA1019 | V |
| 3/11/2021 | Order Granting Plaintiff's Motion to Compel and Denying Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b) | SA1020 - 1026 | V |
| 6/2/2021 | Minute Order regarding attorneys' fees and costs | SA1027 | V |
| 8/6/2021 | Defendants' Status Report on Compliance with the Court's Orders | SA1028 - 1059 | V |
| 8/9/2021 | Court Minutes - Status Check | SA1060 | V |
| 9/15/2021 | Appellants Opening Brief Nevada Supreme Court Case No. 82794 | SA1061 - 1105 | V |

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT'S APPENDIX IN SUPPORT OF RESPONDENT'S ANSWERING BRIEF VOLUME V of V** was filed electronically with the Nevada Supreme Court on January 3, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

MAIER GUTIERREZ & ASSOCIATES
JASON R. MAIER
Nevada Bar No. 8557
Email: jrm@mglaw.com
Joseph A. Gutierrez
Nevada Bar No. 9046
Email: jag@mgalaw.com
Danielle J. Barraza
Nevada Bar No. 13822
Email: djb@mgalaw.com
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Appellants*

BY: */s/ Max Erwin*
an employee of Garman Turner Gordon LLP

**Raffi A Nahabedian**

**From:** Erika Turner [eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 9:42 AM
**To:** R. A. Nahabedian, Esq.
**Cc:** Dylan Ciciliano
**Subject:** TGC Farkas Funding, LLC
**Attachments:** scan0005.pdf

Mr. Nahabedian,

You are directed to STOP communicating with Matthew Farkas, the former control person and current member of TGC Farkas Funding, LLC regarding your purported retention on behalf of TGC Farkas Funding, LLC. The company is represented by counsel, as you well know. For the avoidance of doubt, there is no privilege that can be asserted over your communications with TGC Farkas Funding, LLC as the company controls the privilege, not you.

You have the option of attending the deposition subject of your subpoena in person or via Zoom.

Erika

**Erika Pike Turner**
Partner

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P 725 777 3000 | D 725 244 4573
eturner@gtg.legal

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

www.gtg.legal

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Date:** February 2, 2021 at 8:42:56 AM PST
**To:** Matthew Farkas <matthewfarkas70@gmail.com>
**Cc:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Subject: For Your/Your Attorney's Immediate Attention**

Mr. Farkas

Good morning.

Please see the attached and provide to your attorney.

Time is of the essence, so please do not delay.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Raffi A Nahabedian [raffi@nahabedianlaw.com]
**Sent:** Tuesday, February 02, 2021 12:37 PM
**To:** 'Erika Turner'
**Cc:** 'Dylan Ciciliano'; 'Raffi A Nahabedian'
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

Given your email, I assume you read my letter to Mr. Farkas. Therein you will see that I have no idea as to who is representing Mr. Farkas; as such, it is and was impossible to ascertain who I was to coordinate any communication with him this morning relating to your subpoena.

At the time I was engaged by Mr. Farkas to act as counsel for TGC/Farkas Funding, LLC, it was represented to me (and I believed) that Mr. Farkas was the sole manager of the LLC and that he was authorized to retain legal counsel for the LLC. Until I received your letter, I did not know of an amendment to the LLC's operating agreement that replaced Mr. Farkas as the sole manager of the LLC. Thereafter, Mr. Farkas provided your referenced amendment.

Upon learning of the amendment, I immediately terminated my involvement in this matter. I have never represented Mr. Farkas in his individual capacity. Nevertheless, it is conceivable and reasonable that Mr. Farkas expected his communications with me to be and remain confidential. Such expectations and beliefs, whether right or wrong, valid or accurate are not irrelevant and trifling, and must substantively be considered and appreciated by counsel. Indeed, as an attorney, I am subject to the Rules applicable to the practice of law in Nevada, including NRPC 1.6, which requires that I not reveal confidential information without informed consent. Furthermore, the ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 473 suggests that an attorney has an obligation to request client permission before disclosing client information in response to a subpoena. Out of an abundance of caution and necessity, I reached out to Mr. Farkas after receiving your subpoena to inquire as to his position with respect to my response to the subpoena.

Mr. Farkas's position on the matter remains unclear. In fact, your email expressly reflects that you are serving as his counsel and, as such, I cannot learn of or be informed of his position (which seems/appears to give rise to substantive conflict issues). Accordingly, absent written and full consent from Mr. Farkas, coupled with an order from the court compelling my testimony and the parameters thereof, I cannot provide testimony regarding my involvement in this matter in response to your subpoena. While you may not like this reality, it is real since I believe that providing testimony would breach or expose me to a breach of my ethical obligations as an attorney; if would also expose me to potential professional liability.

Inasmuch as you have provided unsolicited legal advice and opinion, I cannot and will not accept such without a court order confirming your unsolicited positions (as valid and accurate), as well as a consideration of my compliance with my ethical obligations under the Rules (as deemed appropriate by the State Bar of Nevada). Again, this is a reality that will not escape your unsolicited legal proclamations.

Finally, to be clear, I have never claimed to control any privilege held by either Mr. Farkas or the LLC. I am simply trying to comply with my ethical obligations and avoid exposure. Despite your expressed certainty of the information contained in your email below, I do not believe the issue to be as straight forward as you proclaim based on the facts and circumstances presented. If you wish to provide any legal authority to support your position, I will consider it and respond, as I am certain the court will need to be included in this matter.

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**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

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**Sent:** Tuesday, February 02, 2021 2:36 PM
**To:** 'Erika Turner'
**Cc:** 'Dylan Ciciliano'; 'Raffi A Nahabedian'; 'Bart Larsen'
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

As I was driving to a doctor's appointment, I was contacted by a Mr. Ken Hogan who stated that he was going to be representing Mr. Farkas. That contact, however, does not change or eliminate the substantive matters contained in my correspondence. Moreover, your threats and posture are becoming quite alarming and unfortunate given the facts and circumstances expressed in my communications. Certainly you, as a member of the Bar, are not encouraging and demanding professional violations of the Rules, as well as breaches to the rights/interests of former clients. Again, your unsolicited legal advice and positions have been provided without any support. I will not succumb to your pressure without the matter being decided by the court in conformity of the Rules.

Additionally, as I remain concerned about your own conflict, it appears that the court's guidance is warranted and needed to resolve the matter.

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**Subject: For Your/Your Attorney's Immediate Attention**

Mr. Farkas

Good morning.

Please see the attached and provide to your attorney.

Time is of the essence, so please do not delay.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Erika Turner [eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 2:58 PM
**To:** R. A. Nahabedian, Esq.
**Cc:** Dylan Ciciliano; 'Bart Larsen'; Ken Hogan
**Subject:** RE: TGC Farkas Funding, LLC

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Partner

GARMAN | TURNER | GORDON

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**Subject:** RE: TGC Farkas Funding, LLC

I have gone to great lengths to make my positions and concerns clear and understandable as to providing any testimony without violating the Rules, confidences and exposure to liability. As Mr. Hogan has been included on these exchanges (and he expressly represents Mr. Farkas), he certainly can read and appreciate the matters set forth including, but not limited to, those relating to Mr. Farkas.

Until and unless there is absolute certainty regarding no violation of the Rules, confidences and liability, my answers and responses will be the same – as it should be by all members of the Bar.

Respectfully,

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 3:17 PM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano; 'Bart Larsen'; 'Ken Hogan'
**Subject:** RE: TGC Farkas Funding, LLC

As I asked for an unequivocal response if you are refusing to attend the duly noticed deposition, and you have not indicated that you are refusing, we will expect your attendance on Feb 12.

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

---

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 3:14 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Bart Larsen' <blarsen@shea.law>; 'Ken Hogan' <ken@h2legal.com>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

Ms Turner

There is no "game playing" as you assert. As I indicated in my last communication to you, I was contacted by a Mr. Hogan while traveling to a doctor's appointment (such contact was made AFTER the sending of my letter this morning). Upon my return from the doctor's appointment, I prepared and sent a response to your communication. Those are the facts and there is no gamesmanship.

As for attending any deposition, my articulated positions are not "deflection" as you proclaim, but substantive concerns and issues that warrant judicial attention and direction to prevent any violations of the Rules or the exposure to professional liability for breaching confidences. It is unfortunate that you refuse to appreciate such and, worse, that you continue to provide unsolicited legal advice to support your demands and aggressive threats.



**PLTF_452**

**RAN0276**
**SA0903**

You included you former partner Mr. Hogan on this email, so I will include him as well. In terms of Mr. Larsen, he is included as counsel, but I will continue to respond on my behalf.

All rights reserved, none waived, including the right to fees and costs.

Respectfully,

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 2:58 PM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano; 'Bart Larsen'; Ken Hogan
**Subject:** RE: TGC Farkas Funding, LLC

Mr. Nahabedian,

I see you are cc'ing an attorney, Bart Larsen. Is Mr. Larsen your counsel? If so, then we can conduct all further communications without your involvement.

If Mr. Larsen is counsel, he can respond. Otherwise, we ask you to respond without ambiguity or deflection:
**Are you refusing to attend your duly noticed deposition scheduled for February 12, 2021?** We are on a short timetable and need to know your intentions.

With respect to your deflection: Your accusations of a conflict of interest against me are without any factual or legal basis. I have represented, and continue to represent, TGC Farkas Funding, LLC.
Earlier this afternoon, you misrepresented that you did not know who was representing Mr. Farkas when you had actually been contacted by Mr. Hogan by that point in time. So, I am really confused what game you are playing. Neither TGC Farkas Funding, LLC nor Matthew Farkas are directing you not to attend the duly-noticed deposition, nor are either claiming your communications with Matthew Farkas were privileged.

We are entitled to your testimony regarding the facts and circumstances surrounding your retention and actions, purportedly on behalf of TGC Farkas Funding, LLC.

Again, all rights and remedies are expressly reserved, including those rights and remedies under NRCP 45 (30 and 37 as well), including appropriate sanctions for all fees and costs being incurred to address any refusal to comply with a duly-issued

and noticed subpoena. There is no rule that has an application that would excuse your attendance.

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

---

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 2:36 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>; 'Bart Larsen' <blarsen@shea.law>
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

As I was driving to a doctor's appointment, I was contacted by a Mr. Ken Hogan who stated that he was going to be representing Mr. Farkas. That contact, however, does not change or eliminate the substantive matters contained in my correspondence. Moreover, your threats and posture are becoming quite alarming and unfortunate given the facts and circumstances expressed in my communications. Certainly you, as a member of the Bar, are not encouraging and demanding professional violations of the Rules, as well as breaches to the rights/interests of former clients. Again, your unsolicited legal advice and positions have been provided without any support. I will not succumb to your pressure without the matter being decided by the court in conformity of the Rules.

Additionally, as I remain concerned about your own conflict, it appears that the court's guidance is warranted and needed to resolve the matter.

Respectfully,

Raffi A Nahabedian

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**Sent:** Tuesday, February 02, 2021 2:15 PM
**To:** Raffi A Nahabedian
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**Subject:** RE: TGC Farkas Funding, LLC

Mr. Nahabedian,

We are informed you have spoken to Mr. Farkas' personal counsel. No one acting on Mr. Farkas' or TGC Farkas' behalf is directing you not to testify on the grounds of any purported privilege. If you refuse to attend the duly noticed and served deposition subpoena, we reserve all rights under NRCP 45(e).

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

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**Sent:** Tuesday, February 2, 2021 12:37 PM
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**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

Given your email, I assume you read my letter to Mr. Farkas. Therein you will see that I have no idea as to who is representing Mr. Farkas; as such, it is and was impossible to ascertain who I was to coordinate any communication with him this morning relating to your subpoena.

At the time I was engaged by Mr. Farkas to act as counsel for TGC/Farkas Funding, LLC, it was represented to me (and I believed) that Mr. Farkas was the sole manager of the LLC and that he was authorized to retain legal counsel for the LLC. Until I received your letter, I did not know of an amendment to the LLC's operating agreement that replaced Mr. Farkas as the sole manager of the LLC. Thereafter, Mr. Farkas provided your referenced amendment.

Upon learning of the amendment, I immediately terminated my involvement in this matter. I have never represented Mr. Farkas in his individual capacity. Nevertheless, it is conceivable and reasonable that Mr. Farkas expected his communications with me to be and remain confidential. Such expectations and beliefs, whether right or wrong, valid or accurate are not irrelevant and trifling, and must substantively be considered and appreciated by counsel. Indeed, as an attorney, I am subject to the Rules applicable to the practice of law in Nevada, including NRPC 1.6, which requires that I not reveal confidential information without informed consent. Furthermore, the ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 473 suggests that an attorney has an obligation to request client permission before disclosing client information in response to a subpoena. Out of an abundance of caution and necessity, I reached out to Mr. Farkas after receiving your subpoena to inquire as to his position with respect to my response to the subpoena.

Mr. Farkas's position on the matter remains unclear. In fact, your email expressly reflects that you are serving as his counsel and, as such, I cannot learn of or be informed of his position (which seems/appears to give rise to substantive conflict issues). Accordingly, absent written and full consent from Mr. Farkas, coupled with an order from the court compelling my testimony and the parameters thereof, I cannot provide testimony regarding my involvement in this matter in response to your subpoena. While you may not like this reality, it is real since I believe that providing testimony would breach or expose me to a breach of my ethical obligations as an attorney; if would also expose me to potential professional liability.

Inasmuch as you have provided unsolicited legal advice and opinion, I cannot and will not accept such without a court order confirming your unsolicited positions (as valid and accurate), as well as a consideration of my compliance with my ethical obligations under the Rules (as deemed appropriate by the State Bar of Nevada). Again, this is a reality that will not escape your unsolicited legal proclamations.

Finally, to be clear, I have never claimed to control any privilege held by either Mr. Farkas or the LLC. I am simply trying to comply with my ethical obligations and avoid exposure. Despite your expressed certainty of the information contained in your email below, I do not believe the issue to be as straight forward as you proclaim based on the facts and circumstances presented. If you wish to provide any legal authority to support your position, I will consider it and respond, as I am certain the court will need to be included in this matter.

Respectfully,

Raffi A Nahabedian

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 9:42 AM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano
**Subject:** TGC Farkas Funding, LLC

Mr. Nahabedian,

You are directed to STOP communicating with Matthew Farkas, the former control person and current member of TGC Farkas Funding, LLC regarding your purported retention on behalf of TGC Farkas Funding, LLC. The company is represented by counsel, as you well know. For the avoidance of doubt, there is no privilege that can be asserted over your communications with TGC Farkas Funding, LLC as the company controls the privilege, not you.

You have the option of attending the deposition subject of your subpoena in person or via Zoom.

Erika

**Erika Pike Turner**
Partner

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eturner@gtg.legal

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

www.gtg.legal

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Date:** February 2, 2021 at 8:42:56 AM PST
**To:** Matthew Farkas <matthewfarkas70@gmail.com>
**Cc:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Subject: For Your/Your Attorney's Immediate Attention**

Mr. Farkas

Good morning.

Please see the attached and provide to your attorney.

Time is of the essence, so please do not delay.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Erika Turner [eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 3:57 PM
**To:** R. A. Nahabedian, Esq.
**Cc:** Dylan Ciciliano; 'Bart Larsen'; 'Ken Hogan'
**Subject:** RE: TGC Farkas Funding, LLC

Ok, if Mr. Hogan wants to seek a protective order, he can. Otherwise, we will see you Feb. 12.


Erika Pike Turner
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal


---

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 3:41 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Bart Larsen' <blarsen@shea.law>; 'Ken Hogan' <ken@h2legal.com>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

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Until and unless there is absolute certainty regarding no violation of the Rules, confidences and liability, my answers and responses will be the same – as it should be by all members of the Bar.

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Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
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**Sent:** Tuesday, February 2, 2021 3:14 PM
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**Sent:** Tuesday, February 02, 2021 2:15 PM
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**Subject:** RE: TGC Farkas Funding, LLC

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**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

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**Sent:** Tuesday, February 2, 2021 12:37 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

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Finally, to be clear, I have never claimed to control any privilege held by either Mr. Farkas or the LLC. I am simply trying to comply with my ethical obligations and avoid exposure. Despite your expressed certainty of the information contained in your email below, I do not believe the issue to be as straight forward as you proclaim based on the facts and circumstances presented. If you wish to provide any legal authority to support your position, I will consider it and respond, as I am certain the court will need to be included in this matter.

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Raffi A Nahabedian

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**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 9:42 AM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano
**Subject:** TGC Farkas Funding, LLC

Mr. Nahabedian,

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You have the option of attending the deposition subject of your subpoena in person or via Zoom.

Erika

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Partner

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7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

www.gtg.legal

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Date:** February 2, 2021 at 8:42:56 AM PST
**To:** Matthew Farkas <matthewfarkas70@gmail.com>
**Cc:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Subject: For Your/Your Attorney's Immediate Attention**

Mr. Farkas

Good morning.

Please see the attached and provide to your attorney.

Time is of the essence, so please do not delay.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** R. A. Nahabedian, Esq. [raffi@nahabedianlaw.com]
**Sent:** Tuesday, February 02, 2021 4:11 PM
**To:** Erika Turner
**Cc:** R. A. Nahabedian, Esq.; Dylan Ciciliano; 'Bart Larsen'; 'Ken Hogan'
**Subject:** RE: TGC Farkas Funding, LLC

That is NOT what I said and, again, I am not seeking or requesting your unsolicited legal positions and advice. Please, carefully and substantively read my communications to prevent any further unnecessary exchanges and wasted time.

If Mr. Hogan has substantive legal positions to assert and present on behalf of Mr. Farkas, it will be critically and fundamentally assessed and addressed given the entirety of my concerns and issues repeatedly raised in these communications.

Sent from my Verizon, Samsung Galaxy smartphone. So, if there are any errors or grammatical issues, I will simply blame it on the PDA embedded in my cellphone. If that's not good enough, remember that life is too short!

-------- Original message --------
From: Erika Turner <eturner@Gtg.legal>
Date: 2/2/21 3:56 PM (GMT-08:00)
To: "R. A. Nahabedian, Esq." <raffi@nahabedianlaw.com>
Cc: Dylan Ciciliano <dciciliano@Gtg.legal>, 'Bart Larsen' <blarsen@shea.law>, 'Ken Hogan' <ken@h2legal.com>
Subject: RE: TGC Farkas Funding, LLC

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**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

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**To:** Erika Turner <eturner@Gtg.legal>
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**Subject:** RE: TGC Farkas Funding, LLC

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Partner

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**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Bart Larsen' <blarsen@shea.law>; 'Ken Hogan' <ken@h2legal.com>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

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Again, all rights and remedies are expressly reserved, including those rights and remedies under NRCP 45 (30 and 37 as well), including appropriate sanctions for all fees and costs being incurred to address any refusal to comply with a duly-issued and noticed subpoena. There is no rule that has an application that would excuse your attendance.

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 2:36 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>; 'Bart Larsen' <blarsen@shea.law>
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

As I was driving to a doctor's appointment, I was contacted by a Mr. Ken Hogan who stated that he was going to be representing Mr. Farkas. That contact, however, does not change or eliminate the substantive matters contained in my correspondence. Moreover, your threats and posture are becoming quite alarming and unfortunate given the facts and circumstances expressed in my communications. Certainly you, as a member of the Bar, are not encouraging and demanding professional violations of the Rules, as well as breaches to the rights/interests of former clients. Again, your unsolicited legal advice and positions have been provided without any support. I will not succumb to your pressure without the matter being decided by the court in conformity of the Rules.

Additionally, as I remain concerned about your own conflict, it appears that the court's guidance is warranted and needed to resolve the matter.

Respectfully,

Raffi A Nahabedian

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 2:15 PM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano
**Subject:** RE: TGC Farkas Funding, LLC

Mr. Nahabedian,

We are informed you have spoken to Mr. Farkas' personal counsel. No one acting on Mr. Farkas' or TGC Farkas' behalf is directing you not to testify on the grounds of any purported privilege. If you refuse to attend the duly noticed and served deposition subpoena, we reserve all rights under NRCP 45(e).

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

---

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 12:37 PM

**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

Given your email, I assume you read my letter to Mr. Farkas. Therein you will see that I have no idea as to who is representing Mr. Farkas; as such, it is and was impossible to ascertain who I was to coordinate any communication with him this morning relating to your subpoena.

At the time I was engaged by Mr. Farkas to act as counsel for TGC/Farkas Funding, LLC, it was represented to me (and I believed) that Mr. Farkas was the sole manager of the LLC and that he was authorized to retain legal counsel for the LLC. Until I received your letter, I did not know of an amendment to the LLC's operating agreement that replaced Mr. Farkas as the sole manager of the LLC. Thereafter, Mr. Farkas provided your referenced amendment.

Upon learning of the amendment, I immediately terminated my involvement in this matter. I have never represented Mr. Farkas in his individual capacity. Nevertheless, it is conceivable and reasonable that Mr. Farkas expected his communications with me to be and remain confidential. Such expectations and beliefs, whether right or wrong, valid or accurate are not irrelevant and trifling, and must substantively be considered and appreciated by counsel. Indeed, as an attorney, I am subject to the Rules applicable to the practice of law in Nevada, including NRPC 1.6, which requires that I not reveal confidential information without informed consent. Furthermore, the ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 473 suggests that an attorney has an obligation to request client permission before disclosing client information in response to a subpoena. Out of an abundance of caution and necessity, I reached out to Mr. Farkas after receiving your subpoena to inquire as to his position with respect to my response to the subpoena.

Mr. Farkas's position on the matter remains unclear. In fact, your email expressly reflects that you are serving as his counsel and, as such, I cannot learn of or be informed of his position (which seems/appears to give rise to substantive conflict issues). Accordingly, absent written and full consent from Mr. Farkas, coupled with an order from the court compelling my testimony and the parameters thereof, I cannot provide testimony regarding my involvement in this matter in response to your subpoena. While you may not like this reality, it is real since I believe that providing testimony would breach or expose me to a breach of my ethical obligations as an attorney; if would also expose me to potential professional liability.

Inasmuch as you have provided unsolicited legal advice and opinion, I cannot and will not accept such without a court order confirming your unsolicited positions (as valid and accurate), as well as a consideration of my compliance with my ethical obligations under the Rules (as deemed appropriate by the State Bar of Nevada). Again, this is a reality that will not escape your unsolicited legal proclamations.

Finally, to be clear, I have never claimed to control any privilege held by either Mr. Farkas or the LLC. I am simply trying to comply with my ethical obligations and avoid exposure. Despite your expressed certainty of the information contained in your email below, I do not believe the issue to be as straight forward as you proclaim based on the facts and circumstances presented. If you wish to provide any legal authority to support your position, I will consider it and respond, as I am certain the court will need to be included in this matter.

Respectfully,

Raffi A Nahabedian

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 9:42 AM

**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano
**Subject:** TGC Farkas Funding, LLC

Mr. Nahabedian,

You are directed to STOP communicating with Matthew Farkas, the former control person and current member of TGC Farkas Funding, LLC regarding your purported retention on behalf of TGC Farkas Funding, LLC. The company is represented by counsel, as you well know. For the avoidance of doubt, there is no privilege that can be asserted over your communications with TGC Farkas Funding, LLC as the company controls the privilege, not you.

You have the option of attending the deposition subject of your subpoena in person or via Zoom.

Erika

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
eturner@gtg.legal

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

www.gtg.legal

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Date:** February 2, 2021 at 8:42:56 AM PST
**To:** Matthew Farkas <matthewfarkas70@gmail.com>
**Cc:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Subject: For Your/Your Attorney's Immediate Attention**

Mr. Farkas

Good morning.

Please see the attached and provide to your attorney.

Time is of the essence, so please do not delay.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Raffi A Nahabedian [raffi@nahabedianlaw.com]
**Sent:** Tuesday, February 02, 2021 4:51 PM
**To:** 'Jay Bloom'
**Cc:** 'Raffi A Nahabedian'
**Subject:** confidential communication

Mr. Bloom

On or about January 4, 2021, you contacted me to ask if I would represent your brother-in-law, Matthew Farkas. I agreed to represent him in a limited capacity and emailed a retainer agreement and a Scope of Representation/Conflict letter for him to sign as he was the apparent manager of a company, TGC/Farkas Funding, LLC. You are aware of these items. As my services were very limited, I was not involved in and did not participate in any settlement negotiations or the preparation of any settlement documents. My services as understood by you and Mr. Farkas were merely to prepare a substitution of attorney based on Mr. Farkas' retention of my services, provide Garman Turner Gordon a letter of termination prepared/signed by Mr. Farkas, and to file a dismissal; nothing more.

As your attorneys in the underlying matter are aware (and may have informed you of), the law firm of Garman Turner Gordon has issued a subpoena for me to testify. As there are issues relating to the Rules and confidentiality from various perspectives, I contacted the State Bar of Nevada to speak with State Bar Counsel. During the discussion, it was confirmed and stated that communications with you, only, as you are a current client (in a completely unrelated matter) would and should be considered confidential and not subject to disclosure without your full written consent and/or judicial order.

Given the above, I am informing you of my intention to comply with Rules and the information as provided by State Bar Counsel. Unless instructed otherwise in a writing signed by you or via court order, I am constrained.
I have expressed a similar position to counsel who issued the subpoena, along with issues relating to a possible conflict of interest.

Should you have any questions, please contact me to discuss.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Ken Hogan [ken@h2legal.com]
**Sent:** Friday, February 05, 2021 2:30 PM
**To:** R. A. Nahabedian, Esq.; 'Erika Turner'
**Cc:** 'Dylan Ciciliano'; 'Bart Larsen'
**Subject:** RE: TGC Farkas Funding, LLC

Raffi:
Sorry for the delay, but I just wanted to close the loop on this -- I have no substantive legal position to assert on behalf of Mr. Farkas.
Ken

---

**From:** R. A. Nahabedian, Esq. <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 4:11 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** R. A. Nahabedian, Esq. <raffi@nahabedianlaw.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; 'Bart Larsen' <blarsen@shea.law>; 'Ken Hogan' <ken@h2legal.com>
**Subject:** RE: TGC Farkas Funding, LLC

That is NOT what I said and, again, I am not seeking or requesting your unsolicited legal positions and advice. Please, carefully and substantively read my communications to prevent any further unnecessary exchanges and wasted time.

If Mr. Hogan has substantive legal positions to assert and present on behalf of Mr. Farkas, it will be critically and fundamentally assessed and addressed given the entirety of my concerns and issues repeatedly raised in these communications.

Sent from my Verizon, Samsung Galaxy smartphone. So, if there are any errors or grammatical issues, I will simply blame it on the PDA embedded in my cellphone. If that's not good enough, remember that life is too short!

-------- Original message --------
From: Erika Turner <eturner@Gtg.legal>
Date: 2/2/21 3:56 PM (GMT-08:00)
To: "R. A. Nahabedian, Esq." <raffi@nahabedianlaw.com>
Cc: Dylan Ciciliano <dciciliano@Gtg.legal>, 'Bart Larsen' <blarsen@shea.law>, 'Ken Hogan' <ken@h2legal.com>
Subject: RE: TGC Farkas Funding, LLC

Ok, if Mr. Hogan wants to seek a protective order, he can. Otherwise, we will see you Feb. 12.

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

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**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 3:41 PM

**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Bart Larsen' <blarsen@shea.law>; 'Ken Hogan' <ken@h2legal.com>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

I have gone to great lengths to make my positions and concerns clear and understandable as to providing any testimony without violating the Rules, confidences and exposure to liability. As Mr. Hogan has been included on these exchanges (and he expressly represents Mr. Farkas), he certainly can read and appreciate the matters set forth including, but not limited to, those relating to Mr. Farkas.

Until and unless there is absolute certainty regarding no violation of the Rules, confidences and liability, my answers and responses will be the same – as it should be by all members of the Bar.

Respectfully,

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 3:17 PM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano; 'Bart Larsen'; 'Ken Hogan'
**Subject:** RE: TGC Farkas Funding, LLC

As I asked for an unequivocal response if you are refusing to attend the duly noticed deposition, and you have not indicated that you are refusing, we will expect your attendance on Feb 12.

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

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**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 3:14 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Bart Larsen' <blarsen@shea.law>; 'Ken Hogan' <ken@h2legal.com>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

Ms Turner

There is no "game playing" as you assert. As I indicated in my last communication to you, I was contacted by a Mr. Hogan while traveling to a doctor's appointment (such contact was made AFTER the sending of my letter this morning). Upon my return from the doctor's appointment, I prepared and sent a response to your communication. Those are the facts and there is no gamesmanship.

As for attending any deposition, my articulated positions are not "deflection" as you proclaim, but substantive concerns and issues that warrant judicial attention and direction to prevent any violations of the Rules or the exposure to professional liability for breaching confidences. It is unfortunate that you refuse to appreciate such and, worse, that you continue to provide unsolicited legal advice to support your demands and aggressive threats.

You included you former partner Mr. Hogan on this email, so I will include him as well. In terms of Mr. Larsen, he is included as counsel, but I will continue to respond on my behalf.

All rights reserved, none waived, including the right to fees and costs.

Respectfully,

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 2:58 PM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano; 'Bart Larsen'; Ken Hogan
**Subject:** RE: TGC Farkas Funding, LLC

Mr. Nahabedian,

I see you are cc'ing an attorney, Bart Larsen. Is Mr. Larsen your counsel? If so, then we can conduct all further communications without your involvement.

If Mr. Larsen is counsel, he can respond. Otherwise, we ask you to respond without ambiguity or deflection:
**Are you refusing to attend your duly noticed deposition scheduled for February 12, 2021?** We are on a short timetable and need to know your intentions.

With respect to your deflection: Your accusations of a conflict of interest against me are without any factual or legal basis. I have represented, and continue to represent, TGC Farkas Funding, LLC.
Earlier this afternoon, you misrepresented that you did not know who was representing Mr. Farkas when you had actually been contacted by Mr. Hogan by that point in time. So, I am really confused what game you are playing. Neither TGC Farkas Funding, LLC nor Matthew Farkas are directing you not to attend the duly-noticed deposition, nor are either claiming your communications with Matthew Farkas were privileged.

We are entitled to your testimony regarding the facts and circumstances surrounding your retention and actions, purportedly on behalf of TGC Farkas Funding, LLC.

Again, all rights and remedies are expressly reserved, including those rights and remedies under NRCP 45 (30 and 37 as well), including appropriate sanctions for all fees and costs being incurred to address any refusal to comply with a duly-issued

and noticed subpoena. There is no rule that has an application that would excuse your attendance.

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

---

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 2:36 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>; 'Bart Larsen' <blarsen@shea.law>
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

As I was driving to a doctor's appointment, I was contacted by a Mr. Ken Hogan who stated that he was going to be representing Mr. Farkas. That contact, however, does not change or eliminate the substantive matters contained in my correspondence. Moreover, your threats and posture are becoming quite alarming and unfortunate given the facts and circumstances expressed in my communications. Certainly you, as a member of the Bar, are not encouraging and demanding professional violations of the Rules, as well as breaches to the rights/interests of former clients. Again, your unsolicited legal advice and positions have been provided without any support. I will not succumb to your pressure without the matter being decided by the court in conformity of the Rules.

Additionally, as I remain concerned about your own conflict, it appears that the court's guidance is warranted and needed to resolve the matter.

Respectfully,

Raffi A Nahabedian

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**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 2:15 PM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano
**Subject:** RE: TGC Farkas Funding, LLC

Mr. Nahabedian,

We are informed you have spoken to Mr. Farkas' personal counsel. No one acting on Mr. Farkas' or TGC Farkas' behalf is directing you not to testify on the grounds of any purported privilege. If you refuse to attend the duly noticed and served deposition subpoena, we reserve all rights under NRCP 45(e).

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

---

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Sent:** Tuesday, February 2, 2021 12:37 PM
**To:** Erika Turner <eturner@Gtg.legal>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
**Subject:** RE: TGC Farkas Funding, LLC

Ms. Turner

Given your email, I assume you read my letter to Mr. Farkas. Therein you will see that I have no idea as to who is representing Mr. Farkas; as such, it is and was impossible to ascertain who I was to coordinate any communication with him this morning relating to your subpoena.

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Upon learning of the amendment, I immediately terminated my involvement in this matter. I have never represented Mr. Farkas in his individual capacity. Nevertheless, it is conceivable and reasonable that Mr. Farkas expected his communications with me to be and remain confidential. Such expectations and beliefs, whether right or wrong, valid or accurate are not irrelevant and trifling, and must substantively be considered and appreciated by counsel. Indeed, as an attorney, I am subject to the Rules applicable to the practice of law in Nevada, including NRPC 1.6, which requires that I not reveal confidential information without informed consent. Furthermore, the ABA Standing Committee on Ethics and Professional Responsibility's Formal Opinion 473 suggests that an attorney has an obligation to request client permission before disclosing client information in response to a subpoena. Out of an abundance of caution and necessity, I reached out to Mr. Farkas after receiving your subpoena to inquire as to his position with respect to my response to the subpoena.

Mr. Farkas's position on the matter remains unclear. In fact, your email expressly reflects that you are serving as his counsel and, as such, I cannot learn of or be informed of his position (which seems/appears to give rise to substantive conflict issues). Accordingly, absent written and full consent from Mr. Farkas, coupled with an order from the court compelling my testimony and the parameters thereof, I cannot provide testimony regarding my involvement in this matter in response to your subpoena. While you may not like this reality, it is real since I believe that providing testimony would breach or expose me to a breach of my ethical obligations as an attorney; if would also expose me to potential professional liability.

Inasmuch as you have provided unsolicited legal advice and opinion, I cannot and will not accept such without a court order confirming your unsolicited positions (as valid and accurate), as well as a consideration of my compliance with my ethical obligations under the Rules (as deemed appropriate by the State Bar of Nevada). Again, this is a reality that will not escape your unsolicited legal proclamations.

Finally, to be clear, I have never claimed to control any privilege held by either Mr. Farkas or the LLC. I am simply trying to comply with my ethical obligations and avoid exposure. Despite your expressed certainty of the information contained in your email below, I do not believe the issue to be as straight forward as you proclaim based on the facts and circumstances presented. If you wish to provide any legal authority to support your position, I will consider it and respond, as I am certain the court will need to be included in this matter.

Respectfully,

Raffi A Nahabedian

---

**From:** Erika Turner [mailto:eturner@Gtg.legal]
**Sent:** Tuesday, February 02, 2021 9:42 AM
**To:** Raffi A Nahabedian
**Cc:** Dylan Ciciliano
**Subject:** TGC Farkas Funding, LLC

Mr. Nahabedian,

You are directed to STOP communicating with Matthew Farkas, the former control person and current member of TGC Farkas Funding, LLC regarding your purported retention on behalf of TGC Farkas Funding, LLC. The company is represented by counsel, as you well know. For the avoidance of doubt, there is no privilege that can be asserted over your communications with TGC Farkas Funding, LLC as the company controls the privilege, not you.

You have the option of attending the deposition subject of your subpoena in person or via Zoom.

Erika

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
eturner@gtg.legal

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

www.gtg.legal

**From:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Date:** February 2, 2021 at 8:42:56 AM PST
**To:** Matthew Farkas <matthewfarkas70@gmail.com>
**Cc:** Raffi A Nahabedian <raffi@nahabedianlaw.com>
**Subject: For Your/Your Attorney's Immediate Attention**

Mr. Farkas

Good morning.

Please see the attached and provide to your attorney.

Time is of the essence, so please do not delay.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Raffi A Nahabedian [raffi@nahabedianlaw.com]
**Sent:** Monday, February 08, 2021 3:57 PM
**To:** 'Raffi A Nahabedian'; 'Jay Bloom'
**Subject:** RE: confidential communication

**Importance:** High

Mr. Bloom

Good afternoon.

As a follow up to my email below, please confirm that you have consulted with counsel and, based on our discussion, are instructing me to not disclose confidential communications. In this regard, please have your attorney prepare a letter that states that you have been notified of my concern and my statement that you are the holder of the privilege. This letter must reflect your signature to verify that you have been advised of and are aware of your rights, and that you are either waiving or enforcing your rights.

Additionally, it is critical to note that there was a discussion that was not exclusive to us, meaning that other persons (third parties) were on the telephone call or communication. In this regard, it is critical to ascertain your position regarding confidences and the maintenance of the privilege. This too must be set forth in writing to prevent any issues. If issues arise, then an objection will be made on the record and the Court, in conformity with the Rules and State Bar, must issue an order upon full briefing. If you disagree with the order, then it is understood that you will file an appeal.

Thank you and please confirm receipt of this email. Again, please confirm that you have informed your attorney and have been provided legal advice and counsel in this regard.

Respectfully,
Raffi A Nahabedian

-----Original Message-----
From: Raffi A Nahabedian [mailto:raffi@nahabedianlaw.com]
Sent: Tuesday, February 02, 2021 4:51 PM
To: 'Jay Bloom'
Cc: 'Raffi A Nahabedian'
Subject: confidential communication

Mr. Bloom

On or about January 4, 2021, you contacted me to ask if I would represent your brother-in-law, Matthew Farkas. I agreed to represent him in a limited capacity and emailed a retainer agreement and a Scope of Representation/Conflict letter for him to sign as he was the apparent manager of a company, TGC/Farkas Funding, LLC. You are aware of these items. As my services were very limited, I was not involved in and did not participate in any settlement negotiations or the preparation of any settlement documents. My services as understood by you and Mr. Farkas were merely to prepare a substitution of attorney based on Mr. Farkas' retention of my services, provide Garman Turner Gordon a letter of termination prepared/signed by Mr. Farkas, and to file a dismissal; nothing more.

As your attorneys in the underlying matter are aware (and may have informed you of), the law firm of Garman Turner Gordon has issued a subpoena for me to testify. As there are issues relating to the Rules and confidentiality from various perspectives, I contacted the State Bar of Nevada to speak with State Bar Counsel. During the discussion, it was confirmed and stated that communications with you, only, as you are a current client (in a comple

unrelated matter) would and should be considered confidential and not subject to disclosure without your full written consent and/or judicial order.

Given the above, I am informing you of my intention to comply with Rules and the information as provided by State Bar Counsel. Unless instructed otherwise in a writing signed by you or via court order, I am constrained.
I have expressed a similar position to counsel who issued the subpoena, along with issues relating to a possible conflict of interest.

Should you have any questions, please contact me to discuss.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Jay Bloom [jbloom@lvem.com]
**Sent:** Monday, February 08, 2021 4:56 PM
**To:** R. A. Nahabedian, Esq.
**Cc:** Jason Maier
**Subject:** Re: confidential communication

Dear Mr. Nahabedian,

This email is to confirm, after discussing the issue with my counsel, that I will not be waving privilege, with regard to any discussion we had, be they oral or in writing.

This is inclusive of all discussions we had directly, and to the full extent applicable, discussions we had with other persons in situations under which the privilege might be applicable as well.

I will ask counsel to prepare a letter reflecting this directive.

Thank you,

**Jay Bloom**
Leading Ventures and Enterprise Matching
m 702.423.0500 | f 702.974.0284
Jbloom@lvem.com | www.LVEM.com

**Please consider the environment**



Sent from my iPhone

On Feb 8, 2021, at 3:57 PM, Raffi A Nahabedian <raffi@nahabedianlaw.com> wrote:

> Mr. Bloom
>
> Good afternoon.
>
> As a follow up to my email below, please confirm that you have consulted with counsel and, based on our discussion, are instructing me to not disclose confidential communications. In this regard, please have your attorney prepare a letter that states that you have been notified of my concern and my statement that you are the holder of the privilege. This letter must reflect your signature to verify that you have been advised of and are aware of your rights, and that you are either waiving or enforcing your rights.

Additionally, it is critical to note that there was a discussion that was not exclusive to us, meaning that other persons (third parties) were on the telephone call or communication. In this regard, it is critical to ascertain your position regarding confidences and the maintenance of the privilege. This too must be set forth in writing to prevent any issues. If issues arise, then an objection will be made on the record and the Court, in conformity with the Rules and State Bar, must issue an order upon full briefing. If you disagree with the order, then it is understood that you will file an appeal.

Thank you and please confirm receipt of this email. Again, please confirm that you have informed your attorney and have been provided legal advice and counsel in this regard.

Respectfully,
Raffi A Nahabedian

-----Original Message-----
From: Raffi A Nahabedian [mailto:raffi@nahabedianlaw.com]
Sent: Tuesday, February 02, 2021 4:51 PM
To: 'Jay Bloom'
Cc: 'Raffi A Nahabedian'
Subject: confidential communication

Mr. Bloom

On or about January 4, 2021, you contacted me to ask if I would represent your brother-in-law, Matthew Farkas. I agreed to represent him in a limited capacity and emailed a retainer agreement and a Scope of Representation/Conflict letter for him to sign as he was the apparent manager of a company, TGC/Farkas Funding, LLC. You are aware of these items. As my services were very limited, I was not involved in and did not participate in any settlement negotiations or the preparation of any settlement documents. My services as understood by you and Mr. Farkas were merely to prepare a substitution of attorney based on Mr. Farkas' retention of my services, provide Garman Turner Gordon a letter of termination prepared/signed by Mr. Farkas, and to file a dismissal; nothing more.

As your attorneys in the underlying matter are aware (and may have informed you of), the law firm of Garman Turner Gordon has issued a subpoena for me to testify. As there are issues relating to the Rules and confidentiality from various perspectives, I contacted the State Bar of Nevada to speak with State Bar Counsel. During the discussion, it was confirmed and stated that communications with you, only, as you are a current client (in a completely unrelated matter) would and should be considered confidential and not subject to disclosure without your full written consent and/or judicial order.

Given the above, I am informing you of my intention to comply with Rules and the information as provided by State Bar Counsel. Unless instructed

otherwise in a writing signed by you or via court order, I am constrained. I have expressed a similar position to counsel who issued the subpoena, along with issues relating to a possible conflict of interest.

Should you have any questions, please contact me to discuss.

Respectfully,

Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Raffi A Nahabedian [raffi@nahabedianlaw.com]
**Sent:** Tuesday, February 09, 2021 8:48 AM
**To:** 'Ken Hogan'; 'Dylan Ciciliano'; 'Jason Maier'; 'Joseph Gutierrez'; 'Erika Turner'
**Cc:** 'Raffi A Nahabedian'; 'Bart Larsen'
**Subject:** deposition

**Importance:** High

Good morning.

In discussing the upcoming deposition with Mr. Larsen and the morass of issues relating thereto, it has come to my attention that he is unavailable in the morning of February 12, 2021. As such, we will need to move the deposition to the afternoon. Please confirm (and indicate) that either 1 p.m. or 2 p.m., February 12, will work with your calendars so we may schedule accordingly.

Respectfully,
Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Erika Turner [eturner@Gtg.legal]
**Sent:** Tuesday, February 09, 2021 9:03 AM
**To:** R. A. Nahabedian, Esq.; 'Ken Hogan'; Dylan Ciciliano; 'Jason Maier'; 'Joseph Gutierrez'
**Cc:** 'Bart Larsen'
**Subject:** RE: deposition- TGC Farkas adv First 100

Mr. Nahabedian,
I note as an initial matter that the deposition subpoena has been duly served for over a week. You knew the date when you hired counsel; thus, if there was any limitation in Mr. Larsen's availability, he should have declined the representation. Notwithstanding, as a professional courtesy to Mr. Larsen, we will agree to move the deposition to 1 pm; however, if we cannot finish the examination on Friday, then we may need to go to a second day.

Erika Pike Turner
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

-----Original Message-----
From: Raffi A Nahabedian <raffi@nahabedianlaw.com>
Sent: Tuesday, February 9, 2021 8:48 AM
To: 'Ken Hogan' <ken@h2legal.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; 'Jason Maier' <jrm@mgalaw.com>; 'Joseph Gutierrez' <jag@mgalaw.com>; Erika Turner <eturner@Gtg.legal>
Cc: 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>; 'Bart Larsen' <blarsen@shea.law>
Subject: deposition
Importance: High

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Respectfully,
Raffi A Nahabedian



PLTF_484

RAN0359
SA0935

**Raffi A Nahabedian**

**From:** Raffi A Nahabedian [raffi@nahabedianlaw.com]
**Sent:** Tuesday, February 09, 2021 9:18 AM
**To:** 'Erika Turner'; 'Ken Hogan'; 'Dylan Ciciliano'; 'Jason Maier'; 'Joseph Gutierrez'
**Cc:** 'Bart Larsen'; 'Raffi A Nahabedian'
**Subject:** RE: deposition- TGC Farkas adv First 100

To the remaining counsel included on this email, please confirm your availability at 1 p.m., February 12, for the deposition. Indeed, the courtesy is greatly appreciated given my recent request to have Mr. Larsen involved in the deposition.

All rights and obligations reserved and none waived.

Respectfully,

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From: Erika Turner [mailto:eturner@Gtg.legal]
Sent: Tuesday, February 09, 2021 9:03 AM
To: Raffi A Nahabedian; 'Ken Hogan'; Dylan Ciciliano; 'Jason Maier'; 'Joseph Gutierrez'
Cc: 'Bart Larsen'
Subject: RE: deposition- TGC Farkas adv First 100

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Erika Pike Turner
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
E eturner@gtg.legal

-----Original Message-----
From: Raffi A Nahabedian <raffi@nahabedianlaw.com>
Sent: Tuesday, February 9, 2021 8:48 AM
To: 'Ken Hogan' <ken@h2legal.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; 'Jason Maier' <jrm@mgalaw.com>; 'Joseph Gutierrez' <jag@mgalaw.com>; Erika Turner <eturner@Gtg.legal>
Cc: 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>; 'Bart Larsen' <blarsen@shea.law>
Subject: deposition
Importance: High

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**From:** Ken Hogan [ken@h2legal.com]
**Sent:** Tuesday, February 09, 2021 9:40 AM
**To:** R. A. Nahabedian, Esq.; 'Erika Turner'; 'Dylan Ciciliano'; 'Jason Maier'; 'Joseph Gutierrez'
**Cc:** 'Bart Larsen'
**Subject:** RE: deposition- TGC Farkas adv First 100

Works for me, thanks.

-----Original Message-----
From: Raffi A Nahabedian <raffi@nahabedianlaw.com>
Sent: Tuesday, February 9, 2021 9:18 AM
To: 'Erika Turner' <eturner@Gtg.legal>; 'Ken Hogan' <ken@h2legal.com>; 'Dylan Ciciliano' <dciciliano@Gtg.legal>; 'Jason Maier' <jrm@mgalaw.com>; 'Joseph Gutierrez' <jag@mgalaw.com>
Cc: 'Bart Larsen' <blarsen@shea.law>; 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>
Subject: RE: deposition- TGC Farkas adv First 100

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Sent: Tuesday, February 09, 2021 9:03 AM
To: Raffi A Nahabedian; 'Ken Hogan'; Dylan Ciciliano; 'Jason Maier'; 'Joseph Gutierrez'
Cc: 'Bart Larsen'
Subject: RE: deposition- TGC Farkas adv First 100

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Erika Pike Turner
Partner

GARMAN | TURNER | GORDON

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Sent: Tuesday, February 9, 2021 8:48 AM
To: 'Ken Hogan' <ken@h2legal.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; 'Jason Maier' <jrm@mgalaw.com>; 'Joseph Gutierrez' <jag@mgalaw.com>; Erika Turner <eturner@Gtg.le

Cc: 'Raffi A Nahabedian' <raffi@nahabedianlaw.com>; 'Bart Larsen' <blarsen@shea.law>
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Respectfully,
Raffi A Nahabedian

**Raffi A Nahabedian**

**From:** Max Erwin [MErwin@Gtg.legal]
**Sent:** Thursday, February 11, 2021 12:08 PM
**To:** R. A. Nahabedian, Esq.; 'Bart Larsen'
**Cc:** Erika Turner
**Subject:** TGC/Farkas Funding, LLC v. First 100, LLC et al, A-20-822273-C

Good afternoon,

Please see below the zoom information for tomorrow's Deposition.

All participants appearing remotely will need to connect to the link below.

https://zoom.us/j/96573672950

Thank you.

**Max Erwin**
Legal Assistant

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

website | vCard | map | email

**Raffi A Nahabedian**

**From:** Dylan Ciciliano [dciciliano@Gtg.legal]
**Sent:** Friday, February 12, 2021 11:06 AM
**To:** Ken Hogan; R. A. Nahabedian, Esq.; 'Bart Larsen'
**Cc:** Max Erwin; Erika Turner
**Subject:** FW: TGC/Farkas Funding, LLC v. First 100, LLC et al, A-20-822273-C

Gentleman,

Please see below the zoom information for today's deposition

https://zoom.us/j/96573672950

Thank you.

**Dylan T. Ciciliano, Esq.**

Attorney

Phone: 725 777 3000 | Fax: 725 777 3112

GARMAN | TURNER | GORDON
7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

Visit us online at www.gtg.legal

**Raffi A Nahabedian**

**From:** R. A. Nahabedian, Esq. [raffi@nahabedianlaw.com]
**Sent:** Friday, February 12, 2021 11:12 AM
**To:** Dylan Ciciliano
**Cc:** R. A. Nahabedian, Esq.
**Subject:** RE: TGC/Farkas Funding, LLC v. First 100, LLC et al, A-20-822273-C

Is the depo not open to all? It appears that Mr. Gutierrez and Mr. Maier were not included in the email.

Sent from my Verizon, Samsung Galaxy smartphone. So, if there are any errors or grammatical issues, I will simply blame it on the PDA embedded in my cellphone. If that's not good enough, remember that life is too short!

-------- Original message --------
From: Dylan Ciciliano <dciciliano@Gtg.legal>
Date: 2/12/21 11:06 AM (GMT-08:00)
To: Ken Hogan <ken@h2legal.com>, "R. A. Nahabedian, Esq." <raffi@nahabedianlaw.com>, 'Bart Larsen' <blarsen@shea.law>
Cc: Max Erwin <MErwin@Gtg.legal>, Erika Turner <eturner@Gtg.legal>
Subject: FW: TGC/Farkas Funding, LLC v. First 100, LLC et al, A-20-822273-C

Gentleman,

Please see below the zoom information for today's deposition

https://zoom.us/j/96573672950

Thank you.

**Dylan T. Ciciliano, Esq.**
Attorney

Phone: 725 777 3000 | Fax: 725 777 3112
GARMAN | TURNER | GORDON
7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119
Visit us online at www.gtg.legal

From: Joseph Gutierrez [mailto:jag@mgalaw.com]
Sent: Monday, January 11, 2021 12:56 PM
To: raffi@nahabedianlaw.com
Subject: FW: Emailing: Supplemental Declaration of Adam Flatto

Joseph A. Gutierrez
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jag@mgalaw.com | www.mgalaw.com

-----Original Message-----
From: Joseph Gutierrez
Sent: Monday, January 11, 2021 12:55 PM
To: 'Jay Bloom' <Jbloom@f100llc.com>; Jason Maier <jrm@mgalaw.com>
Subject: Emailing: Supplemental Declaration of Adam Flatto

Your message is ready to be sent with the following file or link attachments:

Supplemental Declaration of Adam Flatto

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

**SUPPLEMENTAL DECLARATION OF ADAM FLATTO**

I, Adam Flatto ("Declarant"), declare as follows:

1. I am the manager of TGC Investor 100, LLC, 50% member of TGC/Farkas Funding, LLC ("Claimant"). I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

2. Attached hereto is a true and correct copy of Claimant's Limited Liability Agreement (the "Operating Agreement").

3. As explicitly set forth in the Operating Agreement, TGC/Farkas Funding, LLC ("Claimant") was formed as an investment vehicle relating to the $1 million capital contribution to First 100, LLC, and Matthew Farkas' 2% interest vested in First 100, LLC. *See* the Recitals.

4. Matthew Farkas was, and still is, the "Administrative Member" of Claimant, as that term is defined in the Operating Agreement. See Sect. 4.1.

5. Under Section 3.4 of the Operating Agreement, the Administrative Member can only take action to bind Claimant after consultation with, and upon the consent of, all Claimant members.

6. TGC Investor 100, LLC did not consent to any redemption of the 3% membership interest in First 100, LLC. The request for redemption appeared to reflect an interest in an entity which was unknown to me, resulting in questions as to what interest was being redeemed and whether there was a contention Claimant's interest had been converted into ownership in another entity. The request for redemption is one of the reasons for Claimant seeking to inspect the business records of both entities.

7. Claimant did not receive any communication disputing its membership had been effectuated from First 100, LLC until after a request for records was provided to counsel. As previously provided, a schedule K-1 tax form reflecting 3% membership interest was provided to reflect the membership interest in federal tax filings.

Garman Turner Gordon LLP
Attorneys At Law
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

8. Claimant did not receive any distribution relating to the 3% membership interest in First 100, LLC, nor any notice of dissolution, merger or otherwise that would adversely impact such interest.

9. The Operating Agreement for 1st One Hundred Holdings, LLC reflects a 1.5% membership interest in 1st One Hundred Holdings, LLC held by Claimant.

10. Claimant has not ever received a fully executed copy of the Redemption Agreement indicating that it was signed by Mr. Farkas on behalf of Claimant.

11. Claimant has not received any distribution from 1st One Hundred Holdings, LLC, and there has been no Certificate of Dissolution, accounting or other information provided from 1st One Hundred Holdings, LLC since the April 2017 Redemption Agreement.

Dated this 13th day of August, 2020.

Adam Flatto

Garman Turner Gordon LLP
Attorneys At Law
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

# Exhibit 1

# LIMITED LIABILITY COMPANY AGREEMENT

# OF

# TGC/FARKAS FUNDING LLC

## A Delaware Limited Liability Company

**Dated as of October 21, 2013**

ARTICLE I

DEFINITIONS



ARTICLE II

GENERAL PROVISIONS



ARTICLE III

MEMBERS



ARTICLE IV

MANAGEMENT

ARTICLE V

CAPITAL STRUCTURE AND CONTRIBUTIONS



ARTICLE VI

ALLOCATIONS AND DISTRIBUTIONS



ARTICLE VII

BOOKS AND REPORTS



ARTICLE VIII

TRANSFERS OF COMMON INTERESTS; PARTIAL REDEMPTION



ARTICLE IX

DISSOLUTION OF THE COMPANY

ARTICLE X

MISCELLANEOUS

LIMITED LIABILITY COMPANY AGREEMENT
OF TGC/FARKAS FUNDING LLC

AGREEMENT OF LIMITED LIABILITY COMPANY of TGC/FARKAS FUNDING LLC (the "Company"), dated as of October 21, 2013 (the "Effective Date"), among the persons listed on Schedule A attached hereto (individually, a "Member" and, collectively, the "Members").

RECITALS

WHEREAS, the Members have formed the Company in accordance with the provisions of the Delaware Limited Liability Company Act, as amended from time to time (the "Act"), and desire to enter into a written agreement pursuant to the Act governing the affairs of the Company and the conduct of its business;

WHEREAS, Matthew Farkas ("Farkas") has been granted a two percent (2%) membership interest (the "2% Interest") in First 100, LLC, a Nevada limited liability company (the "Investment Vehicle") 1.5% of which shall be subject to vesting over a period of three (3) years, as evidenced by the vesting letter attached as Exhibit A hereto;

WHEREAS, as of the date hereof, Farkas has contributed all of his right, title and interest in and to the 2% Interest to the Company in exchange for a fifty percent (50%) membership interest in the Company;

WHEREAS, TGC 100 Investor, LLC, a Delaware limited liability company ("TGC Investor"), has the right to purchase a one percent (1%) Class A Voting Membership Interest (the "1% Class A Interest") in the Investment Vehicle and has contributed this right to the Company, together with a capital contribution in the amount of the 1% Class A Interest purchase price, in exchange for a fifty percent (50%) membership interest in the Company; and

WHEREAS, the Members party hereto desire to enter into this Agreement in order to document their business and economic relationship.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I

## DEFINITIONS

Section 1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Act. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, the terms set forth below shall have the following meanings:

"1% Class A Interests" has the meaning set forth in the Recitals hereof.

"2% Interest" has the meaning set forth in the Recitals hereof.

"Act" has the meaning set forth in the Recitals hereof.

"Agreement" shall mean this Agreement of Limited Liability Company of TGC/Farkas Funding LLC.

"Administrative Member" has the meaning set forth in Section 4.1(c) hereof.

"Business Days" shall mean any day on which commercial banking institutions in the City of New York are not authorized or required to close.

"Capital Commitment" shall mean, for any Member, the amounts set forth opposite such Member's name on Schedule B hereto, as the same may be amended from time to time in accordance with this Agreement.

"Capital Contribution" shall mean, for any Member, at any time, the amount of capital actually contributed to the Company by such Member on or prior to such time which has not been paid back to such Member.

"Certificate of Formation" has the meaning set forth in Section 2.1 hereof.

"Code" has the meaning set forth in Section 6.44 hereof.

"Common Interests" has the meaning set forth in Section 5.1 hereof.

"Company" has the meaning set forth in the Introductory Paragraph hereof.

"Consent to Assignment" has the meaning set forth in Section 5.5 hereof.

"Covered Persons" has the meaning set forth in Section 4.3 hereof.

"Distributable Cash" shall mean, unless otherwise expressly stated herein, the cash proceeds from the operations of the Company, net of all related costs and expenses.

"Effective Date" has the meaning set forth in the Introductory Paragraph hereof.

"Event of Termination" has the meaning set forth in Section 9.1.

"Farkas" has the meaning set forth in the Recitals hereof.

"Fiscal Year" has the meaning set forth in Section 2.9.

"Initial Capital Contribution" has the meaning set forth in Section 5.2.

"Investment Vehicle" has the meaning set forth in the Recitals.

"Member" has the meaning set forth in the Introductory Paragraph.

"Membership Interest" shall mean each Member's ownership interest in the Company.

"Membership Interest Percentage" has the meaning set forth in Section 3.1(a) hereof.

"Person" means any individual, corporation, general or limited partnership, limited liability company, limited liability partnership, joint venture, estate, trust, joint stock company, unincorporated association, any other entity, any governmental authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Preferred Rate" shall mean shall mean a sum equal to three percent (3.0%) per annum, determined on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days in the period for which the Preferred Return is being determined.

"Preferred Return" shall mean, commencing on the date hereof and thereafter, an amount required for TGC Investor to receive a return on its Capital Account balance as of the first day of the relevant Fiscal Period equal to the Preferred Rate, compounded annually, which amount shall accumulate to the extent not paid pursuant to Section 6.1(b).

"Secretary of State" has the meaning set forth in Section 2.1 hereof.

"TGC Investor" has the meaning set forth in the Recitals hereof.

"Transfer" has the meaning set forth in Section 8.1.

## ARTICLE II

## GENERAL PROVISIONS

Section 2.1 Formation. The Members have formed the Company as a limited liability company pursuant to the Act. A Certificate of Formation described in Section 18-201 of the Act (the "Certificate of Formation") was filed with the Secretary of State of the State of Delaware (the "Secretary of State") on October 18, 2013 in conformity with the Act. Catherine Ledyard, as an authorized person within the meaning of the Act, was expressly authorized to execute and file the Certificate of Formation. The Administrative Member (as hereinafter defined), on behalf of the Company shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Delaware.

Section 2.2 Company Name. The name of the Company shall be "TGC/Farkas Funding LLC". The business of the Company may be conducted under such other names as the Members may from time to time determine, provided that the Company complies with all relevant state laws relating to the use of fictitious and assumed names.

Section 2.3 Place of Business; Principal Office. The principal and chief executive office of the Company shall be located at the offices of TGC Investor in New York, New York or such other place that the Members shall determine. The books and records of the Company shall be kept and maintained at the principal office of the Company.

Section 2.4 Purpose; Nature of Business Permitted; Powers. The Company is formed for the purpose of owning not less than a three percent (3.0%) membership interest in the Investment Vehicle, and to engage in any and all activities that may be necessary, incidental or advisable to the foregoing. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, insofar as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

Section 2.5 Business Transactions of a Member with the Company. In accordance with Section 18-107 of the Act, a Member may lend money to, borrow

money from, act as surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not a Member. The Company shall not lend money to, act as a surety, guarantor or endorser for, guarantee or assume on or more obligations of, or provide collateral for a Member.

Section 2.6 Company Property. No real or other property of the Company shall be deemed to be owned by a Member individually, but shall be owned by and title shall be vested solely in the Company. The Common Interests in the Company held by the Members shall constitute personal property of the Members.

Section 2.7 Term. The existence of the Company commenced on the date of the filing of the Certificate of Formation in the office of the Secretary of State of the State of Delaware in accordance with the Act, and, subject to the provisions of Article X hereof, the Company shall have perpetual life.

Section 2.8 No State Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture and that no Member be a partner or joint venturer of any other Member for any purposes other than applicable tax laws. This Agreement may not be construed to suggest otherwise.

Section 2.9 Fiscal Year. The fiscal year of the Company (the "Fiscal Year") for financial statement and federal income tax purposes shall be the calendar year. The Company shall have the same fiscal year for tax and accounting purposes.

Section 2.10 Tax Treatment. The Company shall be treated as a partnership for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes), and the Members and the Company shall timely make any and all necessary elections and filings for the Company to be treated as a partnership for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes).

Section 2.11 Registered Office and Agency. The address of the registered office of the Company in the State of Delaware is Corporation Services Company, 2711 Centerville Road, in the City of Wilmington, County of New Castle, State of Delaware 19808. Such office and such agent may be changed from time to time by the Members.

## ARTICLE III

## MEMBERS

Section 3.1 Members. The name, address and Membership Interest Percentage (as hereinafter defined) of each of the Members are set forth on Schedule A hereto, which shall be amended from time to time to reflect the admission of new Members, additional capital contributions of Members or the Transfer of Common Interests, each, to the extent permitted by the terms of this Agreement. As of the date hereof, each Member's membership interest in the Company (its "Membership Interest Percentage") is as follows:

| Member | Membership Interest Percentage |
|---|---|
| TGC Investor | 50.00% |
| Farkas | 50.00% |
| TOTAL: | 100.00% |

Section 3.2 Admission of New Members. A Person shall be admitted as a Member of the Company only upon (i) the prior unanimous written approval of the Members and (ii) receipt by the Company of a counterpart to this Agreement, executed by such Person, agreeing to be bound by the terms of this Agreement.

Section 3.3 No Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

Section 3.4 Actions by the Members; Meetings; Quorum.

(a) The Administrative Member may take any action without a meeting; however, the Administrative Member agrees that all actions shall be taken after consultation with, and upon the consent of, all Members and the Administrative Member agrees to file a copy of any action taken by the Administrative Member with the records of the Company.

(b) Meetings of the holders of the Common Interests may be called at any time by the Members. Decisions of the Members shall be made by the unanimous vote of the Members.

Section 3.5 Power to Bind the Company. No Member (acting in its capacity as such) other than the Administrative Member shall have any authority to bind the Company to any third party with respect to any matter except pursuant to a resolution expressly authorizing such matter and authorizing such Member to bind the Company with respect thereto, which resolution is duly adopted by the affirmative vote of all Members.

## ARTICLE IV

## MANAGEMENT

Section 4.1 Management of the Company.

(a) The Members hereto agree that Farkas shall be the administrative member of the Company (the "Administrative Member") and shall be responsible for the day-to-day management of the Company. The Administrative Member shall be a "manager" of the Company as such term is defined in the Act and shall be responsible for making all business and managerial decisions for the Company.

(b) Neither this Agreement nor any term or provision hereof may be amended, waived, modified or supplemented orally, but only by a written instrument signed by all of the Members hereto.

Section 4.2 Exculpation. Neither the Administrative Member nor the Members shall be liable to the Company or to any other Person for any action taken or omitted to be taken by such party or for any action taken or omitted to be taken by any other Person with respect to the Company, except to the extent that any such act or omission was attributable to such Person's willful misconduct, fraud or gross negligence. Without limiting the generality of the foregoing, neither the Administrative Member nor the Members shall be liable to the Company for honest mistakes of judgment or for losses or liabilities due to such mistakes or to the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company.

Section 4.3 Indemnification.

(a) The Company shall indemnify to the fullest extent permitted by law each of Administrative Member and each Member and each of their respective employees or agents of each of them (each, a "Covered Person") from and against all costs and expenses (including attorneys' fees and disbursements), judgments, fines, settlements, claims and other liabilities incurred by or imposed upon such Covered Person in connection with, or resulting from, investigating,

preparing or defending any action, suit or proceeding, whether civil, criminal, administrative, investigative, legislative or otherwise (or any appeal therein), to which such Covered Person may be made a party or become otherwise involved or with which such Covered Person may be threatened, in each case by reason of, or in connection with, such Covered Person's being or having been associated with the Company, or having acted at the direction of the Company as a director, officer, employee, partner or agent of an entity in which the Company has invested, directly or indirectly, or by reason of any action or alleged action, omission or alleged omission by such Covered Person in any such capacity, provided that such Covered Person is not ultimately adjudged to have engaged in willful misconduct, fraud or gross negligence.

(b) The Company may purchase and maintain liability insurance on behalf of any Covered Person against any liability asserted against a Covered Person and incurred by him, her or it arising out of the Company, whether or not the Company could indemnify such Covered Person against the liability under the provisions of this Section 4.3.

(c) The Company shall pay the expenses incurred by any such Covered Person in investigating, preparing or defending a civil or criminal action, suit or proceeding, in advance of the final disposition thereof, upon receipt of an undertaking by or on behalf of such Covered Person to repay such amount if there is a final adjudication or determination that he, she or it is not entitled to indemnification as provided herein.

(d) None of the provisions of this Section 4.3 shall be deemed to create or grant any rights in favor of any third party, including, without limitation, any right of subrogation in favor of any insurer or surety. The rights of indemnification granted hereunder shall survive the dissolution, winding up and termination of the Company.

(e) The right of any Covered Person to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Covered Person's successors, assigns and legal representatives.

(f) All judgments against the Company or a Covered Person, in respect of which such Covered Person is entitled to indemnification, shall first be satisfied from Company assets before the Covered Person is responsible therefor.

Section 4.4 Reliance by Third Parties. Persons dealing with the Company are entitled to rely conclusively upon the power and authority of the Administrative Member.

Section 4.5 Officers and Related Persons. By resolution of the Members, Farkas is hereby appointed Chief Executive Officer of the Company (the "CEO"). The CEO shall have the authority to appoint and terminate officers of the Company, retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such officers, employees, agents and consultants as the CEO deems appropriate in each case to operate in accordance with the Approved Budget or as otherwise agreed by the Members.

## ARTICLE V

## CAPITAL STRUCTURE AND CONTRIBUTIONS

Section 5.1 Capital Structure. The capital structure of the Company shall consist of one class of common interests ("Common Interests"). Each of the Common Interests shall be as set forth on Schedule A hereto, and shall have identical rights unless otherwise set forth herein.

Section 5.2 Capital Contributions. TGC Investor has contributed, as an initial capital contribution to the Company, all of its right to purchase the 1% Class A Interests and all of its right, title and interest in and to the amount of cash listed on Schedule A hereto (each, an "Initial Capital Contribution"). Farkas has contributed, as an initial contribution to the Company, his right to purchase the 2% Interest in the Investment Vehicle, which, for the purpose of this Agreement has the value set forth on Schedule A hereto. In exchange for the Initial Capital Contribution each Member is herewith receiving Common Interests in the Company in the amount set forth opposite the name of such Member on Schedule A hereto. Upon the satisfaction of the condition to effectiveness set forth in Section 5.5 hereof, the Administrative Members shall cause the Company to purchase the 1% Class A Interest with the cash contributed to the Company.

Section 5.3 Additional Capital Contributions. Other than as may be agreed by the Members, there shall be no additional contributions to the Company's capital.

Section 5.4 No Withdrawal Of Capital Contributions. Except upon the dissolution and liquidation of the Company as set forth in Article IX hereof, the Members shall not have the right to withdraw capital contributions.

Section 5.5 Condition to Effectiveness; Exclusive Investment Vehicle.

a. As a condition to the effectiveness of this Agreement, Farkas shall and shall cause the managing member of the Investment Vehicle to deliver to the Administrative Member that certain Consent to Admission of New Member in the form attached hereto as Exhibit B (the "Consent to Assignment"), pursuant to which the Company consents to the admission of the Company as a member as more particularly set forth therein.

b. The Members acknowledge and agree that 1.5% of the interest in the Investment Vehicle which is subject to vesting shall be allocable to Farkas and 1.5% of the interest in the Investment Vehicle which is not subject to vesting shall be allocable to TGC Investor. The Administrative Member shall cause the Investment Vehicle to properly identify the interests allocable to Farkas and TGC Investor on Schedule A to the Investment Vehicle operating agreement.

c. The Members acknowledge and agree that the Company shall be Farkas' exclusive vehicle for investments in the Investment Vehicle during the term of this Agreement.

Section 5.6 Maintenance of Capital Accounts. The Company shall establish and maintain capital accounts for the Common Interest Members in accordance Treasury Regulations Section 1.704-(b). The balance in each Member's capital account shall be increased by (x) the amount of each contribution made by such Member and (y) the distributive share of net profits of the Member and shall be decreased by (x) the amount of each distribution made to the Member and (y) the distributive share of net losses allocated to the Member.

## ARTICLE VI

## ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 Distributions. The Administrative Member shall determine the amount of Distributable Cash in compliance with the Act and the timing of all distributions to be made hereunder. All distributions of Distributable Cash prior to the liquidation of the Company shall be made in the following order and priority:

(a) first, one hundred percent (100%) to TGC Investor until TGC Investor shall have received a cumulative amount equal to the Preferred Return; and

(b) second, one hundred percent (100%) to TGC Investor until such time as TGC Investor shall have received a cumulative amount equal to the total amount of its unpaid Capital Contributions, from time to time; and

(c) third, one hundred percent (100%) to the Members on a pro rata basis in accordance with their respective Membership Interest Percentage.

Section 6.2 Allocations of Net Profits and Net Losses from Operations. For financial accounting and tax purposes, the Company's net profits or net losses shall be determined on an annual basis in accordance with the manner determined by the Administrative Member upon consultation with the Members, provided, however allocation of net profits and net losses shall comply with the provisions of Section 704 and the Treasury Regulations promulgated thereunder. In each year, the Company's net profits and net losses shall be allocated to the Members, pro rata, in accordance with their Membership Interest Percentage.

Section 6.3 No Right to Distributions. The Members shall not have the right to demand or receive distributions of any amount, except as expressly provided in this Article VI.

Section 6.4 Withholding. The Company is authorized to withhold from distributions to the Members, or with respect to allocations to the Members, and to pay over to a Federal, foreign, state or local government, any amounts required to be withheld pursuant to the Internal Revenue Code of 1986 (the "Code"), or any provisions of any other Federal, foreign, state or local law. Any amounts so withheld shall be treated as having been distributed to the Members pursuant to this Article VI for all purposes of this Agreement, and shall be offset against the current or next amounts otherwise distributable to the Members.

## ARTICLE VII

## BOOKS AND REPORTS

Section 7.1 Books and Records. The Company shall keep or cause to be kept at the office of the Company (or at such other place as the Board in its discretion shall determine) full and accurate books and records regarding the status of the business and financial condition of the Company and shall make the same available to the Member upon request, subject to the provisions of the Act.

Section 7.2 Form K-1. After the end of each Fiscal Year, the Administrative Member shall cause to be prepared and transmitted, as promptly as possible, and in any event within 90 days of the close of the Fiscal Year, a Federal income tax Form K-1 and any required similar state income tax form for the Member.

Section 7.3 Tax Matters Partner. The Administrative Member is hereby designated as the Company's "Tax Matters Partner" under Section 6231(a) (7) of the

Code, and shall have all the powers and responsibilities of such position as provided in the Code. The Tax Matters Partner is specifically directed and authorized to take whatever steps are necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under the Regulations issued under the Code. The Tax Matters Partner shall cause to be prepared and shall sign all tax returns of the Company, make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company and monitor any governmental tax authority in any audit that such authority may conduct of the company's books and records or other documents.

Section 7.4 Reports. The Administrative Member shall provide the Members with reports as follows:

(a) A quarterly report for each calendar quarter (other than the last calendar quarter of the Fiscal Year), certified by Administrative Member, to its actual knowledge, to be true, accurate and complete in all material respects, and submitted to the Members within twenty (20) days of the end of each such calendar quarter, which shall include an operating statement and report of financial condition of the Company for such quarter; and

(b) Annual financial statements in a format acceptable to the Members within ninety (90) days of the end of the Fiscal Year. The Members hereby agree to act reasonably in approving a Company accountant to provide auditing and tax services.

## ARTICLE VIII

## TRANSFERS OF COMMON INTERESTS; PARTIAL REDEMPTION

Section 8.1 Restriction on Transfer. No Member shall sell, convey, assign, transfer, pledge, grant a security interest in or otherwise dispose of (each a "Transfer") all or any part of its Common Interest, other than upon the prior unanimous written consent of the Members; provided, however, such Person to whom such Common Interests are Transferred shall be an assignee and shall have no right to participate in the Company's business and affairs unless and until such Person shall be admitted as a member of the Company upon (i) the prior unanimous written consent of the Members and (ii) receipt by the Company of a written agreement executed by the Person to whom such Common Interests are Transferred agreeing to be bound by the terms of this Agreement. All Transfers in violation of this Article VIII are null and void ab initio and of no force or effect.

Section 8.2 Permitted Transfers. Notwithstanding the foregoing, the consent of the Members shall not be required in connection with a transfer, in one or a series of transactions, of not more than forty-nine percent (49%) of a Member's membership interests in the Company provided that (i) any such Transfers are made by the ultimate beneficial owner of the membership interests to his spouse or a trust or other entity for estate planning purposes for the benefit of his spouse and (ii) any such transfer shall be permitted under the organizational documents of the Investment Vehicle.

## ARTICLE IX

## DISSOLUTION OF THE COMPANY

Section 9.1 Dissolution. The Company shall be dissolved upon the occurrence of either of the following events (an "Event of Termination"):

(a) TGC Investor and Farkas vote for dissolution; or

(b) the entry of a decree of judicial dissolution under the Act.

No other event, including the retirement, insolvency, liquidation, dissolution, insanity, expulsion, bankruptcy, death, incapacity or adjudication of incompetency of a Member, shall cause the Company to be dissolved; provided, however, that in the event of any occurrence resulting in the termination of the continued membership of the last remaining member of the Company, the Company shall be dissolved unless, within 90 days following such event, the personal representative of the last remaining member agrees in writing to continue the Company and to the admission of such personal representative (or any other Person designed by such personal representative) as a member of the Company, effective upon the event resulting in the termination of the continued membership of the last remaining member of the Company.

Section 9.2 Winding Up.

(a) In the event that an Event of Termination shall occur, then the Company shall be liquidated and its affairs shall be wound up by the Administrative Member(s) in accordance with the Act. All proceeds from such liquidation shall be distributed in accordance with the provisions of Law, and all Common Interests in the Company shall be cancelled.

(b) Upon the completion of the distribution of the winding up of the Company's affairs and Company's assets, the Company shall be terminated and

the Administrative Member shall cause the Company to execute and file a Certificate of Cancellation in accordance with the Act.

## ARTICLE X

## MISCELLANEOUS

Section 10.1 Amendment to the Agreement. Amendment to this Agreement and to the Certificate of Formation shall be effective only if approved in writing by TGC Investor and Farkas. An amendment shall become effective as of the date specified in the approval of such Members or as of the date of such approval.

Section 10.2 Successors; Counterparts. Subject to Article VIII, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors, or nominees or representatives, of the Members and (b) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

Section 10.3 Governing Law; Severability.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to the principles of conflicts of law. In particular, this Agreement shall be construed to the maximum extent possible to comply with all the terms and conditions of the Act. If it shall be determined by a court of competent jurisdiction that any provisions or wording of this Agreement shall be invalid or unenforceable under the Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provisions cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable terms or provisions. If it shall be determined by a court of competent jurisdiction that any provision relating to the distributions and allocations of the Company or to any expenses payable by the Company is invalid or unenforceable, this Agreement shall be construed or interpreted so as (a) to make it enforceable or valid and (b) to make the distributions and allocations as closely equivalent to those set forth in this Agreement as is permissible under applicable law.

(b) The Members agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or relating hereto shall be brought solely in the courts of the County of New York in the State of New York or the United States federal courts sitting in the Southern District of New York. The

parties hereto irrevocably waive any objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum.

Section 10.4 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope or intent of this Agreement or any provision hereof.

Section 10.5 Notices. All notices, requests and other communications to any Member shall be in writing (including electronic mail, facsimile or similar writing) and shall be given to the Members (and any other Person designated by such Members) at its address or electronic mail, facsimile number set forth in Schedule A hereto or such other address or electronic mail, facsimile number as the Member may hereafter specify for the purpose by notice. Each such notice, request or other communication shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this Section 10.5 and the appropriate confirmation is received, (b) if given by mail, 72 hours after such communication is received by the other party, or (c) if given) by electronic or any other means, when delivered to the address specified pursuant to this Section 10.5.

Section 10.6 Interpretation. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine, or the neuter gender shall include the masculine, feminine and neuter.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

TGC 100 Investor, LLC

By: _____
Name: Adam Flatto
Title: Manager

_____
Matthew Farkas

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date first above written.

TGC 100 Investor, LLC

By: _____
Name: Adam Flatto
Title: Manager

_____
Matthew Farkas

**Schedule A**

TGC/Farkas Funding LLC
Membership Percentage Interest and Initial Capital Balance of Member

| Name and Address of Member | Membership Percentage Interest | Initial Capital Balance |
|---|---|---|
| TGC 100 Investor, LLC<br>c/o The Georgetown Company, LLC<br>677 Madison Avenue<br>New York, New York 10021<br>Attention: Adam Flatto<br>Telephone: 212-755-2323<br>Facsimile: 212-755-3679<br>Email: aflatto@georgetownco.com | 50.0% | $1,000,000.00 |
| Matthew Farkas<br>3345 Birchwood Park Circle<br>Las Vegas, Nevada, 89141<br>Telephone: 646-226-0674<br>Facsimile:702.724.9781<br>Email: mfarkas@f100llc.com | 50.0% | $0.00 |
| Total | 100.0% | $1,000,000.00 |

**Schedule B**

Capital Commitments

| | |
|---|---|
| TGC 100 Investor, LLC | $1,000,000.00 |
| Farkas | $0.00 |

**Exhibit A**

Organizational Documents of
First 100, LLC

[to be attached]

ROSS MILLER
Secretary of State
204 North Carson Street, Suite 4
Carson City, Nevada 89701-4520
(775) 684-5708
Website: www.nvsos.gov

*050103*

# Articles of Organization
# Limited-Liability Company
(PURSUANT TO NRS CHAPTER 86)

| Filed in the office of | Document Number |
|---|---|
| Ross Miller<br>Secretary of State<br>State of Nevada | 20120251991-62 |
| | Filing Date and Time<br>04/10/2012 3:19 PM |
| | Entity Number<br>E0202092012-1 |

(This document was filed electronically.)

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**1. Name of Limited-Liability Company:** (must contain approved limited-liability company wording; see instructions)
FIRST 100, LLC
Check box if a Series Limited-Liability Company: [X]
Check box if a Restricted Limited-Liability Company: [ ]

**2. Registered Agent for Service of Process:** (check only one box)
[X] Commercial Registered Agent: BLACKHAWK CORPORATE SERVICES (Name)
[ ] Noncommercial Registered Agent (name and address below) **OR** [ ] Office or Position with Entity (name and address below)
Name of Noncommercial Registered Agent **OR** 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

**3. Dissolution Date:** (optional)
Latest date upon which the company is to dissolve (if existence is not perpetual):

**4. Management:** (required)
Company shall be managed by: [X] Manager(s) **OR** [ ] Member(s) (check only one box)

**5. Name and Address of each Manager or Managing Member:** (attach additional page if more than 3)
1) SJC VENTURES HOLDING COMPANY LLC-SEE ATTACHED (Name)
113 BARKSDALE PROF. CENTE | NEWARK | DE | 19711-3258 (Street Address | City | State | Zip Code)
2) (Name)
Street Address | City | State | Zip Code
3) (Name)
Street Address | City | State | Zip Code

**6. Effective Date and Time:** (optional)
Effective Date: Effective Time:

**7. Name, Address and Signature of Organizer:** (attach additional page if more than 1 organizer)
BLACKHAWK CO-SEE ATTACHED (Name)
X BLACKHAWK CORPORATE SERVIC (Organizer Signature)
8965 S EASTERN AVE STE 35 | LAS VEGAS | NV | 89123 (Address | City | State | Zip Code)

**8. Certificate of Acceptance of Appointment of Registered Agent:**
*I hereby accept appointment as Registered Agent for the above named Entity.*
X BLACKHAWK CORPORATE SERVICES (Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity)
4/10/2012 (Date)

PLTF_520

*This form must be accompanied by appropriate fees.*

# Articles of Organization

(PURSUANT TO NRS CHAPTER 86)

***CONTINUED***

***Includes data that is too long to fit in the fields on the NRS 86 Form and all additional managers and organizers***

| | |
|---|---|
| ENTITY NAME: | **FIRST 100, LLC** |

| | |
|---|---|
| FOREIGN NAME TRANSLATION: | **Not Applicable** |

| | |
|---|---|
| REGISTERED AGENT NAME: | **BLACKHAWK CORPORATE SERVICES** |
| STREET ADDRESS: | **Not Applicable** |
| MAILING ADDRESS: | **Not Applicable** |

| ADDITIONAL | Managers or Managing Members |
|---|---|
| Name: SJC VENTURES HOLDING COMPANY LLC | |
| Address: 113 BARKSDALE PROF. CENTER | |
| City: NEWARK | |
| State: DE | |
| Zip Code: 19711-3258 | |

| ADDITIONAL | Organizers |
|---|---|
| Name: BLACKHAWK CORPORATE SERVICES | |
| Address: 8965 S EASTERN AVE STE 350 | |
| City: LAS VEGAS | |
| State: NV | |
| Zip Code: 89123 | |

SECRETARY OF STATE

STATE OF NEVADA

# LIMITED LIABILITY COMPANY CHARTER

I, ROSS MILLER, the Nevada Secretary of State, do hereby certify that **FIRST 100, LLC** did on April 10, 2012, 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 April 10, 2012.

ROSS MILLER
Secretary of State

Certified By: Electronic Filing
Certificate Number: C20120410-2383
You may verify this certificate online at **http://www.nvsos.gov/**

# INITIAL LIST OF MANAGERS OR MANAGING MEMBERS AND REGISTERED AGENT AND STATE BUSINESS LICENSE APPLICATION OF:

FILE NUMBER

FIRST 100, LLC — E0202092012-1

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF 4/2012 TO 4/2013

****YOU MAY FILE THIS FORM ONLINE AT www.nvsos.gov****

*100401*

The entity's duly appointed registered agent in the State of Nevada upon whom process can be served is:

BLACKHAWK CORPORATE SERVICES (Commercial Registered Agent)
8965 S EASTERN AVE STE 305
LAS VEGAS, NV 89123 USA

A FORM TO CHANGE REGISTERED AGENT INFORMATION IS FOUND AT: www.nvsos.gov

Filed in the office of
Ross Miller
Secretary of State
State of Nevada

Document Number: 20120252017-92
Filing Date and Time: 04/10/2012 3:28 PM
Entity Number: E0202092012-1

(This document was filed electronically.)
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☐ 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. Initial list fee is $125.00 . A $75.00 penalty must be added for failure to file this form by the last day of the first month following organization date.
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 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.

INITIAL LIST FILING FEE: $125.00 LATE PENALTY: $75.00 BUSINESS LICENSE FEE: $200.00 LATE PENALTY: $100.00

**Complete only if applicable**

☐ Pursuant to NRS, this corporation is exempt from the business license fee. Exemption code: ____

☐ Month and year your State Business License expires: ____ 20____

Section 7(2) Exemption Codes
001 - Governmental Entity
002 - 501(c) Nonprofit Entity
003 - Home-based Business
004 - Natural Person with 4 or less rental dwelling units
005 - Motion Picture Company
006 - NRS 680B.020 Insurance Co.

NAME: SJC VENTURES HOLDING COMPANY LLC
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☑ MANAGER ☐ MANAGING MEMBER
ADDRESS: C/O DELAWARE INTERCORP, INC. 113 BARKSDALE PROF. CENTER
CITY: NEWARK STATE: DE ZIP CODE: 19711-3258

NAME:
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☐ MANAGER ☐ MANAGING MEMBER
ADDRESS: CITY: STATE: ZIP CODE:

NAME:
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☐ MANAGER ☐ MANAGING MEMBER
ADDRESS: CITY: STATE: ZIP CODE:

NAME:
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☐ MANAGER ☐ MANAGING MEMBER
ADDRESS: CITY: STATE: ZIP CODE:

**I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of sections 6 to 18 of AB 146 of the 2009 session of the Nevada Legislature 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 ROBERT ATKINSON
**Signature of Manager or Managing Member**

Title: ATTORNEY
Dat: 4/10/2012 3:27:45 PM

Nevada Secretary of State Initial List ManorMem
Revised: 8-5-09

PLTF 523
SA0974

SECRETARY OF STATE

STATE OF NEVADA

# NEVADA STATE BUSINESS LICENSE

## FIRST 100, LLC

**Nevada Business Identification # NV20121231493**

**Expiration Date: April 30, 2013**

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

This license shall be considered valid until the expiration date listed above unless suspended or revoked in accordance with Title 7 of Nevada Revised Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on April 10, 2012

ROSS MILLER
Secretary of State

This document is not transferable and is not issued in lieu of any locally-required business license, permit or registration.

*Please Post in a Conspicuous Location*

***You may verify this Nevada State Business License online at www.nvsos.gov under the Nevada Business Search.***

PLTF 524

SA0975

**Brown, Susan A (NYC)**

**From:** Adam Flatto <aflatto@georgetownco.com>
**Sent:** Sunday, October 20, 2013 11:57 AM
**To:** Brown, Susan A (NYC)
**Subject:** FW: Formation Docs
**Attachments:** Formation Docs F100.pdf; ATT00001.htm

---

**From:** Matthew Farkas [mailto:Mfarkas@f100llc.com]
**Sent:** Friday, October 11, 2013 2:59 PM
**To:** Adam Flatto
**Subject:** Fwd: Formation Docs

Matthew Farkas

Vice President of Finance

1st One Hundred

m 646.226.0674 | o 702.823.3600 | f 702.724.9781
Mfarkas@f100llc.com | www.f100llc.com

Corporate Headquarters

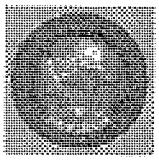
Tivoli Village at Queens Ridge

410 S. Rampart Blvd., Suite 450 Las Vegas, NV 89145

Please consider the environment



-------- Original Message --------
Subject: Formation Docs
From: J Chris Morgando <cmorgando@first100llc.com>
To: Matthew Farkas <Mfarkas@f100llc.com>
CC:



ROSS MILLER
Secretary of State
204 North Carson Street, Suite 4
Carson City, Nevada 89701-4520
(775) 684-5708
Website: www.nvsos.gov

*050103*

# Articles of Organization Limited-Liability Company

(PURSUANT TO NRS CHAPTER 86)

| Filed in the office of | Document Number |
|---|---|
| Ross Miller<br>Secretary of State<br>State of Nevada | 20120251991-62 |
| | Filing Date and Time<br>04/10/2012 3:19 PM |
| | Entity Number<br>E0202092012-1 |

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**1. Name of Limited-Liability Company:** (must contain approved limited-liability company wording; see instructions)

FIRST 100, LLC

Check box if a Series Limited-Liability Company: [X]

Check box if a Restricted Limited-Liability Company: [ ]

**2. Registered Agent for Service of Process:** (check only one box)

[X] Commercial Registered Agent: BLACKHAWK CORPORATE SERVICES (Name)

[ ] Noncommercial Registered Agent (name and address below) **OR** [ ] Office or Position with Entity (name and address below)

Name of Noncommercial Registered Agent **OR** 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

**3. Dissolution Date:** (optional)

Latest date upon which the company is to dissolve (if existence is not perpetual):

**4. Management:** (required)

Company shall be managed by: [X] Manager(s) **OR** [ ] Member(s) (check only one box)

**5. Name and Address of each Manager or Managing Member:** (attach additional page if more than 3)

1) SJC VENTURES HOLDING COMPANY LLC-SEE ATTACHED (Name)

113 BARKSDALE PROF. CENTE (Street Address) | NEWARK (City) | DE (State) | 19711-3258 (Zip Code)

2) (Name)

Street Address | City | State | Zip Code

3) (Name)

Street Address | City | State | Zip Code

**6. Effective Date and Time:** (optional)

Effective Date: Effective Time:

**7. Name, Address and Signature of Organizer:** (attach additional page if more than 1 organizer)

BLACKHAWK CO-SEE ATTACHED (Name) | X BLACKHAWK CORPORATE SERVIC (Organizer Signature)

8965 S EASTERN AVE STE 35 (Address) | LAS VEGAS (City) | NV (State) | 89123 (Zip Code)

**8. Certificate of Acceptance of Appointment of Registered Agent:**

*I hereby accept appointment as Registered Agent for the above named Entity.*

X BLACKHAWK CORPORATE SERVICES

Authorized Signature of Registered Agent or On Behalf of Registered Agent Entity | Date: 4/10/2012

*This form must be accompanied by appropriate fees.*

# Articles of Organization

(PURSUANT TO NRS CHAPTER 86)

***CONTINUED***

***Includes data that is too long to fit in the fields on the NRS 86 Form and all additional managers and organizers***

| | |
|---|---|
| ENTITY NAME: | **FIRST 100, LLC** |

| | |
|---|---|
| FOREIGN NAME TRANSLATION: | **Not Applicable** |

| | |
|---|---|
| REGISTERED AGENT NAME: | **BLACKHAWK CORPORATE SERVICES** |
| STREET ADDRESS: | **Not Applicable** |
| MAILING ADDRESS: | **Not Applicable** |

| ADDITIONAL | Managers or Managing Members |
|---|---|
| Name: SJC VENTURES HOLDING COMPANY LLC | |
| Address: 113 BARKSDALE PROF. CENTER | |
| City: NEWARK | |
| State: DE | |
| Zip Code: 19711-3258 | |

| ADDITIONAL | Organizers |
|---|---|
| Name: BLACKHAWK CORPORATE SERVICES | |
| Address: 8965 S EASTERN AVE STE 350 | |
| City: LAS VEGAS | |
| State: NV | |
| Zip Code: 89123 | |

SECRETARY OF STATE

STATE OF NEVADA

# LIMITED LIABILITY COMPANY CHARTER

I, ROSS MILLER, the Nevada Secretary of State, do hereby certify that **FIRST 100, LLC** did on April 10, 2012, 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 April 10, 2012.

ROSS MILLER
Secretary of State

Certified By: Electronic Filing
Certificate Number: C20120410-2383
You may verify this certificate online at **http://www.nvsos.gov/**

# INITIAL LIST OF MANAGERS OR MANAGING MEMBERS AND REGISTERED AGENT AND STATE BUSINESS LICENSE APPLICATION OF:

FILE NUMBER

FIRST 100, LLC | E0202092012-1

NAME OF LIMITED-LIABILITY COMPANY

FOR THE FILING PERIOD OF 4/2012 TO 4/2013

****YOU MAY FILE THIS FORM ONLINE AT www.nvsos.gov****

*100401*

The entity's duly appointed registered agent in the State of Nevada upon whom process can be served is:

BLACKHAWK CORPORATE SERVICES (Commercial Registered Agent)
8965 S EASTERN AVE STE 305
LAS VEGAS, NV 89123 USA

A FORM TO CHANGE REGISTERED AGENT INFORMATION IS FOUND AT: www.nvsos.gov

Filed in the office of
Ross Miller
Secretary of State
State of Nevada

Document Number: 20120252017-92
Filing Date and Time: 04/10/2012 3:28 PM
Entity Number: E0202092012-1

(This document was filed electronically.)
ABOVE SPACE IS FOR OFFICE USE ONLY

USE BLACK INK ONLY - DO NOT HIGHLIGHT

☐ 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. Initial list fee is $125.00 . A $75.00 penalty must be added for failure to file this form by the last day of the first month following organization date.
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 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.

INITIAL LIST FILING FEE: $125.00 LATE PENALTY: $75.00 BUSINESS LICENSE FEE: $200.00 LATE PENALTY: $100.00

**Complete only if applicable**

☐ Pursuant to NRS, this corporation is exempt from the business license fee. Exemption code: ____

☐ Month and year your State Business License expires: ____ 20____

Section 7(2) Exemption Codes
001 - Governmental Entity
002 - 501(c) Nonprofit Entity
003 - Home-based Business
004 - Natural Person with 4 or less rental dwelling units
005 - Motion Picture Company
006 - NRS 680B.020 Insurance Co.

NAME: SJC VENTURES HOLDING COMPANY LLC
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☑ MANAGER ☐ MANAGING MEMBER
ADDRESS: C/O DELAWARE INTERCORP, INC. 113 BARKSDALE PROF. CENTER
CITY: NEWARK STATE: DE ZIP CODE: 19711-3258

NAME:
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☐ MANAGER ☐ MANAGING MEMBER
ADDRESS: CITY: STATE: ZIP CODE:

NAME:
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☐ MANAGER ☐ MANAGING MEMBER
ADDRESS: CITY: STATE: ZIP CODE:

NAME:
(DOCUMENT WILL BE REJECTED IF TITLE NOT INDICATED) ☐ MANAGER ☐ MANAGING MEMBER
ADDRESS: CITY: STATE: ZIP CODE:

**I declare, to the best of my knowledge under penalty of perjury, that the above mentioned entity has complied with the provisions of sections 6 to 18 of AB 146 of the 2009 session of the Nevada Legislature 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 ROBERT ATKINSON
**Signature of Manager or Managing Member**

Title: ATTORNEY
Date: 4/10/2012 3:27:45 PM

Nevada Secretary of State Initial List ManorMem
Revised: 8-5-09
RAN0414

PLTF 529
SA0980

SECRETARY OF STATE

STATE OF NEVADA

# NEVADA STATE BUSINESS LICENSE

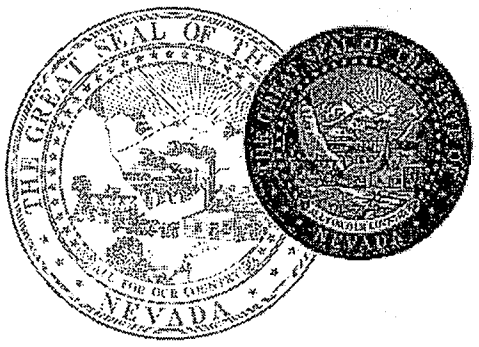
## FIRST 100, LLC

**Nevada Business Identification # NV20121231493**

**Expiration Date: April 30, 2013**

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

This license shall be considered valid until the expiration date listed above unless suspended or revoked in accordance with Title 7 of Nevada Revised Statutes.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on April 10, 2012

ROSS MILLER
Secretary of State

This document is not transferable and is not issued in lieu of any locally-required business license, permit or registration.

*Please Post in a Conspicuous Location*

***You may verify this Nevada State Business License online at www.nvsos.gov under the Nevada Business Search.***

PLTF 530

SA0981

# FIRST AMENDED OPERATING AGREEMENT
# *of*
# FIRST 100, LLC

This operating agreement of **FIRST 100, LLC**, a Nevada limited liability company, Adopted April 11, 2012, and further Amended December 12, 2012, having an effective date of December 12, 2012, is: (i) adopted by the Manager (as defined below); and (ii) executed and agreed to, for good and valuable consideration, by the Members (as defined below).

## ARTICLE I: DEFINITIONS

As used in this Operating Agreement, unless the context clearly indicates otherwise, the following terms have the following meanings:

**1.1** **"Act"** means Chapter 86 of the Nevada Revised Statutes and any successor statute, as amended from time to time.

**1.2** **"Articles"** means the Articles of Organization filed with the Nevada Secretary of State by which the Company was organized as a Nevada limited liability company under and pursuant to the Act.

**1.3** **"Bankrupt Member"** means any Member: (a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a proceeding of the type described in sub-clauses (i) through (iv) of this Clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member's or of all or any substantial part of the Member's properties; or (b) against which, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member's consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties has been appointed and 90 days have expired without the appointment's having been vacated or stayed, or 90 days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**1.4** **"Business Day"** means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of Nevada are closed.

**1.5** **"Capital Contribution"** means any contribution by a Member to the capital of the Company.

**1.6** **"Class A Member"** means a Member identified on SCHEDULE A hereto.

**1.7** **"Class A Membership Interest"** means, with respect to any Class A Member, the percentage interest set forth opposite such Class A Member's name on SCHEDULE A, as may be amended from time to time.

**1.8** **"Class B Member"** means a Member identified on SCHEDULE A hereto.

**1.9** **"Class B Membership Interest"** means with respect to any Non Voting Class B Member, the percentage interest set forth opposite such Class B Member's name on SCHEDULE A, as may be amended from time to time.

**1.10** **"Class C Member"** means a Member identified on SCHEDULE A hereto.

1.11 **"Class C Membership Interest"** means with respect to any Non Voting Class C Member, the percentage interest set forth opposite such Class C Member's name on SCHEDULE A, as may be amended from time to time.

1.12 **"Code"** means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

1.13 **"Company"** means First 100, LLC, a Nevada limited liability company

1.14 **"Default Interest Rate"** means a rate per annum equal to the lesser of (a) one percent (1.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.15 **"Delinquent Member"** means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

1.16 **"Dispose," "Disposing," or "Disposition"** means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

1.17 **"General Interest Rate"** means a rate per annum equal to the lesser of (a) the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

1.18 **"Lending Member"** means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

1.19 **"Manager"** means SJC Ventures Holding Company, LLC, a Delaware limited liability company. There is only one Manager of the Company.

1.20 **"Member"** means any Person executing this Operating Agreement as of the date of this Operating Agreement as a Member, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

1.21 **"Membership Interest"** means the interest of a Member in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve.

1.22 **"NRS"** means Nevada Revised Statutes.

1.23 **"NRS Chapter 86"** means the Nevada statutes contained in Chapter 86 of the Nevada Revised Statutes concerning limited-liability companies, and any successor statute, as amended from time to time.

1.24 **"Operating Agreement"** means this Operating Agreement, as approved or amended by the Members, as herein provided.

1.25 **"Permitted Transferee"** means any member of such Member's immediate family, or a trust, including a charitable remainder trust, corporation, limited liability company, or partnership controlled by such Member or members of such Member's immediate family, or another Person controlling, controlled by, or under common control with such Member.

1.26 **"Person"** includes an individual, partnership, limited partnership, limited liability company,

foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

1.27 **"Priority Return"** means a sum equal to that particular Class B Member's principal amount of Class B Capital Contribution.

1.28 **"Proceeding"** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative.

## ARTICLE II: ORGANIZATION

2.1 **FORMATION.** The Company has been organized as a Nevada limited liability company by the filing of Articles under and pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of Nevada.

2.2 **NAME.** The name of the Company is **FIRST 100, LLC** and all Company business must be conducted in that name, or such other registered names that comply with applicable law as the Manager may select from time to time.

2.3 **REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE IN THE UNITED STATES; OTHER OFFICES.** The registered office of the Company required by the Act to be maintained in the State of Nevada shall be the office of the initial registered agent named in the Articles 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. The registered agent of the Company in the State of Nevada shall be the initial registered agent named in the Articles or such other Person or Persons as the Manager may designate from time to time in the manner provided by law. The principal office of the Company in the United States shall be at such place as the Manager may designate from time to time, which need not be in the State of Nevada, and the Company shall maintain records there as required by NRS §86.241 and shall keep the street address of such principal office at the registered office of the Company in the State of Nevada. The Company may have such other offices as the Manager may designate from time to time.

2.4 **PURPOSES.** The purpose of the Company is everything allowable by law.

2.5 **FOREIGN QUALIFICATION.** Prior to the Company's conducting business in any jurisdiction other than Nevada, the Manager shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Manager or Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Manager or Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.6 **TERM.** The Company commenced on the date the Nevada Secretary of State issued a certificate of organization for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

2.7 **MERGERS AND EXCHANGES.** The Company may be a party to: (a) a merger; or (b) an exchange or acquisition permitted by the Act, subject to the requirements of this Operating Agreement.

2.8 **NO STATE-LAW PARTNERSHIP.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

## ARTICLE III: MEMBERS

3.1 **THREE CLASSES OF MEMBERSHIP INTEREST.** The Company shall have three classes of Membership Interests: Class A Voting Membership Interests, Class B Non Voting Membership Interests and Class C Non Voting Membership Interests. Each of the Class A Membership Interests. Class B Membership Interests and Class C Membership Interests shall have certain rights, obligations and privileges, as provided in this Agreement.

3.2 **MEMBERSHIP INTERESTS.** The Member names and Class A Membership Interests of the Class A Members are set forth on SCHEDULE A. The Member names and Class B Membership Interests of the Class B Members are set forth on SCHEDULE A. The Member names and Class C Membership Interests of the Class C Members are set forth on SCHEDULE A.

3.3 **CLASSES AND VOTING.** The Company may issue voting Membership Interests and non-voting Membership Interests. The Membership certificates shall clearly designate so as to distinguish between voting and non-voting classes. Upon adoption of this Operating Agreement:

i. Class A Members shall have voting rights. All references in this Operating Agreement to discretionary actions subject to a vote of Members shall solely refer to Class A Members.

ii. Class B Members are **non-voting** Membership Interests.

iii. Class C Members are **non-voting** Membership Interests.

3.4 **VOTING; PROXIES.** Each outstanding Class A Membership Interest shall be entitled to one vote per one full percent of Class A Membership Interest owned by the Member on each matter submitted to a vote at a meeting of Members. A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

3.5 **QUORUM.** Unless otherwise provided in the Articles, the holders of a simple majority of the Membership Interest entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Class A Members.

3.6 **MAJORITY VOTE.** With respect to any matter when a quorum is present at any meeting, the vote of the holders of a simple majority of the Membership Interest, present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by an express provision of the Act which is applicable to such vote unless overridden by the Articles, a different vote is required, in which case such express provision shall govern and control the decision of such matter.

3.7 **PLACE AND MANNER OF MEETING.** All meetings of the Members shall be held at such time and place, within or without the State of Nevada, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.8 **CONDUCT OF MEETINGS.** All meetings of the Members shall be presided over by the chairman of the meeting, who shall be a Person designated by the Manager. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

3.9 **ANNUAL MEETING.** An annual meeting of the Members shall be held each year. Failure to hold the annual meeting at the designated time shall not work as a dissolution of the Company.

3.10 **SPECIAL MEETINGS.** Special meetings of the Members may be called at any time by: (i) the

Manager of the Company; (ii) the President of the Company if such office exists; or (iii) the holders of at least five percent (5%) of the Class A Membership interests. Unless waived, notice of such special meeting must be made in writing at least ten days prior to the meeting date, and such notice shall state the purpose of such special meeting and the matters proposed to be acted on thereat. A quorum must be present for such meeting to be recognized and effective.

3.11 **NOTICE.** Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting either personally or by mail, to each Member, provided that such notice may be waived as provided in this Operating Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid.

3.12 **CLOSING RECORD BOOKS AND FIXING RECORD DATE.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or entitled to distribution or in order to make a determination of Members for any other proper purpose, the Manager may provide that the record books shall be closed for a stated period not exceeding sixty (60) days. If the record books shall be closed for the purpose of determining Members entitled to notice of or to vote at a meeting of Members, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the record books, the Manager may fix in advance a date as the record date for any such determination of Members, such date in any case to be not more than sixty (60) days and in the case of a meeting of Members, not less than ten (10) days prior to the date of which the particular action requiring such determination of Members is to be taken. If the record books are not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, or Members entitled to receive distribution, the date on which notice of the meeting is mailed or the date on which the resolution of the Manager, declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof, except where the determination has been made through the closing of record books and the stated period of closing has expired.

3.13 **ACTION WITHOUT MEETING.** Any meeting, or any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members (including any action requiring less than unanimous vote of the members), may be taken without a formal meeting, and without prior notice, but only if consent in writing, setting forth the action so taken, shall have been signed by the holders of all the Membership Interest for each class entitled to vote and such consent shall have the same force and effect as vote by formal meeting of the Members. Written consents made pursuant to this Section shall be signed and dated.

3.14 **CONFIDENTIAL INFORMATION.** The Members acknowledge that from time to time, they may receive information from the Manager or other Persons regarding the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any person other than to another Member or a Manager, except for disclosures: (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable); (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this Section; or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance. The Members acknowledge that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members to examine or copy that information.

3.15 **LIABILITIES TO THIRD PARTIES.** Except as otherwise expressly agreed in writing, no

Member or the Manager shall be liable for the debts, obligations or liabilities of the Company.

3.16 **WITHDRAWAL / SURRENDER.** A Member may unilaterally withdraw from the Company as a Member, but only by ways of a written surrender of membership interest tendered to the Company and all Members then in existence.

3.17 **LACK OF AUTHORITY TO BIND OR OBLIGATE.** The Company is Manager-managed. No Member (other than a Manager or a duly appointed officer) has the authority or power to act for or on behalf of the Company, to do any act that would be obligating or binding on the Company, or to incur any expenditures on behalf of the Company.

3.18 **REPRESENTATIONS AND WARRANTIES.** Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in Clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof, (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, shareholders, Manager, Member(s), partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery, and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

3.19 **ADMISSION OF ADDITIONAL MEMBERS.** Following adoption of this Operating Agreement, the Company may admit one or more additional Members from time to time, but only upon the majority vote of all Class A Members then in existence. The terms of admission or issuance must specify the Capital Contributions applicable thereto, and may also provide for the creation of additional classes of Members and having different rights, powers, and duties, but is so then this Operating Agreement shall be amended to reflect such added classes. Upon the admission to the Company of any additional members, the Membership Interests of the other Members shall be reduced accordingly on a pro rata basis. SCHEDULE A shall be amended from time to time as of the effective date of the admission of an additional member to the Company. As a condition to being admitted to the Company, each additional member shall execute an agreement to be bound by the terms and conditions of this Agreement.

3.20 **RESTRICTIONS ON TRANSFERENCE OF MEMBERSHIP INTEREST.** Notwithstanding anything herein to the contrary, the Membership Interest and transferability of Membership Interest in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership Interest may be transferred or encumbered without the consent of all Members. This Company is formed by a closely-held group, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership Interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue. Notwithstanding the foregoing restrictions upon transfer and ownership, the following transfers are permitted:

A. **Death of a Member Who Is A Natural Person.** The personal representative of a deceased Member's estate, or his or her contract beneficiary, may exercise all of the decedent's rights and powers as a Member,

and the decedent's Membership Interest in the Company will continue and pass to those entitled thereto upon the Member's death. It is specifically provided that a Member may prepare a written and acknowledged document in which he or she designates one or more beneficiaries of that Person's Membership Interest, and his or her written designation will be binding upon the Company if delivered to the Company before or within at least sixty 60 days after the death of the Member.

B. **Estate Planning Transfers.** A Member will also have the right to make estate planning transfers of all or any part of his or her Membership Interest in the Company. The term "estate planning transfer" will mean any transfer made during the life of a Member without value, or for less than full consideration, by way of a marital partition agreement and/or a transfer of all or any part of a Membership Interest to a trust whose beneficiary or beneficiaries are the Member and/or the spouse of a Member, and/or the descendants of a Member, and/or one or more beneficiaries qualified to receive a charitable gift under § 170(c) of the Code. The Articles and this Operating Agreement will bind the transferee of any estate planning transfer to the exact terms and conditions of the Articles and this Operating Agreement.

C. **Transfers for Convenience.** A Member who is a company may freely transfer its Membership to another company whose ownership is identical to the ownership of the assignor Member, provided, however, that such Member may not cause or permit an interest, direct or indirect, in itself to be disposed of such that, after the disposition, (a) the Company would be considered to have terminated within the meaning of §708 of the Code or (b) that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership Interest all in accordance with Article XI as if the breaching Member were a Bankrupt Member.

D. **Approved Sale or Transfers.** A Member may transfer its Membership to another Person upon the unanimous vote of all Class A Members.

3.21 **DISPUTED TRANSFERS.** The Company will not be required to recognize the interest of any transferee who has obtained a purported interest as the result of a transfer of ownership which is not an authorized transfer. If the Membership Interest is in doubt, or if there is reasonable doubt as to who is entitled to a distribution of the income realized from a Membership Interest, the Company may accumulate the income until this issue is finally determined and resolved. Accumulated income will be credited to the capital account of the Member whose interest is in question.

3.22 **RIGHT OF FIRST REFUSAL.** If any Person or agency should acquire the interest of a Member as the result of an order of a court of competent jurisdiction which the Company is required to recognize, or if a Member makes an unauthorized transfer of a Membership Interest which the Company is required to recognize, the interest of the transferee may then be acquired by the Company upon the following terms and conditions:

(a) The Company will have the unilateral option to re-acquire the Membership Interest by giving written notice to the transferee of its intent to purchase within 90 days from the date it is finally determined that the Company is required to recognize the transfer.

(b) The Company will have 180 days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Membership Interest. The valuation date for the Membership Interest will be the first day of the month following the month in which notice is delivered.

(c) Unless the Company and the transferee agree otherwise, the fair market value of a Member's Membership Interest is to be determined by the written appraisal of a Person or firm qualified to value this type of business. The appraiser selected by the Company must be a member of and qualified by the American Society of Appraisers, Business Valuations Division, [P. O. Box 17265, Washington, DC 20041] to perform appraisals.

(d) Closing of the sale will occur at the registered office of the Company at 10 o'clock A.M. on the

first Tuesday of the month following the month in which the valuation report is accepted by the transferee (called the "closing date"). The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the Membership Interest is resolved. The transferee will be considered a non-voting owner of the Membership Interest, and entitled to all items of income, deduction, gain or loss from the Membership Interest, plus any additions or subtractions therefrom until closing.

(e) In order to reduce the burden upon the resources of the Company, the Company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in 10 equal annual installments (or the remaining terms of the Company if less than 10 years) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the Manager. The term "market rates" will mean the rate of interest prescribed as the "prime rate" as quoted in the money rates section of the Wall Street Journal, which is also the base rate on corporate loans at large United States money center commercial banks, as of the first day of the calendar year. If §§483 and 1274A of the Code apply to this transaction, the rate of interest of the purchase money obligation will be fixed at the rate of interest then required by law. The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Company will have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.

(f) The Manager may assign the Company's option to purchase to one or more of the Members (this with the affirmative consent of no less than 50% of the remaining Members, excluding the interest of the Member or transferee whose interest is to be acquired), and when done, any rights or obligations imposed upon the Company will instead become, by substitution, the rights and obligations of the Members who are assignees.

(g) Neither the transferee of an unauthorized transfer or the Member causing the transfer will have the right to vote during the prescribed option period, or if the option to purchase is timely exercised, until the sale is actually closed.

3.23 **TAX TREATMENT OF TRANSFERRED MEMBERSHIP INTERESTS.** With respect to any transferred Membership Interest that may occur, all items of income, gain, loss, deduction, and credit allocable to any transferred Membership Interest shall for tax purposes be allocated between the transferor and the transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest without regard to the results of Company operations during any particular portion of that calendar year and without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; provided, however, that this allocation must be made in accordance with a method permissible under §706 of the Code and the regulations thereunder.

## ARTICLE IV: CAPITAL CONTRIBUTIONS

4.1 **INITIAL CONTRIBUTIONS.** Contemporaneously with the execution by such Member of this Operating Agreement, each Member shall make the Capital Contributions described for that Member in SCHEDULES A and B. No interest shall be earned or paid on Capital Contributions or a member's capital account.

4.2 **SUBSEQUENT CONTRIBUTIONS.** If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital demand shall be made on each Class A Member in proportion to its Class A Membership Interest. Any such Capital Call notice must include a statement in reasonable detail of the proposed uses of the required additional capital

contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the additional capital contributions must be made.

4.3 **FAILURE TO CONTRIBUTE.** If a Member does not contribute all of its share of a Capital Call by the time required, then either:

1) One or more Class A Members may provide the additional capital, with such added capital to be reflected in that Class A Member's Capital Contribution, however, such additional capital to be entitled to priority return superior to those set forth in Article V.

or

2) Any other Members, individually or in concert (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Call that is in default, with the following results:

(a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;

(b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member;

(c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;

(d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);

(e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, and the Lending Member may file a financing statement evidencing and perfecting such security interest; and

(f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member.

4.4 **RETURN OF CONTRIBUTIONS.** Class A Members are not entitled to the return of any part of their Capital Contributions. In accordance with Article V, Class B Members and Class C Members are entitled to priority return of all of their Capital Contributions. An un-repaid Capital Contribution is not a liability of the Company or of any Member.

4.5 **ADVANCES BY MEMBERS.** If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this Section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the date of payment, and is not a Capital Contribution.

4.6 **CAPITAL ACCOUNTS.** A capital account shall be established and maintained for each Member,

by Class. The Members' capital accounts also shall be maintained and adjusted as permitted by the provisions of Treas. Reg. § 1.704-1 (b)(2)(iv)(f) and as required by the other provisions of Treas. Reg. § 1.704-1 (b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization, and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treas. Reg. §1.704-l(b)(2)(iv)(g). On the transfer of all or part of a Membership Interest, the capital account of the transferor that is attributable to the transferred Membership Interest or part thereof shall carry over to the transferee Member in accordance with the provisions of Treas. Reg. §1.704-l(b)(2)(iv)(l).

## ARTICLE V: ALLOCATIONS AND DISTRIBUTIONS

**5.1 DISTRIBUTIONS.** From time to time (but at least once each calendar quarter) the Manager shall determine in its reasonable judgment to what extent (if any) the Company's cash on hand exceeds its current and anticipated needs, including, without limitation, for operating expenses, debt service, acquisitions, and a reasonable contingency reserve. If such an excess exists, the Manager shall cause the Company to distribute to the Members an amount in cash (or property other than cash) equal to that excess. Distributions by the Manager shall be mandatory upon the affirmative vote of 95% or more of the Class A Members, subject to Section 5.5.

**5.2 ALLOCATION OF PROFIT DISTRIBUTIONS OF THE COMPANY.** Profit distributions of the Company in each fiscal quarter shall be allocated to the Members as follows:

i. first to the Class B Members, in proportion to their respective Class B Capital Contributions, in accordance with Section 5.3 ("Priority Return");

ii. next to the Class C Members, in proportion to their respective Class C Capital Contributions, in accordance with Section 5.3 ("Priority Return");

iii. next to the Class A Members in accordance with their respective Class A Membership Interests; provided, however, that Class A Members will only be allocated profit distributions after Class B Members and Class C Members have been paid their entire Priority Return.

**5.3 TREATMENT OF CLASS B DISTRIBUTIONS.** Class B profit distributions made pursuant to Section 5.2(i) shall be treated as a return of capital, and accordingly each Class B Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class B Member, until their Capital Contribution is returned in full. Once each Class B Member's Capital Contribution is reduced to $0, the Class B class will cease to exist.

**5.4 TREATMENT OF CLASS C DISTRIBUTIONS.** Class C profit distributions made pursuant to Section 5.2(ii) shall be treated as a return of capital, and accordingly each Class C Member's Capital Contribution will be proportionately reduced by the dollar amount equal to the allocation of profit distributions made to that particular Class C Member, until their Capital Contribution is returned in full. Once each Class C Member's Capital Contribution is reduced to $0, the Class C class will cease to exist.

**5.5 RIGHT TO RECEIVE DISTRIBUTIONS.** Except as otherwise provided in NRS §86.391 and §86.521, at the time a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

**5.6 LIMITATION ON DISTRIBUTION.** Notwithstanding any other provision in this Article, the Manager may not make a distribution to the Company's Members to the extent that, immediately after giving effect to the distribution, all liabilities of this Company, other than liabilities to Members with respect to their interests and liabilities for which the recourse of creditors is limited to specified property of this Company, exceed the fair value of this Company assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in this Company's assets only to the extent that the fair value of that property exceeds that liability. However, a Member who receives such a distribution has no liability under the Act to return the distribution unless the Member knew that the distribution violated any provision of the Act.

## ARTICLE VI: MANAGER

### 6.1 MANAGEMENT BY MANAGER.

A. Except for situations in which the approval of the Members is required by this Operating Agreement or by non-waivable provisions of applicable law, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of the Manager. No member shall take part in the management of the Company's business, transact any business in the Company's name or have the power to sign documents or otherwise bind the Company. The Manager may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

(1) hiring, managing, and terminating officers, employees, and independent contractors

(2) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company;

(3) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;

(4) maintaining the assets of the Company in good order;

(5) collecting sums due the Company;

(6) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;

(7) acquiring, utilizing for Company purposes, and Disposing of any asset of the Company;

(8) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;

(9) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;

(10) obtaining insurance for the Company;

(11) determining distributions of Company cash and other property as provided in Article V; and

(12) the institution, prosecution and defense of any proceeding in the Company's name.

B. Notwithstanding the provisions of Section 6.1 A., the Manager may not cause the Company to do any of the following without complying with the applicable requirements set forth below:

(1) sell, lease, exchange or otherwise dispose of (other than by way of a pledge, mortgage, deed of trust or trust indenture) all or substantially all the Company's property and assets (with or without good will), other than in the usual and regular course of the Company's business, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(2) be a party to (i) a merger, or (ii) an exchange or acquisition, without complying with the

applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members (unless such provision is rendered inapplicable by another provision of applicable law);

(3) amend or restate the Articles, without complying with the applicable procedures set forth in the Act, including, without limitation, the requirements set forth in this Operating Agreement regarding approval by the Members, unless such provision is rendered inapplicable by another provision of applicable law.

**6.2 ACTIONS BY MANAGER; DELEGATION OF AUTHORITY AND DUTIES.**

**A.** In managing the business and affairs of the Company and exercising its powers, the Manager shall act: (i) collectively through meetings and written consents consistent as may be provided or limited in other provisions of this Operating Agreement; (ii) through officers to whom management authority and duties have been delegated, pursuant to subsection (C) below; and (iii) through committees comprised of Members and management, if any so may be appointed.

**B.** The Manager may, from time to time, designate one or more advisory boards to provide guidance and insight to the Company's strategic direction and operations, provided, however, that any such advisory board shall have no managerial authority or any other authority to act on behalf of or bind the Company.

**C.** The Manager may, from time to time, designate one or more natural persons to be officers of the Company. No officer need be a resident of the State of Nevada or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decide otherwise, if the title is one commonly used for officers of a business corporation formed under the NRS Chapter 78, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office but may also include other such specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been terminated by Manager or the President of the Company, if any. Any number of offices may be held by the same person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager or the President of the Company (if such position has been appointed). Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in their judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

**D.** Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

**6.3 AGENCY.** The Manager and any appointed officers are agents of this Company for the purpose of any act carrying out the business of the Company, including the execution in the name of the Company of any instrument for apparently carrying on in the usual way the business of this Company.

**6.4 COMPENSATION.** The Manager shall be paid reasonable compensation and reimbursed for all expenses incurred on behalf of the Company.

**6.5 REMOVAL AND RESIGNATION.** The Manager may not be removed or terminated by the Members except by unanimous vote. The Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein.

**6.6 VACANCIES.** Any vacancy occurring in the position of Manager may be filled by the affirmative

vote of a majority of Class A Members by election at a special meeting of Members called for that purpose.

6.7 **APPROVAL OR RATIFICATION OF ACTS OR CONTRACTS BY MEMBERS.** The Manager in its discretion may submit any act or contract for approval or ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by 98% of the Class A Members shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

6.8 **INTERESTED MANAGER, OFFICERS AND MEMBERS.**

A. No contract or transaction shall be voidable between this Company and any other Person in which the Company's Manager, any Member, or any officer is (i) that Person or (ii) holds a financial interest in that Person, if:

(1) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all of the Members, and the Manager or committee in good faith authorizes the contract or transaction; or

(2) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to all Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(3) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or
ratified by the Manager or the Members.

B. A Member who is a Manager may be counted in determining the presence of a quorum at a meeting of the Members which authorizes the contract or transaction.

## ARTICLE VII: INDEMNIFICATION

7.1 **DEFINITIONS.** For purposes of this Article VII:

A. "Limited Liability Company" includes any domestic or foreign predecessor entity of the Company in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the Company by operation of law and in any other transaction in which the Company assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this Article.

B. "Manager" means any Person who is or was a Manager of the Company and any Person who, while a Manager of the Company, is or was serving at the request of the Company as a Manager, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

C. "Expenses" include court costs and attorneys' fees.

D. "Official capacity" means: (1) when used with respect to a Manager, the office of Manager in the Company; and (2) when used with respect to a Person other than a Manager, the elective or appointive office in the Company held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the Company; provided, however, that "official capacity" does not include service for any other foreign or domestic limited liability company, corporation, or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

E. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any

inquiry or investigation that could lead to such an action, or proceeding.

7.2 **STANDARD FOR INDEMNIFICATION.** The Company shall indemnify a Person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the Person is or was a Manager or Officer of the Company, or for any action, related to Company or non-Company matters, if it is determined either by the Manager for any reason, or in accordance with this Article, that the Person:

A. conducted himself in good faith;

B. reasonably believed (i) in the case of conduct in his official capacity as a Manager of the Company, that his conduct was in the Company's best interests, and (ii) in all other cases, that his conduct was at least not opposed to the Company's best interests;

C. in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful; or

D. for any other reason as may be determined solely in the discretion of the Manager.

7.3 **PROHIBITED INDEMNIFICATION.** Except to the extent permitted by this Article, a Manager or Member may not be indemnified under any Section of this Article in respect of a proceeding:

A. in which the Person is found liable on the basis that personal benefit from company assets was improperly received by him; or

B. in which the Person is found liable to the Company.

Either the Manager or majority of the membership may elect to provide for such indemnification of the Manager or any party under any circumstance.

7.4 **EFFECT OF TERMINATION OF PROCEEDING.** The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the Person did not meet the requirements set forth in any Section of this Article. A Person shall be deemed to have been found liable in respect of any claim, issue or matter only after the Person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Until such time as to a final disposition, the Company shall provide the indemnification and defenses contemplated herein.

7.5 **EXTENT OF INDEMNIFICATION.** A Person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the Person in connection with the proceeding; but if the Person is found liable to the Company or is found liable on the basis that Personal benefit was improperly received by the Person, the indemnification shall (a) be limited to reasonable expenses actually incurred, and (b) not be made in respect of any proceeding in which the Person shall have been found liable for willful or intentional misconduct in the performance of such Person's duty to the Company.

7.6 **DETERMINATION OF INDEMNIFICATION.** A determination of indemnification under any Section of this Article may be made by (i) the Manager, (ii) legal counsel to the company, or (iii) by the Members in a vote.

7.7 **AUTHORIZATION OF INDEMNIFICATION.** Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that: (i) if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by the foregoing Section for the selection of special legal counsel; and (ii) the provision of this Article making indemnification mandatory in certain cases specified herein shall be deemed to constitute authorization in the manner specified by this Section of indemnification in such cases.

7.8 **SUCCESSFUL DEFENSE OF PROCEEDINGS.** Except as provided otherwise by law or by this Operating Agreement, the Company shall indemnify a Manager against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

7.9 **COURT ORDER IN SUIT FOR INDEMNIFICATION.** Indemnification required by the foregoing Section shall be subject to Order upon request by an indemnified party in a court of competent jurisdiction upon claim by the Manager as to entitlement to indemnification under that Section, the court shall order indemnification and shall award to the Manager the expenses incurred in securing the indemnification.

7.10 **COURT DETERMINATION OF INDEMNIFICATION.** Upon application of a Manager, a court of competent jurisdiction shall determine, after giving any notice the court considers necessary, that the Manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in any Section of this Article or has been found liable in the circumstances described in any Section of this Article. The court shall order the indemnification that the court determines is proper and equitable; but, if the Person is found liable to the Company or is found liable on the basis that personal benefit was improperly received by the Person, the indemnification shall be limited to reasonable expenses actually incurred by the Person in connection with the proceeding.

7.11 **ADVANCEMENT OF EXPENSES.** Reasonable expenses incurred by a Manager who was, is, or is threatened to be made a named defendant or respondent in a proceeding shall be paid or reimbursed by the Company in advance of the final disposition of the proceeding, without the authorization or determination specified in this Article, after the Company receives a written affirmation by the Manager of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, which must be an unlimited general obligation of the Manager (and can be accepted without reference to financial ability to make repayment) but need not be secured, made by or on behalf of the Manager to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the Manager against expenses incurred by him in connection with that proceeding is prohibited by this Article. A provision contained in the Articles, this Operating Agreement, a resolution of Members or Manager, or an agreement that makes mandatory the payment or reimbursement permitted under this Section shall be deemed to constitute authorization of that payment or reimbursement.

7.12 **EXPENSES OF WITNESS.** Notwithstanding any other provision of this Article, the Company may pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding, given that such appearance or participation occurs by reason of his being or having been a Manager of the Company.

7.13 **INDEMNIFICATION OF OFFICERS.** The Company may, at the discretion of the Manager, indemnify and advance or reimburse expenses to a Person who is or was an officer of the Company to the same extent that it shall indemnify and advance or reimburse expenses to Manager under this Article.

7.14 **INDEMNIFICATION OF OTHER PERSONS.** The Company may, at the discretion of the Manager, indemnify and advance expenses to any Person who is not or was not an officer, employee, or agent of the Company but who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise to the same extent that it shall indemnify and advance expenses to Manager under this Article.

7.15 **ADVANCEMENT OF EXPENSES TO OFFICERS AND OTHERS.** The Company shall indemnify and advance expenses to an officer, and may indemnify and advance expenses to an employee or agent of the Company, or other Person who is identified in the foregoing Section and who is not a Manager, to such further extent as such Person may be entitled by law, agreement, vote of Members or otherwise.

7.16 **CONTINUATION OF INDEMNIFICATION.** The indemnification and advance payments provided by this Article shall continue as to a Person who has ceased to hold his position as a Manager, officer, employee or agent, or other Person described in any Section of this Article, and shall inure to his heirs, executors and

administrators.

7.17 **LIABILITY INSURANCE.** The Company may purchase and maintain insurance or another arrangement on behalf of any Person who is or was a Manager, officer, employee, or agent of the Company or who is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person, whether or not the Company would have the power to indemnify him against that liability under this Article. If the insurance or other arrangement is with a Person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the Company would not have the power to indemnify the Person only if including coverage for the additional liability has been approved by the Members of the Company. Without limiting the power of the Company to procure or maintain any kind of insurance or other arrangement, the Company may, for the benefit of Persons indemnified by the Company, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the Company; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the Company or with any insurer or other Person deemed appropriate by the Manager regardless of whether all or part of the stock or other securities of the insurer or other Person are owned in whole or part by the Company. In the absence of fraud, the judgment of the Manager as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other Person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be avoidable and shall not subject the Manager approving the insurance or arrangement to liability, on any ground, regardless of whether Manager participating in the approval are beneficiaries of the insurance or arrangement.

## ARTICLE VIII: CERTIFICATES

8.1 **CERTIFICATES.** Certificates in the form determined by the Manager shall be executed representing all Membership Interests then outstanding, as may change from time to time. Such certificates shall be consecutively numbered, and shall be entered in the books of the Company as they are issued. Each certificate shall state on the face thereof the holder's name, the class of membership, the Membership Interest, and such other matters as may be required by the laws of the State of Nevada. They shall be signed by a Manager or officer of the Company, and may be sealed with the seal of the Company if adopted. A Member has the right to possess the original certificate, provided, however, that the Manager may keep a copy of such certificate in the records of the Company.

8.2 **REPLACEMENT OF LOST OR DESTROYED CERTIFICATE.** The Manager may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the holder of record thereof, or his duly authorized attorney or legal representative who is claiming the certificate to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Manager in its discretion and as a condition precedent to the issuance thereof, may require the owner of such lost or destroyed certificate or certificates or his legal representative to advertise the same in such manner as it shall require or to give the Company a bond with surety and in form satisfactory to the Company (which bond shall also name the Company's transfer agents and registrars, if any, as obligees) in such sum as it may direct as indemnity against any claim that may be made against the Company or other obligees with respect to the certificate alleged to have been lost or destroyed, or to both advertise and also give such bond.

8.3 **TRANSFER OF MEMBERSHIP INTEREST.** Upon surrender to the Company or the transfer agent of the Company of a certificate for Membership Interest duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Company to issue a new certificate to the Person entitled thereto, cancel the old certificate, and record the transaction upon its books.

8.4 **REGISTERED MEMBERS.** The Company shall be entitled to treat the holder of record of any certificate or certificate of Membership interest of the Company as the owner thereof for all purposes and, accordingly shall not be bound to recognize any equitable or other claim to or interest in such Membership interest or

any rights deriving from such Membership Interest on the part of any other Person, including (but without limitation) a purchaser, assignee or transferee, unless and until such other Person becomes a Member, whether or not the Company shall have either actual or constructive notice of the interest of such Person, except as otherwise provided by law.

## ARTICLE IX: TAXES

**9.1 TAX RETURNS.** The tax matters partner, as defined in Section 9.3, shall cause to be prepared and filed any necessary federal and state income tax returns for the Company, including making the elections described in Section 9.2. Each Member shall furnish to the tax matters partner all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.

**9.2 TAX ELECTIONS.** The Company may make the following elections on the appropriate tax returns:

**A.** to adopt the calendar year as the Company's fiscal year;

**B.** to adopt the cash method of accounting and to keep the Company's books and records on the income-tax method;

**C.** if a distribution of Company property as described in §734 of the Code occurs or if a transfer of a Membership Interest as described in §743 of the Code occurs, on written request of any Member, to elect, pursuant to §754 of the Code, to adjust the basis of Company properties;

**D.** to elect to amortize the organizational expenses of the Company and the start-up expenditures of the Company under §195 of the Code as permitted by §709(b) of the Code; and

**E.** any other election the Manager may deem appropriate and in the best interests of the Members.

**9.3 TAX MATTERS PARTNER.** The Manager shall designate itself to be the "tax matters partner" of the Company pursuant to §6231(a)(7) of the Code. The tax matters partner shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of §6223 of the Code. Any Member who is designated tax matters partner shall inform each other Member of all significant matters that may come to its attention in its capacity as tax matters partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The tax matters partner may not take any action contemplated by §§6222 through 6232 of the Code without the consent of a majority of Members but this sentence does not authorize any action left to the determination of an individual Member under §§6222 through 6232 of the Code.

## ARTICLE X: NOTICE

**10.1 METHOD.** Whenever by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or the Manager, and no provision is made as to how the notice shall be given, it shall not be construed to mean personal notice, but any such notice may be given in writing, postage prepaid, addressed to the Manager or Member at the address appearing on the books of the Company, or in any other method permitted by law. Any notice required or permitted to be given by mail shall be deemed given at the time when the same is thus deposited in the United States mail.

**10.2 WAIVER.** Whenever, by statute or the Articles or this Operating Agreement, notice is required to be given to any Member or Manager, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated in such notice, shall be equivalent to the giving of such notice. Attendance of the Manager or a Member at a meeting shall constitute a waiver of notice of such meeting, except

where a Manager or Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

## ARTICLE XI: BANKRUPTCY OF A MEMBER

**11.1 BANKRUPTCY.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Manager to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and on the exercise of this option the Bankrupt Member's bankruptcy estate (or the trustee thereof) shall sell, its Membership Interest to the Company. The purchase price shall be a dollar amount equal to the Class A Capital Contribution of the Bankrupt Member plus the remaining Class B capital account, if any, of that Bankrupt Member. The payment to be made to the Bankrupt Member or its estate pursuant to this Section is in complete liquidation and satisfaction of all the rights and interest of the Bankrupt Member and its estate (and of all Persons claiming through the Bankrupt Member and its estate) in and in respect to the Company, including, without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members.

## ARTICLE XII: DISSOLUTION, LIQUIDATION, AND TERMINATION

**12.1 DISSOLUTION.** The Company shall dissolve and its affairs shall be wound up on the written consent of all Members.

**12.2 LIQUIDATION AND TERMINATION.** On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager then the Members by majority vote will appoint one or more Members as liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidator are as follows:

**A.** as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

**B.** the liquidator shall provide written notice to be mailed to each known creditor of and claimant against the Company;

**C.** the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

**D.** all remaining assets of the Company shall be distributed to the Members as follows:

(1) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;

(2) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market

value of that property on the date of distribution; and

(3) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the partnership occurs (other than those made by reason of this Clause (3)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of the liquidation). All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 12.2. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 12.2 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

12.3 **DEFICIT CAPITAL ACCOUNTS.** Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective Capital Contributions, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

12.4 **ARTICLES OF DISSOLUTION.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Manager or a Member shall file Articles of Dissolution with the Secretary of State of Nevada and take such other actions as may be necessary to terminate the Company.

## ARTICLE XIII: GENERAL PROVISIONS

13.1 **BOOKS AND RECORDS.**

A. The Company shall maintain those books and records as provided by statute and as it may deem necessary or desirable. All books and records provided for by statute shall be open to inspection of the Members from time to time and to the extent expressly provided by statute. The Manager may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request as may be specified in the Act:

(1) a current list that states:

(a) the name and mailing address of each Member;
(b) the percentage or other interest in the Company owned by each Member; and
(c) if one or more classes or groups are established in or under the Articles or this Operating Agreement, the names of the Members who are Members of each specified class or group;

(2) copies of the federal, state, and local information or income tax returns for the Company's six most recent tax years.

(3) a copy of the Articles and this Operating Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the

manner provided by the Articles or this Operating Agreement, classes or groups of Members;

(4) unless contained in the Articles or this Operating Agreement, a written statement of:

(a) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each Member, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the Member has agreed to make in the future as an additional contribution;
(b) the times at which additional contributions are to be made or events requiring additional contributions to be made;
(c) events requiring the Company to be dissolved and its affairs wound up; and
(d) the date on which each Member in the Company became a Member; and

(5) correct and complete books and records of accounts of the Company.

**B.** The Company shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

**C.** The Company shall keep in its registered office in Nevada and make available to Members on reasonable request the street address of its principal United States office in which the records required by this Section are maintained or will be available.

**D.** A Member, on written request stating the purpose, may examine and copy, in person or by the Member's representative, at any reasonable time, for any proper purpose, and at the Member's expense, records required to be kept under this Section and other information regarding the business, affairs, and financial condition of the Company as is just and reasonable for the Person to examine and copy.

**E.** On the written request by any Member, the Manager shall provide to the requesting Member or assignee, without charge, true copies of:

(1) the Articles and this Operating Agreement and all amendments or restatements; and
(2) any of the tax returns described in the Act.

**13.2 AMENDMENT OR MODIFICATION.** This Operating Agreement may be amended or modified from time to time only by a written instrument adopted by the affirmative vote of 98% or more of the Class A Members.

**13.3 CHECKS, NOTES, DRAFTS, ETC.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by one or more designated Persons appointed by the Manager or Chief Financial Officer of the Company, if such officer position exists.

**13.4 HEADINGS.** The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

**13.5 CONSTRUCTION.** Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits or Schedules, if any, are to Exhibits or Schedules attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

**A.** The remainder of this Operating Agreement shall be considered valid and operative; and
**B.** Effect shall be given to the intent manifested by the portion held invalid or inoperative.

13.6 **ENTIRE AGREEMENT; SUPERSEDURE.** This Operating Agreement constitutes the entire agreement of the Members of the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

13.7 **EFFECT OF WAIVER OR CONSENT.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

13.8 **BINDING EFFECT.** Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

13.9 **DISPUTE RESOLUTION - BINDING ARBITRATION ELECTION.** Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof shall solely be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The parties specifically waive any rights to litigation as a dispute resolution methodology and further divest any Court of jurisdiction to determine disputes between the parties to this Agreement. Notwithstanding, 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, in the English language, and shall be conducted before three arbitrators, wherein the party calling for arbitration selects one arbiter, the party defending selects one arbiter and the arbiters select a third, agreeable to the parties or, if no agreement can be reached, then selected by the AAA. All costs related to the arbitration shall initially be borne by the aggrieved party. The arbitrators 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 post arbitration injunctive relief to protect or enforce its rights hereunder, or prohibit any court from making findings of fact in connection with granting or denying such 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, on any ground, of any decision of the arbitrator.

13.10 **LIQUIDATED DAMAGES PROVISION.** 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 agrees to provide to the 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).

13.11 **GOVERNING LAW; SEVERABILITY.** THIS OPERATING AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEVADA, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS OPERATING AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Operating Agreement and (a) any provision of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

13.12 **FURTHER ASSURANCES.** In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

13.13 **NOTICE TO MEMBERS OF PROVISIONS OF THIS AGREEMENT.** By executing this

Operating Agreement, each Member acknowledges that it has actual notice of: (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in Article III; and (b) all of the provisions of the Articles. Each Member hereby agrees that this Operating Agreement constitutes adequate notice of all such provisions, including, without limitation, any notice requirement under the Chapter 86 of the Nevada Revised Statutes and under the Nevada Uniform Commercial Code, and each Member hereby waives any requirement that any further notice thereunder be given.

13.14 **COUNTERPARTS.** This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

13.15 **CONFLICTING PROVISIONS.** To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then the Manager shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to the Manager in interpreting the provisions of this Operating Agreement to accomplish the purposes and objectives of the Company, and the Manager may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members or the Manager.

# # # # #

**IN WITNESS WHEREOF**, the undersigned hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members and Manager, effective as of the first date written in the preamble above, and we have hereunto affixed our signatures.

## MANAGER:

**MANAGER:** **SJC VENTURES HOLDING COMPANY LLC**, a Delaware limited liability company

By: _____
Jay Bloom, Manager

## MEMBERS:

**MEMBER:** **SJC VENTURES HOLDING COMPANY LLC**, a Delaware limited liability company

By: _____
Jay Bloom, Manager

**MEMBER:** **CBWE, LLC**, a Nevada limited liability company

By: _____
Carlos Cardenas, Manager

**MEMBER:** **MAMBER VENTURES LLC**, a Nevada limited liability company

By: _____
Manuel A. Ramirez Pleitez, Manager

**MEMBER:** **PALADIN VENTURES, LLC**, a Nevada limited liability company

By: **LS MARLO TRUST**

By: _____
J. Chris Morgando, Trustee

MEMBER: **BART RENDEL**, an individual

By: _____
Bart Rendel, individually

MEMBER: **DUSTIN LEWIS**, an individual

By: _____
Dustin Lewis, individually

MEMBER: **SCOTT OLIFANT**, an individual

By: _____
Scott Olifant, Esq., individually

MEMBER: **ROBERT CURLEY**, an individual

By: _____
Robert Curley, individually

Chris Wood, an individual

By: _____
Chris Wood, individually

MEMBER: **HANNAH HARVEY**, an individual

By: _____
Hannah Harvey, individually

MEMBER: **JETHRO WAYNE GORDON**, an individual

By: _____
Jethro Wayne Gordon., individually

MEMBER: **WENDELL BROWN**, an individual

By: _____
Wendell Brown, individually

MEMBER: **JEFFREY ALBREGTS**, an individual

By: _____
Jeffrey Albregts, individually

MEMBER: **GLENN PLANTONE**, an individual

By: _____
Glenn Plantone, individually

MEMBER: **ERIN QUATRALE**, an individual

By: _____
Erin Quatrale, individually

MEMBER: **MARILYN WILEY**, an individual

By: _____
Marilyn Wiley, individually

MEMBER: **DENNIS WILEY**, an individual

By: _____
Dennis Wiley, individually

MEMBER: **MARK HOSTETLER**, an individual

By: _____
Mark Hostetler, individually

MEMBER: **ALAN AND THERESA LAHRS**, jointly and individually

By: _____
Alan Lahrs Theresa Lahrs

MEMBER: IZZY ZALCBERG, an individual

By: _____
Izzy Zalcberg, individually

Kregg Hale, an individual

By: _____
Kregg Hale, individually

MEMBER: JEAN KEMPNER, an individual

By: _____
Jean Kempner, individually

MEMBER: AMY AND ARMAND FARR, jointly and individually

By: _____
Amy Farr Armand Farr

MEMBER: KENT ADAMSON, an individual

By: _____
Kent Adamson, individually

MEMBER: BASIS INVESTMENTS, LLC a Texas Limited Liability Company

By: _____
Phil Bourassa, Member

MEMBER: GREG AND LAURIE DARROCH, jointly and individually

By: _____
Greg Darroch Laurie Darroch

MEMBER: CATHERYN COPE, an individual

By: _____
Catheryn Cope, individually

**Exhibit A-1**

Vesting Letter

[to be attached]

**First 100, LLC**
Tivoli Village at Queens Ridge
410 S. Rampart Blvd., Suite 450
Las Vegas, NV 89145

October 18, 2013

Re: Vesting Terms for 1.5% Class A Voting Membership Interest Grant to TGC/Farkas Funding LLC.

Dear **TGC/Farkas Funding LLC**:

The Executive Committee of Directors of First 100, LLC (the ***"Company"***) at its April 26, 2012 meeting, undertook a review of its policies regarding employee equity compensation in connection with continued employment with the Company. Based on that review and in order to provide its employees with appropriate equity compensation as incentive to continue their employment with the company, the Executive Committee of the Board has concluded that all Membership Interest Incentive grants with certain employees, as may be awarded by the Board, is to provide employees with a specified amount of Membership Interest which will vest under certain circumstances as defined herein.

Summary of the Vesting Terms.

A description of the Vesting Terms for Membership Interests grants is as follows.

Each of your existing and any future Membership Interest Incentive grants that may be awarded to you will provide that, such Membership Interest Incentive granted shall vest at a rate of 1/3 of any such position per year for three (3) years of continuous employment, with such Vesting Term commencing on the hire date of Matthew Farkas of **August 28, 2013**.

In the event that you resign, any unvested Membership Interested Incentive granted is subject to forfeiture and will be surrendered back to the company, being deemed as unearned.

In the event that your employment is terminated without cause (including poor performance) or you otherwise resign within 12 months after the Company is acquired, then vesting under each Membership Interest Incentive granted will automatically accelerate to reflect 100% vesting in any such grant, notwithstanding any outstanding vesting period remaining. Such vesting acceleration will also be automatically provided in the event that the corporation that acquires the Company elects not to assume or otherwise substitute equivalent equity for the unvested portion of the Membership Interest Incentive granted.

In the event of forfeiture of a Membership Interest Incentive grant, the total percentage of vested Membership Interest will be equal to the sum of all Membership Interest vested through the time of termination of employment which is the number of whole years that you have been continuously employed by the Company (and the Company's successor, if applicable).

An example of the operation of this accelerated vesting is as follows: Assume that an employee who was hired on January 1, 2013 has a total of 3% Membership Interest Incentive grant in Class A voting equity and the employee is terminated without cause on February 28, 20014. In that hypothetical case, 14 months would have passed from the date that the employee was hired until his/her termination. Without vesting acceleration, the employee shall be subject to forfeiture of 2% of the Membership Interest, retaining 1% of the Membership Interest. Should vesting acceleration be applicable here (and in lieu of regular vesting) the employee would retain the entirety of the 3% Membership Interest.

During the vesting period, any unvested Membership Interest Incentive grant's voting rights shall be voted by the Board.

Please sign below where indicated to confirm your acceptance of the foregoing Vesting Terms for any such Membership Interest Incentive grant as may be held by you. By signing below, you and the Company also agree that:

(a) Other than as expressly stated in this letter agreement, the terms and conditions of the Operating Agreement remain in full force and effect.

(b) This letter, together with any Membership Interest Incentive grant held by you (or that may be awarded to you in the future) sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and undertakings with respect to the subject matter hereof, however, remains subject to the terms and conditions of the Operating Agreement, as amended, as the controlling document.

Very Truly Yours,

**Agreed and Accepted**

Matthew Farkas
TGC Farkas Funding, LLC

Director
First 100, LLC

1st One Hundred, LLC
*Your partner for a stronger community*

CORPORATE HEADQUARTERS: TIVOLI VILLAGE AT QUEENSRIDGE | 410 SOUTH RAMPART BOULEVARD | SUITE 490 | LAS VEGAS, NV 89145 | O:702.823.3600 | F:702.724.9871

Dear Matthew Farkas,

Let this letter serve as a memorial to an agreement stating the following:

The directorship of First 100, LLC has granted a 2% equity position in the company for services rendered in the VP of Finance position to Matthew Farkas, and by extension, the TGC Partnership between Matthew Farkas and Adam Flatto.

The 1% purchase for $1,000,000 by Adam Flatto will be pooled with this position to make a total position of 3% ownership.

Matthew Farkas (with the consent of the board) has offered to split this position with Adam Flatto on a 50%/50% basis. This will leave Matthew with a 1.5% position in First 100, LLC and Adam Flatto with an identical 1.5% position with First 100, LLC.

Sincerely,

**J. Chris Morgando**
Director
1st One Hundred

m 702.301.3197 | o 702.823.3600 | f 702.724.9781

**Exhibit B**

Form of

Consent to Admission of New Member and Acceptance
(First 100, LLC Membership Interests)

**CONSENT TO ADMISSION OF NEW MEMBER AND ACCEPTANCE**

THIS CONSENT TO ADMISSION OF NEW MEMBER AND ACCEPTANCE (the "Consent and Agreement") is made and entered into on the date set forth on the signature page hereto, and effective as of October __ __, 2013 (the "Effective Date"), by and between the individuals set forth on the signature pages attached hereto as Class A Members of FIRST 100, LLC, a Nevada limited liability company, having an address at 11920 Southern Highlands Parkway, Suite 200, Law Vegas, Nevada 89141 (the "Class A Members"), TGC/FARKAS FUNDING LLC, a Delaware limited liability company, having an address c/o The Georgetown Company, LLC, 677 Madison Avenue, New York, New York 10021, Attention: Adam Flatto (the "TGC/Farkas") and FIRST 100, LLC, a Nevada limited liability company, having an address at 11920 Southern Highlands Parkway, Suite 200, Law Vegas, Nevada 89141 (the "Company").

**WITNESSETH:**

WHEREAS, TGC/Farkas desires to be admitted as an additional Class A member of the First 100, LLC;

WHEREAS, Section 3.19 of the First Amended Operating Agreement of the Company (the "Company Operating Agreement"), adopted April 11, 2012, provides that a majority vote of the Class A Members is required in order for an additional member to be admitted to the Company,

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties agree as follows:

1. Defined Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Company Operating Agreement.

2. Consent. The undersigned Class A Members, constituting a majority of the Class A Members of the Company existing as of the date hereof, hereby consent to the admission of TGC/Farkas as a member of the Company and further consent to TGC/Farkas holding its interest in the following manner: (a) 1.5% subject

to vesting over a three year period as more particularly set forth in the Vesting Letter to TGC/Farkas and (b) 1.5% subject to no vesting.

3. Admission as an Additional Member. The Company accepts this Consent and Agreement. TGC/Farkas is hereby admitted as an additional Member of the Company.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement on this __ day of _____, 2013.

CONSENT OF CLASS A MEMBERS:

Paladin Ventures

By: _____
Name:
Title:

SJC 1, LLC

By: _____
Name:
Title

Mawber Ventures

By: _____
Name:
Title:

SJC 2, LLC

By: _____
Name:
Title:

CBWE

By: _____
Name:
Title:

SJC, LLC

By: _____
Name:
Title:

COMPANY:

**FIRST 100, LLC**

By: _____
Name:
Title:

TGC/FARKAS:

**TGC/FARKAS FUNDING LLC**

By: _____
Matthew Farkas
Manager

**Exhibit C**

Form of
Assignment and Assumption of Membership Interests

## ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST

THIS ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST (this "Assignment") is made as of _____ __, 20_ (the "Effective Date"), by and between _____, a _____ ("Assignor"), and _____, a _____ ("Assignee"), on the following terms and conditions:

RECITALS:

(A) TGC/Farkas Funding LLC (the "Company") was formed as a limited liability company, on _____ __, 2013, pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 et seq., as the same may be amended from time to time.

(B) The members thereto entered into that certain Limited Liability Company Agreement of the Company on _____ __, 2013 (the "Operating Agreement"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Operating Agreement.

(C) Assignor desires to sell, assign and convey to Assignee, and Assignee desires to buy and pay for, all of Assignor's right, title and interest in the Company on the terms and conditions set forth therein.

(D) The parties hereto desire to enter into this Assignment on the terms set forth herein.

ASSIGNMENT:

NOW, THEREFORE, for good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged:

1. **Assignment and Acceptance**. Assignor transfers and assigns to Assignee as of the Effective Date, and Assignee accepts from Assignor as of the Effective Date, the Membership Interest(s) set forth on Schedule 1 attached hereto (collectively, the "Assigned Interest"), together with all privileges, distributions, payments and benefits appertaining thereto including, without limitation, all of

Assignor's right, title and interest in, to and under the Operating Agreement including, without limitation, all sums of money distributable thereunder after the Effective Date in respect of Assignor's Membership Interest in the Company, free and clear of all liens, claims, charges and other encumbrances other than those liens, claims, charges and other encumbrances, if any, created pursuant to the Operating Agreement. This Assignment is made without any representation or warranty, express, implied or statutory by, and without any recourse against, Assignor.

2. **Benefit and Burden**. All terms of this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, executors, successors and assigns.

3. **Counterparts**. This Assignment may be executed in multiple counterparts. Each counterpart shall be an original but together such counterparts shall constitute one and the same instrument.

4. **Consent to Transfer**. By signing this Assignment in the space provided below, the Members hereby consent to Assignor's Transfer of Assignor's Membership Interest to Assignee and consent to the substitution of Assignee as a Member of the Company from and after the Effective Date.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

EXECUTED as of the date and year first above recited.

**ASSIGNOR:**

[ ]

By: _____
Name:
Title:

**ASSIGNEE:**

[ ],
a _____

By: _____
Name:
Title:

AS OF THIS ___ DAY OF _____, 20__ THE MEMBERS HEREBY CONSENT TO THE WITHIN TRANSFER AND TO THE ADMISSION OF ASSIGNEE AS A SUBSTITUTE MEMBER OF THE COMPANY

_____
Name:

_____
Name:

## SCHEDULE 1

| Assignor: | Membership Interest Assigned by Assignor: | Remaining Membership Interest of Assignor |
|---|---|---|

You still on the call?

Hi. Did you send over the conflict waiver?

Not yet. I have to draft it. Will get to you tomorrow

Is it possible for me to speak with him tomorrow?

Very short discussion

Did you see the revised conflict letter?

I did. Will have him sign it tomorrow

Jay, please confirm that I will meet with Matthew at MGA.

When?

For what?

You said he was going to MGA. I was going to meet him there - see my email.

No. He's going to a local FedEx store by his house where they can print it and scan the signed copy

Ok.

You going to have send me a retainer or transfer?

Can you confirm wire instructions for the retainer ?

Lol

I will email you

Typing at the same time

Hey buddy. Joey and Jason asked if you could copy them on the email to GTG. If you could blind copy me as well that would be great. Much appreciated.

Please see email and confirm

Looking now.

Looks good to me

Call you later. With my parents.

**ORDG**

GARMAN TURNER GORDON LLP
ERIKA PIKE TURNER
Nevada Bar No. 6454
Email: eturner@gtg.legal
DYLAN T. CICILIANO
Nevada Bar. No. 12348
Email: dciciliano@gtg.legal
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: (725) 777-3000
Fax: (725) 777-3112
*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| TGC/FARKAS FUNDING, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>FIRST 100, LLC, a Nevada Limited Liability Company; FIRST ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company aka 1st ONE HUNDRED HOLDINGS LLC, a Nevada Limited Liability Company,<br><br>Defendants. | CASE NO. A-20-822273-C<br>DEPT. 13<br><br>**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL and DENYING COUNTERMOTION FOR PROTECTIVE ORDER AND SANCTIONS PURSUANT TO NRS 18.010(2)(b)**<br><br>**Date of Hearing:** March 1, 2021 |

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL and DENYING COUNTERMOTION FOR PROTECTIVE ORDER AND SANCTIONS PURSUANT TO NRS 18.010(2)(b)**

On February 22, 2021, Plaintiff TGC/FARKAS FUNDING, LLC ("Plaintiff") filed its *Motion to Compel and for Sanctions; and Application for Ex- Parte Order Shortening Time* (the "Motion"). On February 26, 2021, Defendants FIRST 100, LLC and FIRST ONE HUNDRED HOLDINGS, LLC aka 1st ONE HUNDRED HOLDINGS LLC ("Defendants") filed their *Opposition to Motion to Compel and for Sanctions Against Nonparty Jay Bloom and His Counsel* and their *Countermotion for Protective Order and Sanctions Pursuant to NRS 18.010(2)(b)* (the "Countermotion"), and Non-Party RAFFI NAHABEDIAN ("Nahabedian") filed his *Opposition to Motion to Compel and for Sanctions*. The Court, having considered the Motion, the Oppositions, the Countermotion, as well as the exhibits thereto, FINDS and CONCLUDES as

follows:

During the relevant time period following entry of the *Order to Show Cause Why Defendants and Jay Bloom Should Not be Found In Contempt of Court* in this case on December 18, 2020, Nahabedian was purporting to represent Plaintiff for the purpose of effectuating a dismissal of this case. At the same time, Nahabedian represented Jay Bloom, the manager of Defendants and subject of the pending contempt proceedings, in a separate, unrelated matter (Case No. A-20-8098882-B, styled *Nevada Speedway LLC v. Jay Bloom, et al.*). As a result of Nahabedian's concurrent representation of Jay Bloom in the separate case along with Nahabedian's alleged reliance on representations made by Nevada State Bar counsel regarding the scope of the attorney-client privilege in this matter, Jay Bloom and counsel for Defendants and Jay Bloom in the above-captioned case, Maier Gutierrez & Associates ("MGA"), asserted an attorney-client privilege on behalf of Jay Bloom and, based thereon, relevant communications between or among Nahabedian, Jay Bloom and/or MGA were withheld.

The attorney-client privilege is statutory and set forth in Nevada at NRS 49.035-115, inclusive. There is no attorney-client privilege that would prevent disclosure of Nahabedian's communications with Jay Bloom and/or MGA relating to Plaintiff in this case or the purported settlement between Plaintiff and Defendants in this case.

The Motion is therefore GRANTED, and the communications between or among Nahabedian and Jay Bloom and/or MGA relating to Plaintiff in this case, the purported settlement between Plaintiff and Defendants in this case shall be produced forthwith. The issue of sanctions is reserved for resolution following the evidentiary hearing scheduled for March 3, 2021 and March 10, 2021.

The Countermotion is DENIED.

IT IS SO ORDERED this 11th day of March, 2021.

DISTRICT COURT JUDGE

Garman Turner Gordon LLP
Attorneys At Law
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
(725) 777-3000

Respectfully submitted:

GARMAN TURNER GORDON LLP

*/s/ Erika Pike Turner*
Erika Pike Turner, Esq., Bar No. 6454
Dylan T. Ciciliano, Esq., Bar. No. 12348
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
*Attorneys for Plaintiff*

Reviewed and Approved:

MAIER GUTIERREZ & ASSOCIATES

*/s/ Joseph A. Gutierrez*
Joseph A. Gutierrez, Esq., Bar No. 9046
Danielle J. Barraza, Esq., Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
*Attorneys for Defendants First 100, LLC and 1st One Hundred Holdings, LLC*

Reviewed and Approved:

SHEA LARSEN

*/s/ Bart K. Larsen*
Bart K. Larsen, Esq., Bar No. 8538
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
*Attorney for Non-Party Raffi A. Nahabedian*

See previous page for Judge Denton's Signature

March 11, 2021.

**From:** Joseph Gutierrez <jag@mgalaw.com>
**Sent:** Wednesday, March 10, 2021 4:08 PM
**To:** Erika Turner <eturner@Gtg.legal>; Bart Larsen <blarsen@shea.law>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>
**Subject:** RE: Order Granting Plaintiffs Motion to Compel- TGC Farkas

Looks good to me

**Joseph A. Gutierrez**
**MAIER GUTIERREZ & ASSOCIATES**
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jag@mgalaw.com | www.mgalaw.com

**From:** Erika Turner <eturner@Gtg.legal>
**Sent:** Wednesday, March 10, 2021 4:06 PM
**To:** Bart Larsen <blarsen@shea.law>; Joseph Gutierrez <jag@mgalaw.com>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>
**Subject:** Order Granting Plaintiffs Motion to Compel- TGC Farkas

Counsel,
Please review the attached and advise if you approve and I may affix your e-signatures.

Erika

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
eturner@gtg.legal

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

www.gtg.legal

**From:** Bart Larsen <blarsen@shea.law>
**Sent:** Wednesday, March 10, 2021 4:09 PM
**To:** Erika Turner <eturner@Gtg.legal>; Joseph Gutierrez <jag@mgalaw.com>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>
**Subject:** Re: Order Granting Plaintiffs Motion to Compel- TGC Farkas

Thanks. You can use my electronic signature.

---

**From:** Erika Turner <eturner@Gtg.legal>
**Date:** Wednesday, March 10, 2021 at 4:06 PM
**To:** Bart Larsen <blarsen@shea.law>, Joseph Gutierrez <jag@mgalaw.com>
**Cc:** Dylan Ciciliano <dciciliano@Gtg.legal>
**Subject:** Order Granting Plaintiffs Motion to Compel- TGC Farkas

Counsel,
Please review the attached and advise if you approve and I may affix your e-signatures.

Erika

**Erika Pike Turner**
Partner

GARMAN | TURNER | GORDON

P 725 777 3000 | D 725 244 4573
eturner@gtg.legal

7251 AMIGO STREET, SUITE 210
LAS VEGAS, NV 89119

**A-20-822273-C**

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Other Civil Matters** **COURT MINUTES** **June 02, 2021**

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

**June 02, 2021** **9:30 AM** **Minute Order**

**HEARD BY:** Denton, Mark R. **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

## JOURNAL ENTRIES

HAVING reviewed and considered the parties' filings pertaining to the attorneys' fees/costs issue addressed at page 35, lines 18-25, of the Court's "Findings of Fact, Conclusions of Law, & Order re Evidentiary Hearing" entered April 7, 2021, and being fully advised in the premises, and determining that Plaintiff has shown in the civil contempt context adequate factual and legal (Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969)) bases for a remedial award-- exclusive of the amount ($10,120.00) attributable to fees/costs incurred by non-party Matthew Farkas, which, though apparently reasonable, relate to a separate indemnity obligation of Plaintiff to Mr. Farkas, and not to attorneys' fees/costs actually incurred by Plaintiff to Plaintiff's counsel-- the Court awards attorneys' fees to Plaintiff in the sum of $146,719.00 and costs in the sum of $4,816.81. Counsel for Plaintiff is directed to submit a proposed order consistent herewith and with supportive briefing and which, inter alia, expressly addresses the Brunzell factors as briefed, concurrent with provision of the same to opposing counsel for signification of approval/disapproval.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 6/2/21

**SR**
JASON R. MAIER, ESQ.
Nevada Bar No. 8557
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: jrm@mgalaw.com
jag@mgalaw.com
djb@mgalaw.com

*Attorneys for Defendants First 100, LLC and 1st One Hundred Holdings, LLC and non-party Jay Bloom*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| TGC/FARKAS FUNDING, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>FIRST 100, LLC, a Nevada limited liability company; 1st ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company,<br><br>Defendants. | Case No: A-20-822273-C<br>Dept. No.: XIII<br><br>**DEFENDANTS' STATUS REPORT ON COMPLIANCE WITH THE COURT'S ORDERS**<br><br>Hearing Date: July 9, 2021<br>Hearing Time: 9:00 a.m. |

Defendants First 100, LLC and 1st One Hundred Holdings, LLC (collectively "First 100") and non-party Jay Bloom, by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby submit this status report on their compliance with the Court's orders.

At the July 8, 2021 status check on this matter, the Court granted First 100's oral motion to post bond in the amount of the sanction award ($151,535.81), and ordered that successful posting of the bond by August 9, 2021 "will stay any collection efforts and resolve the contempt issue surrounding the monetary award." *See* 7/15/2021 Order, *on file*.

/ / /

On August 3, 2021, SJC Ventures Holding Company, LLC, on behalf of First 100, LLC, posted the bond amount with the District Court Clerk. A notice thereof was subsequently filed on August 3, 2021. *See* **Exhibit A**, Bond with Official Receipt.

Also at the July 8, 2021 status check, the Court set an August 9, 2021 status check in order to determine the status of First 100's efforts to obtain additional tax records and Bank of America documents. As set forth in Jay Bloom's supplemental affidavit, efforts to obtain documentation from Bank of America were unsuccessful, and efforts to obtain additional tax returns (which included a request from CPA Mark Dicus) did not yield any response. First 100 has indicated it would not be opposed to TGC/Farkas Funding, LLC issuing a subpoena directly to Bank of America for the additional documentation it is seeking. *See* **Exhibit B**, Supplemental Affidavit of Jay Bloom. First 100 has certified that it has taken any and all actions possible to comply with the document requests. *Id.* at ¶ 48.

Based on the foregoing, First 100 and non-party Jay Bloom respectfully ask that the Court deem the contempt issue resolved in its entirety.

DATED this 6th day of August, 2021.

Respectfully submitted,

**MAIER GUTIERREZ & ASSOCIATES**

*/s/ Joseph A. Gutierrez*

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
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 First 100, LLC and 1st One Hundred Holdings, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2, a copy of the **DEFENDANTS' STATUS REPORT ON COMPLIANCE WITH THE COURT'S ORDERS** was electronically filed on the 6th day of August, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Erika P. Turner, Esq.
Dylan T. Ciciliano, Esq.
GARMAN TURNER GORDON, LLP
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
*Attorneys for TGC Farkas Funding LLC*

*/s/ Brandon Lopipero*
An Employee of MAIER GUTIERREZ & ASSOCIATES

# EXHIBIT “A”

**BOND**

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
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: jrm@mgalaw.com
jag@mgalaw.com
djb@mgalaw.com

*Attorneys for Defendants First 100, LLC,*
*1st One Hundred Holdings, LLC and Jay Bloom*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| TGC/FARKAS FUNDING, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>FIRST 100, LLC, a Nevada limited liability company; 1st ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company,<br><br>Defendants. | Case No: A-20-822273-C<br>Dept. No.: XIII<br><br>**BOND** |

Defendants, First 100, LLC and 1st One Hundred Holdings, LLC, by and through their attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, pursuant to the July 15, 2021 order, hereby files this bond in the amount of the sanction award $151,535.81. A copy of the official

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receipt is attached hereto.

DATED this 3rd day of August, 2021.

Respectfully submitted,

**MAIER GUTIERREZ & ASSOCIATES**

*/s/ Joseph A. Gutierrez*

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
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 First 100, LLC and 1st One Hundred Holdings, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2, a copy of the foregoing **BOND** electronically filed on the 3rd day of August, 2021, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List:

Erika P. Turner, Esq.
Dylan T. Ciciliano, Esq.
GARMAN TURNER GORDON, LLP
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
*Attorneys for TGC Farkas Funding LLC*

*/s/ Natalie Vazquez*
An Employee of MAIER GUTIERREZ & ASSOCIATES

# OFFICIAL RECEIPT

**District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101**

Payor
SJC Ventures Holding Company, LLC

Receipt No.
**2021-48205-CCCLK**

Transaction Date
08/3/2021

| Description | Amount Paid |
|---|---|

On Behalf Of First 100, LLC
A-20-822273-C
TGC/Farkas Funding, LLC, Plaintiff(s) vs. First 100, LLC, Defendant(s)
Stay Bond

| | |
|---|---|
| Stay Bond | 151,535.81 |
| **SUBTOTAL** | **151,535.81** |

**PAYMENT TOTAL** **151,535.81**

| | |
|---|---|
| Cashier Check (Ref #1292626025) Tendered | 151,535.81 |
| Total Tendered | **151,535.81** |
| Change | 0.00 |

| | | |
|---|---|---|
| 08/03/2021 03:21 PM | Cashier Station AIKO | Audit 37905823 |


# OFFICIAL RECEIPT

# EXHIBIT “B”

**CLARK COUNTY, NEVADA**

**AFFIDAVIT OF JAY BLOOM**

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

JAY BLOOM, being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) and I have personal knowledge of all the facts set forth herein. Except otherwise indicated, all facts set forth in this affidavit are based upon my own personal knowledge, my review of the relevant documents, and my opinion of the matters that are the issues of this lawsuit. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters stated to be based upon information and belief.

2. This affidavit is made with respect to Case Number A-20-822273-C.

3. On April 7, 2021, this Court entered an Order declining to reverse its denial of First 100's Motion to Enforce its Settlement Agreement and further ordered the production of certain books and records of the company to be produced.

4. On April 8, 2021, in an effort to timely comply with the April 7, 2021 Order of this Court, I contacted Michael Henrickson, the company's former Financial Controller, and individual in possession of the accounting computer and records for the company, and asked him to schedule a call to produce all documents responsive to the Order of this Court. (See Enclosure A)

5. On or about Friday, April 9, 2021, I spoke to Michael Henrickson, conveyed the Order for production and reviewed the documents needed to be produced pursuant to the Order.

6. During this conversation, Mr. Henrickson indicated that he had plans with his family for the weekend but he would work on compiling the documents to be produced the following week around his responsibilities for his current employer. (see Enclosure B)

7. On April 15, 2021, Mr. Henrickson texted that "The F100 accounting computer no

longer has Microsoft Office so it is extremely difficult for me review any files in that computer." (see Enclosure B)

8. Mr. Henrickson's text continues, "I was able to copy all of filed (except QB) to a thumb drive (***approximately 1,600 files***)". (see Enclosure B)

9. I responded by text, "OK, if I can get the thumb drive from you I'll go through those files. In the mean time can we generate the financials from what's in Quickbooks?" (Enclosure B)

10. Mr. Henrickson's text responded, "I brought them to work hoping to put them on my work computer here to try and separate out which files might answer each request but my financial institution blocks all plug in memory storage devices LOL so I can't view them here either. I would be happy to pass that thumb drive along to you." (see Enclosure B)

11. Mr. Henrickson's text continued, "***There are definitely financial statements included in the files that were on my computer that are now on the thumb drive***". (see Enclosure C)

12. He further texted, "Quickbooks – so I spent a couple of hours last night trying to get some reports out of Quickbooks (a/p reports, General Ledger reports and financial statements) but was having a heck of a time getting any report to save or export. I was going to try it again tonight when I get home. Not sure what else to do on that". (see Enclosure C)

13. I responded by text, "If the files were already created and they're on the flash drive, that's great. That's all we need." (see Enclosure C)

14. Mr. Henrickson's text responded, "Let me know where/when I can meet you then to hand off this thumb drive. Still at work, but wrapping up my day." (see Enclosure C)

15. Additionally, on April 11, 2021, I sent, by Certified mail, Regular mail and e-mail, a document demand to Matthew Farkas, the Company's former CFO and VP of Finance, wherein I demanded the return of any and all books and records in his possession, and further, that if it was his position that he was not in possession of any such documents, that he provide an affidavit stating so. (see Enclosure D)

16. Mr. Farkas did not provide any company books and records in his possession.

17. Mr. Farkas further refused to provide an affidavit that he was not in possession of any such company books and records required for production to TGC/Farkas as plaintiff.

18. Further, on April 11, 2021, the Company issued a capital call, as suggested by the Plaintiff in these proceedings. (See Enclosure E)

19. As all other members subject to the capital call had redeemed their membership, as had Plaintiff prior to reversing their Membership Redemption Agreement executed by Matthew Farkas and found to have been unauthorized by Plaintiff, Plaintiff is the only Member remaining liable for the capital call made.

20. Plaintiff failed to meet its Capital Call obligation under the Operating Agreements.

21. In fact, Plaintiff failed to provide a single dollar in response to the Capital Call.

22. Plaintiff did not even provide what they believed to be an accurate number for their capital call obligations.

23. Plaintiff refused to provide any funds whatsoever under their capital call obligations.

24. I met Mr. Henrickson on April 15, 2021 and obtained the thumb drive containing all of the company's books and records.

25. I then promptly delivered the books and records in their entirety to my Counsel for production to Plaintiffs in compliance with this Courts' Order in order to meet the 10 day production requirement as set by this Court.

26. I did not review the documents for privilege to remove any documents that consisted of communications with counsel for First 100.

27. I did not review the documents for relevance to the production Order.

28. I did not remove a single file and instead overproduced in provided every single file in the company's books and records.

29. All steps were taken to marshal and produce responsive documents from the First 100 accounting computer, and any documents not provided are documents that either do not exist or that First 100 does not have available in its possession or reasonable access to.

30. Plaintiff never e-mailed to Defendant nor its Counsel that there was any deficiency in its production prior to filing its motion seeking a sanction of incarceration of a responsive non party.

31. Plaintiff never called Defendant or its Counsel to indicate that there was any deficiency in its production prior to filing its motion seeking a sanction of incarceration of a responsive non party.

32. Plaintiff never texted Defendant or its Counsel to indicate that there was any deficiency in its production prior to filing its motion seeking a sanction of incarceration of a responsive non party.

33. After Plaintiff filed its "notice" and request for additional sanctions, I had my Counsel produce a PDF version of the documents contained on the flash drive, and 22,933 pages of documents were reproduced in PDF format.

34. Movant responded for the first time seeking supplemental production.

35. In response, First 100 requested any non-privileged documentation as may be in the possession of its attorneys.

36. First 100's counsel was the direct recipient of all of the Member's redemption Agreements, and as such, has supplemented First 100's production with all such Agreements.

37. Additionally, First 100 was a party to a real property transaction conducted by member SJC Ventures, in which First 100 acknowledged SJC's agreement to assign proceeds attributable to SJC to a third party in relation to SJC's pledge of such potential collection receipts to a third party.

38. First 100's counsel has been directed to supplement its production with these documents as well.

39. Bank statements were provided for First 100, LLC by Michael Henrickson.

40. However Movant has requested supplemental production of bank statements from Bank of America for parent company 1st One Hundred Holdings, LLC.

41. Respondent is not in possession of such additional bank records requested by Movant, and Respondent has not been successful in obtaining such documents from Bank of America.

42. Movant also requested supplemental production of tax returns.

43. Respondent requested the production of such records from its certified public accountant, Mark Dicus, who prepared the tax returns.

44. However, as of the time of this affidavit, Respondent has not received a response from Mark Dicus regarding the tax returns requested.

45. There are no further responsive documents in my (Jay Bloom) possession, and I do not have access to any additional responsive documents. I also do not know of anyone else who is in possession of or has access to such documents, except for possibly Mr. Farkas.

46. Therefore, Respondent is unable to supplement its production any further.

47. Respondent would not oppose Movant seeking to subpoena Bank of America for the documentation sought which is not in Respondent's possession.

48. I, non-party, Jay Bloom, both in an individual capacity and on behalf of the Defendant Company have taken any and all actions possible to timely comply with this Court's Order.

49. To the best of my knowledge and belief, no further Books and Records exist beyond the almost 1,600 documents consisting of now in excess of 22,933 pages, as have already been timely produced pursuant to this Court's Order, other than those that may be in Mr. Farkas' possession already which he refuses to provide or attest that he does not possess.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

JAY BLOOM

SUBSCRIBED and SWORN to before me this 6 day of August, 2021.

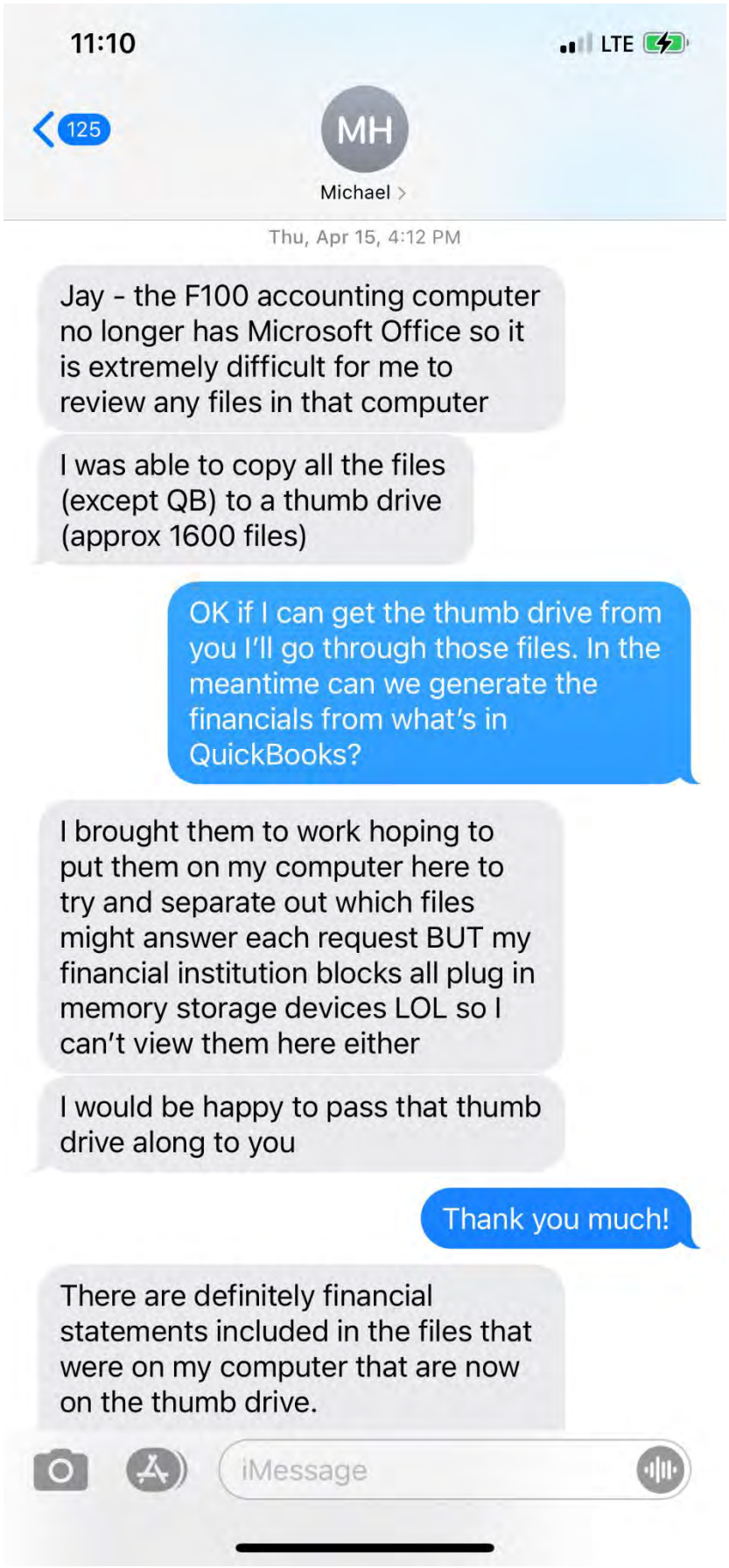
NOTARY PUBLIC

DONNA L. ZAMORA
Notary Public, State of Nevada
Appointment No. 03-80797-1
My Appt. Expires Jul 10, 2023

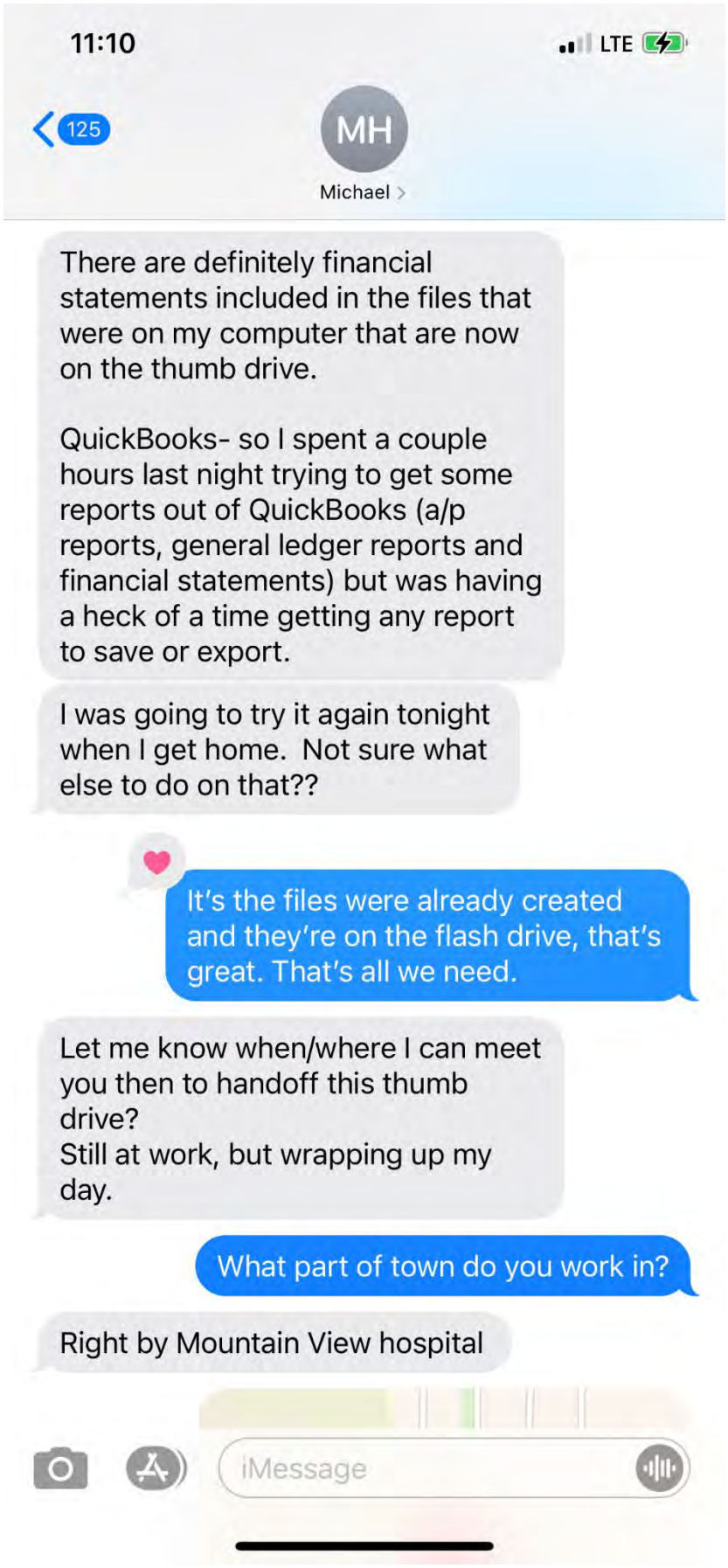
# Enclosure A


11:09
LTE
125
MH
Michael
Thu, Apr 8, 8:42 PM
Hi!!
Are you around for a quick call at 2pm tomorrow?
That should work!
Excellent

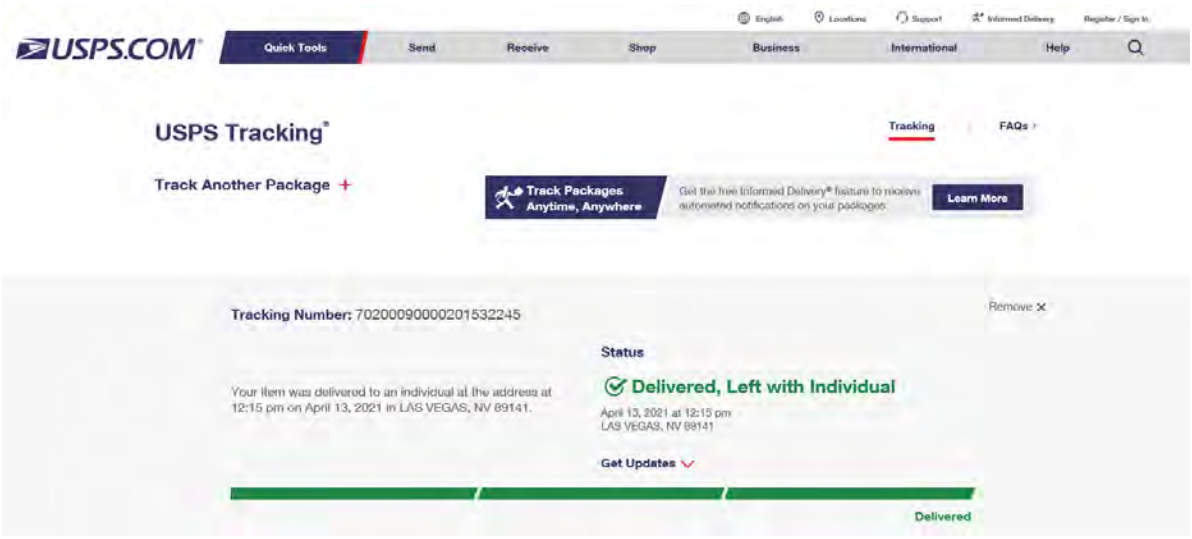
# Enclosure B


11:10
LTE
125
MH
Michael
Thu, Apr 15, 4:12 PM
Jay - the F100 accounting computer no longer has Microsoft Office so it is extremely difficult for me to review any files in that computer
I was able to copy all the files (except QB) to a thumb drive (approx 1600 files)
OK if I can get the thumb drive from you I'll go through those files. In the meantime can we generate the financials from what's in QuickBooks?
I brought them to work hoping to put them on my computer here to try and separate out which files might answer each request BUT my financial institution blocks all plug in memory storage devices LOL so I can't view them here either
I would be happy to pass that thumb drive along to you
Thank you much!
There are definitely financial statements included in the files that were on my computer that are now on the thumb drive.
iMessage

# Enclosure C


11:10
LTE
125
MH
Michael
There are definitely financial statements included in the files that were on my computer that are now on the thumb drive.
QuickBooks- so I spent a couple hours last night trying to get some reports out of QuickBooks (a/p reports, general ledger reports and financial statements) but was having a heck of a time getting any report to save or export.
I was going to try it again tonight when I get home. Not sure what else to do on that??
It's the files were already created and they're on the flash drive, that's great. That's all we need.
Let me know when/where I can meet you then to handoff this thumb drive?
Still at work, but wrapping up my day.
What part of town do you work in?
Right by Mountain View hospital
iMessage

# Enclosure D


USPS.COM
Quick Tools
Send
Receive
Shop
Business
International
Help
USPS Tracking®
Tracking
FAQs
Track Another Package +
Track Packages Anytime, Anywhere
Learn More
Tracking Number: 70200090000201532245
Remove
Status
Your item was delivered to an individual at the address at 12:15 pm on April 13, 2021 in LAS VEGAS, NV 89141.
Delivered, Left with Individual
April 13, 2021 at 12:15 pm
LAS VEGAS, NV 89141
Get Updates
Delivered

**1st One Hundred Holdings, LLC**
**10170 W Tropicana Ave, Ste 156-290**
**Las Vegas, NV 89147**
**p. 702.423.0500 f. 702.974.0284**

Matthew Farkas
3345 Birchwood Park Circle
Las Vegas, NV 89144
farkm1@aol.com

By: USPS Certified 7020 0090 0002 0153 2245, and
Email to farkm1@aol.com

April 11, 2021

Re: 1st One Hundred Holdings, LLC
Demand for return of all Company Records

Dear Mr. Farkas,

It is the understanding of 1st One Hundred Holdings that you are in possession of company records, both physical and electronic.

Demand is hereby made for your return of any and all such document within 2 business days.

You are to immediately return any and all such documents, books and records relating to 1st One Hundred Holdings, LLC to the Company's attorney's at:

Joseph Gutierrez, Esq.
Maier Gutierrez PLLC
8816 Spanish Ridge Ave
Las Vegas, NV 89148

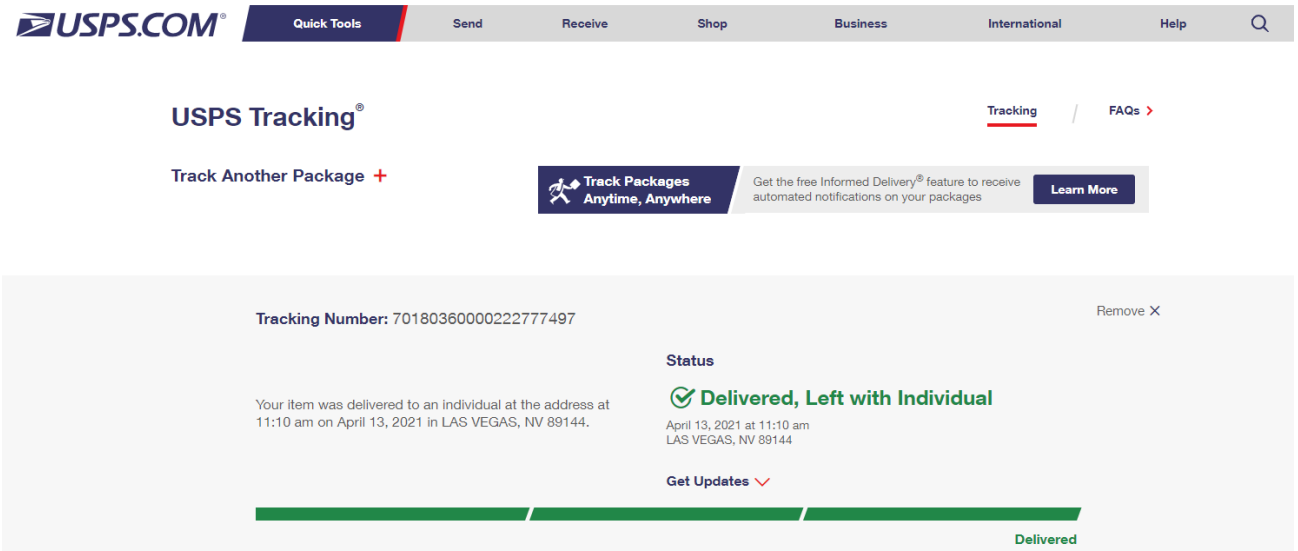
If you are asserting that you are not in possession of any documents, books and records of the Company, you are to provide an Affidavit asserting such under penalty of perjury.

Thank you for your prompt attention to this matter.

Very Truly Yours,

Jay Bloom
As Manager of
SJC Ventures, LLC,
As Manager of
1st One Hundred Holdings,
LLC

# Enclosure E


USPS.COM
Quick Tools
Send
Receive
Shop
Business
International
Help
USPS Tracking®
Tracking
FAQs
Track Another Package +
Track Packages Anytime, Anywhere
Get the free Informed Delivery® feature to receive automated notifications on your packages
Learn More
Tracking Number: 70180360000222777497
Remove
Status
Your item was delivered to an individual at the address at 11:10 am on April 13, 2021 in LAS VEGAS, NV 89144.
Delivered, Left with Individual
April 13, 2021 at 11:10 am
LAS VEGAS, NV 89144
Get Updates
Delivered

1st One Hundred Holdings, LLC
10170 W Tropicana Ave, Ste 156-290
Las Vegas, NV 89147
p. 702.423.0500 f. 702.974.0284

TGC Farkas Funding, LLC
c/o Erika Pike-Turner, Esq.
Garman, Turner Gordon
7251 Amigo Street , Suite 210
Las Vegas, NV 89199
eturner@Gtg.legal

Matthew Farkas, Individually
c/o Kenneth Hogan
1140 N. Town Center Dr.
Suite 300
Las Vegas, NV 89144
ken@h2legal.com

By: USPS Certified 7018 0360 0002 2277 7503,
7018 0360 0002 2277 7497 and
Email to <eturner@Gtg.legal, ken@h2legal.com

April 11, 2021

Re: 1st One Hundred Holdings, LLC
Additional Capital Call

Dear Member,

This correspondence is in relation to TGC/Farkas Funding, LLC ("TGC") Membership Interest in in 1st One Hundred Holdings, LLC (the "Company"), and certain of its obligations thereunder.

As you are aware, on or about April 2017, the Company made an offering of Membership Interest Redemption to its ownership. All non-executive members, including TGC, executed the Membership Redemption Agreement.

On or about September 2020, it was adjudicated in arbitration that Matthew Farkas, the Manager and 50% owner of TGC exceeded his authority in exercising the Redemption Agreement on behalf of his company, and the Redemption Agreement was deemed to be voided, which decision was confirmed by the District Court on or about October 2020.

Pursuant to the Company's Operating Agreement, and voiding of the TGC Redemption Agreement, TGC is the only remaining non-executive owner of Membership Interest, originally a 3% Membership Interest, later increased to 4.553% Membership Interest after all non-executive

Redemptions of Membership Interest (see attached Schedule of Membership Interest) in 1st One Hundred Holdings, LLC.

Further, paragraphs 7.5 and 7.13 of the Operating Agreement provides for indemnification as follows:

> 7.5 EXTENT OF INDEMNIFICATION. A Person shall be indemnified under this Article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the Person in connection with the proceeding; but if the Person is found liable to the Company or is found liable on the basis that Personal benefit was improperly received by the Person, the indemnification shall (a) be limited to reasonable expenses actually incurred, and (b) not be made in respect of any proceeding in which the Person shall have been found liable for willful or intentional misconduct in the performance of such Person's duty to the Company.

> 7.13 INDEMNIFICATION OF OFFICERS. The Company may, at the discretion of the Manager, indemnify and advance or reimburse expenses to a Person who is or was an officer of the Company to the same extent that it shall indemnify and advance or reimburse expenses to Manager under this Article.

Accordingly, the Manager and all Executive Members are indemnified by the Company, leaving TGC as the only remaining non-indemnified Member of the Company subject to a capital call for Indemnified matters, such as the instant matters causing the Subsequent Capital Call.

As you are aware, as a result of a recent action brought by TGC, first in Arbitration and later in the Nevada State Courts, and the resultant decisions, the Company is now in need of capital contributions, and as such, does hereby put forth a capital call to its membership for the following Expenditures anticipated:

| | |
|---|---|
| MGA bills related to the Arbitration | $ 4,776.60 |
| MGA bills related to the State Court Action | $ 98,788.90 |
| Arbitration award: | $ 23,975.00 |
| Reserve for award for TGC State Court fees and costs | $161,655.81 |
| **Total Capital Call:** | **$289,196.31** |

The Company will require additional capital from its non-indemnified Members to meet these obligations resultant from indemnified matters.

Pursuant to the Company's Operating Agreement, Section 4.2, with respect to Subsequent Capital Contributions, the Operating Agreement sets forth the following:

> 4.2 SUBSEQUENT CONTRIBUTIONS. If necessary and appropriate to enable the Company to meet its costs, expenses, obligations, and liabilities, and if no lending source is available, then the Manager shall notify each Class A Member ("Capital Call") of the need for any additional capital contributions, and such capital demand shall be made on each Class A Member in proportion to its Class A Membership Interest. Any such Capital Call notice must include a statement in reasonable detail of the proposed uses of the required additional capital contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the additional capital contributions must be made.

**Accordingly, the Company is hereby making a $289,196.32 Subsequent Capital Call.**

**TGC's portion is as follows:**

| | |
|---|---|
| MGA bills related to the Arbitration: | $ 217.48 |
| MGA bills related to the State Court Action: | $ 4,497.86 |
| Arbitration award: | $ 1,091.58 |
| Reserve for award for TGC State Court fees and costs: | $ 4,553.00 |
| Indemnification costs for Indemnified Parties | $278,836.40 *1 |
| **Total TGC Farkas Capital Call:** | **$289,196.31** |

*1 As TCG Farkas Funding is the sole non Manager, Non Officer, Non Director Member, TGC is sole member remaining subject to the capital call bearing responsible for Capital Call for the above indemnified expenses

On or about April 8, 2021, specifically for this purposes, the Company has established an account to receive your Subsequent Capital Contribution in the amount of $289,196.31.

Your Subsequent Capital Contributions shall be made by wire transfer to:

Incoming Wire Instructions:

**Account Name:** 1st One Hundred Holdings, LLC

**Account Number:** 5010 2667 7709

**ABA Routing Number:** 026 009 593

**Bank Name:** Bank of America

**Bank Address:** Ft Apache Branch, Las Vegas, NV 89147

Further, the actions of TGC and resultant findings have had a material adverse impact on the negotiations related to the sale of the Company's sole asset, the judgment.

Additionally, it is anticipated that additional Capital Calls will be made in the future to fund the Company's ongoing additional expenses in the event the sale of the Judgement cannot be recovered.

Capital Contributions are to be wired no later than by 5pm EST on Friday, April 16, 2021, with proof of transfer provided to the Manager on or before such deadline.

Pursuant to the Company Operating Agreement, Section 4.3, the consequences for TGC's failure to fund its obligations are as follows:

> 4.3 **FAILURE TO CONTRIBUTE.** If a Member does not contribute all of its share of a Capital Call by the time required, then either:
>
> 1) One or more Class A Members may provide the additional capital, with such added capital to be reflected in that Class A Member's Capital Contribution, however, such additional capital to be entitled to priority return superior to those set forth in Article V.
>
> or
>
> 2) Any other Members, individually or in concert (the "Lending Member," whether one or more), to advance the portion of the Delinquent Member's Capital Call that is in default, with the following results:
>
> (a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement;
>
> (b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefore by the Lending Member to the Delinquent Member;
>
> (c) the amount loaned bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member;
>
> (d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal);
>
> (e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership Interest, and the Lending Member may file a financing statement evidencing and perfecting such security interest; and
>
> (f) the Lending Member has the right, in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including, without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member.

Accordingly, TGC's failure to provide (or the short funding of) such Subsequent Capital Contribution will result in SJC Ventures advancement of the funds (in the capacity of Lending Member pursuant to 4.3(2)(a) of the Operating Agreement), as a loan to TGC (in the capacity of Borrowing Member pursuant to 4.3(2)(a) of the Operating Agreement).

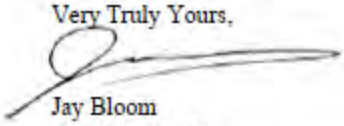
Such funds advanced by SJC on TGC's behalf, and therefore lent by SJC to TGC pursuant to this provision, will be used to bond the judgment amounts pending appeal, during which time, SJC will make demand for the repayment of the loan pursuant to 4.3(2)(b) of the Operating Agreement.

**After 10 days of the issuance of the loan from SJC, as Lending Member, to TGC as Borrowing Member, should TGC fail to repay the loan to SJC, then SJC, as Lender Member, will be taking any and all such actions as necessary pursuant to 4.3(2)(f) of the Operating Agreement for its recovery of such amounts loaned by SJC as Lending Member to TGC as Borrowing Member, including actions against TGC itself, as well as any responsible party, each as defendants in their individual capacity, in Clark County's Eighth Judicial District Court.**

Should you wish to discuss a more amicable resolution which avoids brand new litigation by the Lending Member against the Borrowing Member, and its principals individually, and further the potential for recovery of the sale of the Judgment which provides for TGC's initial capital contribution, please let counsel for the Company and SJC know expeditiously.

Thank you for your prompt attention to this matter.

Very Truly Yours,



Jay Bloom
As Manager of
SJC Ventures, LLC,
As Manager of
1st One Hundred Holdings,
LLC

| | Class A | | | Revised Class A Equity Position | Manager as owner | |
|---|---|---|---|---|---|---|
| Paladin Ventures, LLC | 6.928% | Held | | 10.515% | Chris Morgando Entity | Indemnified |
| Mamber Ventures, LLC | 7.428% | Held | | 11.274% | Albert Ramirez Entity | Indemnified |
| CBWE, LLC | 7.428% | Redeemed | 7.428% | | Carlos Cardenas Entity | |
| SJC 1, LLC | 9.780% | Held | | 14.844% | Albert Ramirez Entity | Indemnified |
| SJC 2, LLC | 13.790% | Held | | 20.931% | Chris Morgando Entity | Indemnified |
| SJC, LLC | 24.958% | Held | | 37.881% | Jay Bloom Entity | Indemnified |
| Bart Rendel | 1.000% | Redeemed | 1.000% | | | |
| Wendell Brown | 1.000% | Redeemed | 1.000% | | | |
| Bob Crow | 2.000% | Redeemed | 2.000% | | | |
| Tammy Henriksen (Michael) | 2.000% | Redeemed | 2.000% | | | |
| Neil Durrant | 2.000% | Redeemed | 2.000% | | | |
| Hannah Harvey | 0.125% | Redeemed | 0.125% | | | |
| Jethro Gordon | 0.125% | Redeemed | 0.125% | | | |
| Greendot Investments, LLC | 2.000% | Redeemed | 2.000% | | | |
| Dennis Wiley | 1.500% | Redeemed | 1.500% | | | |
| Van Holland | 0.250% | Redeemed | 0.250% | | | |
| Marilyn Wiley | 0.750% | Redeemed | 0.750% | | | |
| Glenn Plantone | 0.188% | Redeemed | 0.188% | | | |
| Pat and Sandy O'Laughlin | 1.000% | Redeemed | 1.000% | | | |
| John P. Morgando | 1.000% | Redeemed | 1.000% | | | |
| Erin Quatrale | 0.500% | Redeemed | 0.500% | | | |
| Basis Investments, LLC | 5.000% | Redeemed | 5.000% | | | |
| Marylin Wiley | 1.000% | Redeemed | 1.000% | | | |
| Kent Adamson | 1.000% | Redeemed | 1.000% | | | |
| Alan & Theresa Lahrs | 1.000% | Redeemed | 1.000% | | | |
| Amy and Armond Farr | 0.500% | Redeemed | 0.500% | | | |
| Glenn Plantone | 0.250% | Redeemed | 0.250% | | | |
| Glenn Plantone | 0.375% | Redeemed | 0.375% | | | |
| JWL Management | 0.125% | Redeemed | 0.125% | | | |
| Greg and Laurie Darroch | 0.250% | Redeemed | 0.250% | | | |
| Greg and Laurie Darroch | 0.500% | Redeemed | 0.500% | | | |
| Laurie Darroch | 0.250% | Redeemed | 0.250% | | | |
| Catheryn Cope | 0.250% | Redeemed | 0.250% | | | |
| JWL Management | 0.250% | Redeemed | 0.250% | | | |
| Glenn Plantone | 0.250% | Redeemed | 0.250% | | | |
| Izzy Zalcberg | 0.125% | Redeemed | 0.125% | | | |
| Dr. Natchez Maurice | 0.125% | Redeemed | 0.125% | | | |
| TGC/Farkas Funding, LLC | 1.000% | Held | | 1.518% | | Liable for Capital Call |
| TGC/Farkas Funding, LLC | 2.000% | Held | | 3.036% | | Liable for Capital Call |
| | | | 34.116% | 100.000% | | |

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| **Other Civil Matters** | **COURT MINUTES** | **August 09, 2021** |
|---|---|---|

A-20-822273-C TGC/Farkas Funding, LLC, Plaintiff(s)
vs.
First 100, LLC, Defendant(s)

**August 09, 2021** **9:00 AM** **Status Check**

**HEARD BY:** Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**PARTIES PRESENT:**
Barraza, Danielle J. — Attorney for Defendants
Turner, Erika Pike — Attorney for Plaintiff

**JOURNAL ENTRIES**

Counsel present via BlueJeans.

Court noted a filing was submitted on Friday. Ms. Turner advised they just received certification from Mr. Bloom that no other documents exist and the bond has been paid. As such, Ms. Turner advised the matter can be taken off calendar. Ms. Barraza concurred. Court noted the case will proceed accordingly.

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

| | |
|---|---|
| FIRST 100, LLC, a Nevada limited liability company; 1st ONE HUNDRED HOLDINGS, LLC, a Nevada limited liability company,<br><br>Appellants<br><br>vs.<br><br>TGC/FARKAS FUNDING, LLC,<br><br>Respondent. | Case No. 82794 |



**APPEAL**
from a decision in favor of Respondent
entered by the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-20-822273-C

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# APPELLANTS' OPENING BRIEF

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JASON R. MAIER, ESQ.
Nevada Bar No. 8557
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Nevada Bar No. 9046
jag@mgalaw.com
Danielle J. Barraza, Esq.
Nevada Bar No. 13822
djb@mgalaw.com
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: (702) 629-7900
Facsimile: (702) 629-7925
*Attorneys for Appellants*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Rules**

## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made so the judges of this court may evaluate possible disqualification or recusal. 1st One Hundred Holdings, LLC is the single member of and parent company to First 100, LLC. As of this date, 1st One Hundred Holdings, LLC does not have a parent corporation and no publicly held corporation owns more than 10 percent of stock in 1st One Hundred Holdings, LLC. At all times, Appellants have been represented by Jason R, Maier, Esq., Joseph A. Gutierrez, Esq. and Danielle J. Barraza, Esq. of Maier Gutierrez & Associates.

## JURISDICTIONAL STATEMENT

This is an appeal from the district court's post-judgment Findings of Fact, Conclusions of Law, and Order ("FFCL") entered on April 7, 2021, with notice of entry thereof also filed on April 7, 2021. On April 15, 2021, Appellants filed their notice of appeal. AA1386-1429.[1] Thus, this appeal is timely pursuant to NRAP 4(a) and is an appeal from a special order entered after final judgment pursuant to NRAP 3A(b)(1).

[1] "AA" refers to Appellants' Appendix.

## ROUTING STATEMENT

This matter is presumptively assigned to the Court of Appeals under NRAP 17(7), which covers "appeals from postjudgment orders in civil cases." Following the judgment order issued by the district court, further motions followed, which resulted in an evidentiary hearing and FFLC as to the postjudgment issues.

Respondent has indicated that it believes this matter should be retained by the Nevada Supreme Court because it "originated in business court." *See* 6/1/2021 Motion to Dismiss Appeal at fn. 1. To the contrary, this matter did not originate in business court, as shown by the case number (A-20-822273-C) ending in "C" and not "B," which notes this is a "civil" case and not a "business" case. No party filed a motion for a business court setting, and while the matter was heard before the Honorable Mark Denton, who has a separate business court docket, it was not placed in the business court docket, and has remained a "C" case from its inception.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the district court erred in finding that non-party to the action Jay Bloom "is the alter ego" of First 100, which was not a cause of action brought against Jay Bloom or First 100, and which was not the subject of the limited evidentiary hearing underlying the district court's FFCL.

Whether the district court erred in ordering that First 100 and non-party to the action Jay Bloom are "jointly and severally responsible for the payment of all the

reasonable fees and costs incurred by [TGC/Farkas Funding LLC]."

Whether the district court erred in denying Appellants' motion to enforce settlement after finding that Matthew Farkas of TGC/Farkas Funding LLC "did not have actual or apparent authority to bind Plaintiff under the Settlement Agreement."

## STATEMENT OF THE CASE

This dispute involved a company books and records request, with respondent TGC/Farkas Funding, LLC demanding access to First 100, LLC and 1st One Hundred, LLC's (collectively "First 100") business records, arguing that its status as a purported member of First 100 substantiated the right to examine First 100's company records. The matter was initiated in arbitration through the American Arbitration Association, where the Arbitration Panel determined that First 100 is required to "make all the requested documents and information available from both companies to [Plaintiff] for inspection and copying." AA0010. The arbitration award was later confirmed by the district court, resulting in a judgment in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00.[2] AA0053-59.

Thereafter, a dispute arose as to whether the parties had settled the matter, which resulted in various motions being filed, including a motion to enforce settlement filed by First 100, and a motion for an order to show cause filed by

[2] TGC/Farkas Funding, LLC was subsequently awarded another $9,060.20 in additional fees and costs related to the arbitration proceedings. AA0575-578.

TGC/Farkas Funding, LLC. AA0156-208; AA0330-574; AA0585-715. The district court conducted an evidentiary hearing as to the motions in March 2021, and issued its Findings of Fact, Conclusions of Law, and Order ("FFCL") on April 7, 2021, with notice of entry thereof also filed on April 7, 2021. AA1264-1341.

In the FFCL, the district court ordered that the motion to enforce settlement was denied, ordered immediate compliance of the books and records request which was the subject of the arbitration award confirmed by the district court, and ordered reimbursement of plaintiff TGC/Farkas Funding, LLC's fees and costs, with First 100 and non-party Jay Bloom being "jointly and severally responsible" for payment of such fees and costs. AA1298.

This appeal follows, with Appellants contending that the district court erred in (1) denying the motion to enforce settlement; and (2) holding that non-party Jay Bloom is "jointly and severally responsible" for the payment of fees and costs to TGC/Farkas Funding pursuant to an alter ego finding, despite the fact that no alter ego cause of action was alleged, and the evidence presented did not support an alter ego finding with respect to Mr. Bloom and First 100.

## FACTUAL AND PROCEDURAL BACKGROUND

### I. FACTUAL BACKGROUND

First 100 was in the business of purchasing the beneficial interest in delinquent HOA receivables and then buying the real properties at foreclosure sales. AA0918-

919. Jay Bloom served as the Director of First 100. AA0919.

The members of TGC/Farkas Funding, LLC are Matthew Farkas and TGC 100 Investor, LLC, who each share a 50% membership interest. Mtn. to Enforce Settlement at Ex. C. In the original "Limited Liability Company Agreement of TGC/Farkas Funding LLC," Section 4.1 identified Mr. Farkas as the "Administrative Member" of TGC/Farkas Funding, LLC, meaning that he served as a "manager" of the company and was responsible for making "all business and managerial decisions for the company." AA1013. Further, Section 4.4 of the original "Limited Liability Company Agreement of TGC/Farkas Funding LLC" states that persons dealing with TGC/Farkas Funding, LLC "are entitled to rely conclusively upon the power and authority of the Administrative Member." AA1004.

On or around 2013, TGC/Farkas Funding, LLC invested $1 million into First 100's business in exchange for a one percent membership interest, which was later parlayed into a three percent total interest. AA0007. In October 2013, signing as the CEO of TGC/Farkas Funding, LLC, Matthew Farkas executed the subscription booklet on behalf of TGC/Farkas Funding, LLC, which set forth the company's membership interest in First 100. AA00614-632.

Thereafter, in April 2017, First 100 circulated to its members a Membership Interest Redemption Agreement which provided for the redemption or buy back of the member's interest at $1.5 million per percentage of ownership interest, or a

fraction thereof on a pro rata basis. On or around April 15, 2017, Matthew Farkas executed a redemption agreement, once again on behalf of TGC/Farkas Funding, LLC. AA0634-639. *See also*, AA0008 ("It was not clear from the initial briefs and exhibits whether Matthew Farkas signed a Redemption Agreement for [TGC/Farkas Funding, LLC]. However, the additional evidence clarified that he actually did sign such an agreement.").

Thereafter, on July 13, 2017, TGC/Farkas Funding, LLC's counsel sent correspondence to First 100's counsel claiming that Mr. Farkas "is not the manager of TGC/Farkas Funding, LLC" and "does not have authority to bind TGC/Farkas Funding, LLC." AA1068. Adam Flatto of TGC/Farkas Funding, LLC would later refute that contention in a declaration dated August 13, 2020, in which he admitted that as of that point (August 2020), Mr. Farkas "was, and still is, the 'Administrative Member' of TGC/Farkas Funding, LLC," who does in fact have the power to bind TGC/Farkas Funding, LLC after consulting with all members. AA1064.

In any event, also within the July 13, 2017 correspondence, TGC/Farkas Funding, LLC's counsel made a request for the inspection and copying of First 100's books and records, ostensibly pursuant to NRS 86.241. AA1069.

First 100 initially refused to provide its business records to TGC/Farkas Funding, LLC for numerous reasons, among them that First 100 had not received evidence that Matthew Farkas, who is Mr. Bloom's brother-in-law and a 50%

member of TGC/Farkas Funding, LLC, had actually approved of TGC/Farkas Funding, LLC retaining Garner Turner Gordon and making such a demand upon First 100. AA0161. The demand was particularly odd, as First 100 has not been operational since about 2017, has no office, no employees, no cash, and only a single asset in the form of a substantial judgment against an individual that breached a funding commitment to the company. AA0920.

Thereafter, in January 2020, TGC/Farkas Funding, LLC initiated arbitration proceedings against First 100 regarding the inspection of First 100's business records. In the arbitration proceedings, TGC/Farkas Funding, LLC produced an engagement letter, which purportedly proved that Matthew Farkas did approve of TGC/Farkas Funding, LLC retaining Garman Turner Gordon to resolve the dispute with First 100. That engagement letter has a handwritten condition that "the matter shall not include any litigation against First 100, LLC." AA0171-172.

The arbitration panel ruled in favor of TGC/Farkas Funding, LLC, which was later confirmed by the district court, resulting in a ruling that First 100 "make all the requested documents and information available . . . for inspection and copying," and a judgment against First 100 and in favor of TGC/Farkas Funding, LLC in the amount of $23,975.00 for fees and costs. AA0055. The district court then granted TGC/Farkas Funding, LLC's subsequent motion for additional attorneys' fees on top of the fees already awarded by the Arbitrator. AA0575-578.

TGC/Farkas Funding, LLC thereafter moved forward with post-judgment discovery. AA0131-150.

Appellants contend that in January 2021, Mr. Bloom and Mr. Farkas engaged in discussions about the counterproductive nature of TGC/Farkas Funding, LLC continuing with litigation against First 100 in light of the fact that there is currently no cash in the company. AA0924. Mr. Bloom had also previously discussed with Adam Flatto (CEO of TGC 100 Investor, LLC, a member of TGC/Farkas Funding, LLC) the fact that TGC/Farkas Funding, LLC wanted its money back, plus six percent. AA0924. Mr. Farkas particularly "did not want to sue" either Mr. Bloom or [First 100] because of his familial relationship with Mr. Bloom, and admittedly wanted to "be away from it." AA0849.

Based on those conversations, Mr. Bloom on behalf of First 100 and Mr. Farkas on behalf of TGC/Farkas Funding, LLC came to a settlement, and Mr. Bloom drafted a settlement agreement. AA0925. The terms involved TGC/Farkas Funding, LLC receiving its million dollar investment back, plus six percent, in exchange for TGC/Farkas Funding, LLC ending its litigation against First 100. AA0926; AA0167-169.

At the evidentiary hearing, Mr. Farkas testified that he "mistakenly" signed the Settlement Agreement too quickly and thought he was signing documents to retain a lawyer. AA0859. Despite that, it is undisputed that Matthew Farkas did in

fact execute the Settlement Agreement on behalf of TGC/Farkas Funding, LLC on January 7, 2021. AA0858. Further, in Section 14 of the Settlement Agreement, Mr. Farkas represented and warranted that he had "full power and authority to enter into this Agreement." AA0168.

Mr. Farkas also testified that he signed the Settlement Agreement on his own at a UPS store, not in the presence of Mr. Bloom, and that nobody was threatening him to sign the Settlement Agreement. AA0859. Mr. Farkas his decision not to read the Settlement Agreement before signing it was his own choice, not something that Jay Bloom told him to do. AA0859. Mr. Farkas also testified that he could have contacted Adam Flatto of TGC/Farkas Funding, LLC and consulted with him before signing the Settlement Agreement – he just chose not to. AA0861. Mr. Farkas also testified that he could have crossed out terms in the Settlement Agreement if he so desired. AA0861. Put simply, Mr. Farkas admitted "[i]t's my fault" that he did not read the Settlement Agreement before signing it. AA0860.

In conjunction with executing the Settlement, Mr. Farkas also retained counsel for TGC/Farkas Funding, LLC, Raffi A. Nahabedian, Esq., who on January 14, 2021 sent correspondence to Garman Turner Gordon indicating that he had been retained and that pursuant to the TGC/Farkas Funding, LLC Operating Agreement, Mr. Farkas has full authority to retain and terminate legal representation for TGC/Farkas Funding, LLC in his manager capacity. A0413-414. Mr. Nahabedian

enclosed a substitution of counsel for Garman Turner Gordon to execute, as well as a signed letter from Mr. Farkas which stated that he no longer consented to Garman Turner Gordon taking any further legal actions on behalf of TGC/Farkas Funding, LLC. AA0415-418.

At some point after the parties had executed the Settlement Agreement, Mr. Bloom learned that Mr. Farkas had executed a document on September 17, 2020 purporting to amend the Limited Liability Company Agreement of TGC/Farkas Funding, LLC in which TGC Investor (acting solely through Adam Flatto) was replaced as the Administrative Member of TGC/Farkas Funding, LLC. AA0448-454; AA00932.

On January 15, 2021, Garman Turner Gordon submitted correspondence to Mr. Nahabedian advising him of this amendment. AA0445-447. Following that correspondence, Mr. Nahabedian terminated his legal services, as it was his understanding that Mr. Farkas was actually the "manager" of TGC/Farkas Funding, LLC. AA0430-431.

However, at the evidentiary hearing, Mr. Bloom testified that prior to entering into the Settlement Agreement, Mr. Farkas "insisted that he was still the manager" of TGC/Farkas Funding, LLC. AA0922. Mr. Bloom also testified that the last he had heard from Mr. Flatto was in the August 2020 declaration in which he reiterated that Mr. Farkas remained the Administrative Member and manager of TGC/Farkas

Funding, LLC. AA0922.

Mr. Bloom also testified that the primary way he communicated to TGC/Farkas Funding, LLC was through Mr. Farkas. AA0923. This is corroborated by emails between Mr. Bloom and Mr. Farkas over the years. AA0988-991. Finally, Mr. Bloom testified that the reason he attempted to resolve the dispute directly with Mr. Farkas instead of through counsel was because he had prior bad experiences with law firms wanting to continue litigation for economic reasons. AA0927.

As such, Appellants contend that Mr. Farkas exercised his apparent authority as 50% member and Administrative Manager of TGC/Farkas Funding, LLC to settle the case. In light of Garman Turner Gordon subsequently claiming that there was no settlement and no substitution of counsel, First 100 filed a motion to enforce the settlement agreement executed by the parties and to vacate post-judgment discovery proceedings. AA0156-208. That motion was fully briefed by the parties. AA0156-208; AA0330-574; AA0585-715.

Around that same time, following an *ex parte* motion from TGC/Farkas Funding, LLC, the district court issued an order to show cause as to why First 100 and non-party Jay Bloom should not be held in contempt for failing to abide by the order confirming the Arbitration Award. AA0151-155. The parties also fully submitted briefing on that order to show cause. AA0123-130; AA0209-214; AA0215-322.

At a hearing on January 28, 2021, the district court determined that "there are material questions of fact that prevent the Court from granting the Motion to Enforce," and elected to set an evidentiary hearing on both the Order to Show Cause and the Motion to Enforce and Countermotion for Sanctions. AA0737.

Notably, not included in the district court's order setting the evidentiary hearing was any indication that the parties would need to put on evidence with respect to an analysis as to whether non-party Jay Bloom is the alter ego of First 100. At no point, either in the arbitration proceedings or in the district court proceedings, did TGC/Farkas Funding, LLC bring a cause of action for alter ego against non-party Jay Bloom or First 100.

In an effort to fully comply with the district court's order confirming the Arbitration Award, First 100's counsel submitted correspondence to TGC/Farkas Funding, LLC's counsel on February 12, 2021, reiterating that First 100 would need to hire an accountant (Michael Henriksen, the former controller of First 100) in order to obtain the books and records requested, including financial statements, general ledgers, and accounts payable incurred by First 100. AA1092-1093. Mr. Henriksen set forth his understanding of the documents requested and indicated the challenges associated with obtaining documents from years ago when First 100 was an active company. *Id.*

Accordingly, it has always been clear and undisputed that Mr. Bloom had no

control over the First 100 company books and records sought, as such records needed to be obtained by Mr. Henriksen. *Id.* At no point was evidence submitted indicating that Mr. Bloom obtained and withheld potentially responsive documents related to First 100's books and records that should have been disclosed to TGC/Farkas Funding. No evidence could have been submitted, as that never happened.

## II. PROCEDURAL BACKGROUND

On October 1, 2020, TGC/Farkas Funding, LLC filed its motion to confirm the arbitration award, which had previously (1) compelled the production of First 100's company records; and (2) ordered the reimbursement of TGC/Farkas Funding, LLC's fees and costs. AA0001-40. The arbitration award made it clear that only the "Respondents," meaning First 100 and 1st One Hundred Holdings, were responsible for paying the arbitration fees. AA0010. No ruling was issued against Jay Bloom personally by the arbitration panel. AA010.

The motion to confirm the arbitration award was fully briefed, with First 100 setting forth a limited opposition and seeking clarification that pursuant to the plain language of First 100's Operating Agreement, TGC/Farkas Funding, LLC would have to pay the reasonable cost of obtaining and furnishing First 100's records. AA0041-46.

On November 17, 2020, the district court granted TGC/Farkas Funding, LLC's motion to confirm the arbitration award, and denied First 100's

countermotion to modify the award with respect to requiring TGC/Farkas Funding, LLC to pay for the books and records production pursuant to both NRS 86.243(3) and First 100's Operating Agreement. AA0053-59. The district court's order specifically entered a judgment against only First 100 and 1st One Hundred Holdings (not non-party Jay Bloom) in the amount of $23,975.00 for the fees and costs. *Id.*

On November 17, 2020, TGC/Farkas Funding, LLC filed a motion for attorneys' fees and costs, seeking additional fees and costs on top of what the arbitration panel already awarded. AA0069-110. That motion was fully briefed, and on January 27, 2021, the district court issued its order granting TGC/Farkas Funding, LLC's motion for additional attorneys' fees and costs. AA0579-584. That order imposed a judgment against only First 100 and 1st One Hundred Holdings (not non-party Jay Bloom) in the amount of $9,060.20. *Id.*

At no point did TGC/Farkas Funding seek to amend either judgment in order to add non-party Jay Bloom as a judgment debtor. Despite that, on December 18, 2021, TGC/Farkas Funding, LLC filed an *ex parte* application for an order to show cause why First 100 and non-party Jay Bloom should not be held in contempt of court for failure to comply with the order confirming the Arbitration Award. AA0123-130. The district court granted the *ex parte* application that same day. AA0151-155.

Thereafter, TGC/Farkas Funding, LLC moved forward with post-judgment

discovery. AA0131-150. Various objections were raised with respect to the discovery, including non-party Jay Bloom objecting to a subpoena issued to him and the unilateral setting of his deposition. AA0247-252. TGC/Farkas Funding, LLC was dissatisfied with the discovery responses received, and on January 20, 2021 filed a supplement to its *ex parte* application for an order to show cause. AA0215-0322.

On January 19, 2021, First 100 filed its motion to enforce the Settlement Agreement and vacate post-judgment proceedings. AA0156-208. That motion attached the settlement agreement that Jay Bloom executed on behalf of First 100, and that Matthew Farkas executed on behalf of TGC/Farkas Funding, LLC. AA0167-168. That motion was fully briefed, with TGC/Farkas Funding, LLC opposing and filing a countermotion for sanctions. AA0330-351.

On January 20, 2021, First 100 and non-party Jay Bloom filed a response to the order to show cause, which noted that, aside from First 100 taking the position that the show-cause hearing is moot because the case settled, (1) First 100 has no financial ability to comply with the arbitration order; and (2) non-party Jay Bloom has not violated the order confirming the Arbitration Award to which he was not personally subjected. AA0209-214. Mr. Bloom specifically cited to NRS 86.371, which states that "[u]nless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually

liable for the debts or liabilities of the company." AA0211. Mr. Bloom also noted that no alter ego findings were made, or even sought in the arbitration action nor before the district court. *Id.*

The district court vacated the original show-cause hearing set for January 21, 2021, and elected to hear both the motion to enforce the Settlement Agreement, the countermotion for sanctions, and the show-cause hearing together on January 28, 2021. AA0736-738. At that hearing, the district court found that there are "material questions of fact that prevent the Court from granting the motion to enforce," and set an evidentiary hearing for March 3, 2021 on both the show-cause order, the motion to enforce the Settlement Agreement, and the countermotion for sanctions. AA0737.

The evidentiary hearing took place on March 3, 2021 and March 10, 2021. AA0744-987. Following the evidentiary hearing, on April 7, 2021, the district court issued its Findings of Fact, Conclusions of Law, and Order. AA1264-1301. The district court adopted TGC/Farkas Funding, LLC's proposed FFCL in its entirety, and (1) denied the motion to enforce the Settlement Agreement; (2) found that First 100 and Mr. Bloom "disobeyed and resisted" the order confirming the Arbitration Award, and ordered First 100 to take all reasonable steps to comply with the order confirming the Arbitration Award; and (3) found that First 100 "and Bloom are jointly and severally responsible for the payment of all the reasonable fees and costs

incurred by [TGC/Farkas Funding, LLC] since entry of the [order confirming the Arbitration Award] for the purpose of coercing compliance with that order in order to make them whole . . . ." AA1298. Notice of entry of the FFCL was entered on April 7, 2021, and the notice of appeal followed on April 15, 2021. AA0739-743; AA1386-1429.

The district court has since issued a separate order on the exact amount of fees and costs awarded to TGC/Farkas Funding, LLC, which totaled $151,353.81 for less than four months' of attorney work. That order is the subject of a separate appeal with Supreme Court Case No. 83177.

## SUMMARY OF ARGUMENT

Appellants are appealing the district court's ruling that non-party Jay Bloom is the "alter ego" of First 100, when no alter ego cause of action was ever brought against Mr. Bloom or First 100, and no trial was held on alter ego allegations. Moreover, even if an alter ego claim had been properly brought procedurally, there is not substantial evidence in the record supporting an alter ego finding, as set forth below.

The district court's alter ego conclusion served as the basis for its ruling that Mr. Bloom is "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding LLC]" as a sanction for not abiding by an order confirming an Arbitration Award involving the production of First 100

company books and records. But again, Mr. Bloom was not a party to either the underlying arbitration action or the action before the district court, and the evidence indicates that although he was not the individual in possession of and with access to the First 100 books and records, Mr. Bloom made every effort to comply with the order confirming the Arbitration Award by seeking such documents from First 100's former Controller.

Finally, Appellants are challenging the district court's failure to enforce the Settlement Agreement executed by Mr. Bloom on behalf of First 100 and by Matthew Farkas on behalf of TGC/Farkas Funding, LLC. The district court disregarded evidence showing that Mr. Farkas did in fact have apparent authority to bind TGC/Farkas Funding, LLC as its Administrative Member, and erred in finding that the settlement agreement was not negotiated in good faith and was not supported by consideration.

These errors support reversal of the district court's FFCL.

## ARGUMENT

### I. STANDARD OF REVIEW

With respect to the alter ego ruling, a district court's determination with regard to the alter ego doctrine will only be upheld on appeal if substantial evidence exists to support the decision. *Mosa v. Wilson–Bates Furniture Co.,* 94 Nev. 521, 524, 583 P.2d 453, 455 (1978). This Court has held that "[t]he corporate cloak is

not lightly thrown aside." *Baer v. Amos J. Walker, Inc.,* 85 Nev. 219, 220, 452 P.2d 916, 916 (1969).

With respect to the ruling on Appellants' motion to enforce settlement, "contract interpretation is subject to a *de novo* standard of review. However, the question of whether a contract exists is one of fact, requiring this Court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *May v. Anderson*, 121 Nev. 668, 672–73, 119 P.3d 1254, 1257 (2005).

## II. THE DISTRICT COURT ERRED IN FINDING THAT MR. BLOOM IS THE ALTER EGO OF FIRST 100

In its FFCL, the district court held that Mr. Bloom "is the alter ego of Defendants [First 100 and 1st One Hundred Holdings]." AA1295. The facts that the district court cited to in support of that conclusion of law are: (1) First 100 is in "default" status with the Nevada Secretary of State; (2) First 100 has no continued operations, no employees, no bank accounts, and is no longer maintaining records as it has no active governance of any kind; and (3) there are no writings to reflect that any director or office of First 100 has any authority to bind First 100 instead of Jay Bloom. AA1295. Accordingly, the district court concluded that "equity must be applied such that Bloom will not be immune from consequences for his intentional conduct for the purpose of disobeying and/or resisting the [order

confirming the Arbitration Award]." AA1295.

### A. The Corporate Cloak is Not Lightly Thrown Aside

Nevada applies the following requirements for the application of the alter ego doctrine: (1) the limited liability company must be influenced and governed by the person asserted to be its alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice." NRS 86.376; *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 520, 471 P.2d 240, 243 (1970). "Each of these requirements must be present before the alter ego doctrine can be applied." *Id.* at 520, 243. Whether each requirement is present is a matter of law to be determined by the court. *See* NRS 86.376 (stating "[t]he question of whether a person acts as the alter ego of a limited-liability company must be determined by the court as a matter of law.").

Further, the following factors, though not conclusive, may indicate the existence of an alter ego relationship: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities."). *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000)

Although the alter ego doctrine is frequently asserted, its success is "rare," and the "corporate cloak is not [to be] lightly thrown aside." *N. Arlington Med.*

*Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 471 P.2d 240 (1970); *see also In re Giampietro*, 317 B.R. 841, 846 (Bkrtcy. D. Nev. 2004).

Factual evidence is an essential part of obtaining relief under the alter ego doctrine in Nevada. *See, e.g., LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846 (2000) (". . . [W]e conclude that reverse piercing is appropriate in those limited instances where the particular facts and equities show the existence of an alter ego relationship and require that the corporate fiction be ignored so that justice may be promoted.") (emphasis added).

**B. No Independent Alter Ego Action Was Ever Set Forth**

A party who wishes to assert an alter ego claim must do so in an independent action against the alleged alter ego with the requisite notice, service of process, and other attributes of due process. *Callie v. Bowling*, 123 Nev. 181, 185, 160 P.3d 878, 881 (2007). In *Callie*, a judgment creditor attempted to amend the judgment to add a new defendant as an alter ego of the judgment defendant. The new defendant had not participated in the underlying proceedings and had never been served with the complaint. The Court held that a separate action would have to be asserted in order for the judgment creditor to pursue the alter ego claim. *Id.*

Here, there is no question that TGC/Farkas Funding, LLC never initiated an independent alter ego action against Jay Bloom. There is also no question that the evidentiary hearing was limited to two distinct issues: (1) the motion to enforce the

Settlement Agreement, and (2) the show-cause hearing. AA0737. As such, the alter ego ruling raises separate due process questions as Mr. Bloom was not entitled to put on evidence on behalf of himself during the evidentiary hearing, or to conduct discovery during the discovery period prior to the hearing, nor was he on notice that he would potentially be subjected to an alter ego finding and personally liable for a fees and costs. Mr. Bloom was not able to take depositions or file dispositive motions as to himself personally, and was therefore precluded from exercising his right to due process under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

TGC/Farkas Funding, LLC's failure to initiate an alter ego claim should result in the reversal of the district court's alter ego findings and conclusions.

### C. The Alter Ego Elements Were Never Met in This Case

Generally speaking, the Nevada Supreme Court has been extremely reluctant to recognize situations where a corporate veil may be pierced or determine that an alter ego situation exists. This has been so even when certain corporate formalities are not maintained. In *N. Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 522, 471 P.2d 240, 244 (1970), this Court held that undercapitalization, where it is clearly shown, is an important factor in determining whether the doctrine of alter ego should be applied. "However, in the absence of fraud or injustice to the aggrieved party, it is not an absolute ground for disregarding a corporate entity. In

any event it is incumbent upon the one seeking to pierce the corporate veil, to show by a preponderance of the evidence, that the financial setup of the corporation is only a sham and caused an injustice." *Id.* at 522; 244 (1970).

In *N. Arlington Med. Bldg*, the Nevada Supreme Court held that although a corporation ultimately defaulted on its obligations, it cannot be inferred from that fact that it was initially inadequately financed, as there needs to be a showing of how the default sanctioned a fraud or promoted an injustice. *Id.* at 522; 244. The Court also held that although stock certificates were not delivered and formal meetings were not held, those are factors to be considered by the trial court, but the record still needs to reveal "in what manner they sanctioned a fraud or promoted an injustice towards the respondent." *Id.* at 522-523; 244-245. The Court also held that while ultimately the respondent's decision to sell real property to the corporation "resulted in a very unprofitable venture," the Court found "nothing in the record that would indicate that adherence to the fiction of the separate entity of North Arlington would sanction a fraud or promote injustice." *Id.* at 523; 245.

Similarly, in this case, no evidence was presented indicating that First 100 was initially or thereafter inadequately financed. It should go without saying that First 100's business model of purchasing the beneficial interest in delinquent HOA receivables and then buying the real properties at foreclosure sales was profitable for a period of time following the 2008 recession and subsequent foreclosure boom,

and then business was not as active as the economy recovered and the Nevada legislature instituted various amendments to NRS 116 which limited HOA's ability to extinguish a lender's interest in a property resulting from a borrower's delinquency in HOA assessments, such as the right of redemption period codified in 2015 as NRS 116.31166(3)-(6). The mere fact that the business has not been operational since about 2017, and therefore has no office, no employees, no active bank accounts, no cash, does not in and of itself signal the sanctioning of a fraud or promotion of injustice. AA0919. *See also*, *Lipshie v. Tracy Inv. Co.*, 93 Nev. 370, 377, 566 P.2d 819, 823 (1977) ("It is not reasonable to conclude that [the parent organization] undercapitalized [the subsidiary organization] in order to frustrate the payment of its obligation.").

Finally, the district court's finding that there were "no writings to reflect that any director or officer had any authority to bind First 100 instead of Bloom" (AA1295) is misplaced, as that also does evidence the sanctioning of a fraud or promotion of injustice, especially where zero evidence was presented as to the commingling of funds and assets, or the unauthorized diversion and/or use of funds and assets. *See N. Arlington Med. Bldg*., 86 Nev. at 521; 471 P.2d at 244 (1970) ("Although John W. Isbell influenced and governed North Arlington, there is no such unity of interest and ownership between him and the corporation that their identities are inseparable."). At no point was evidence introduced indicating that

Jay Bloom treated First 100's corporate assets as his own.

In another analogous case, *Rowland v. Lepire*, 99 Nev. 308, 317, 662 P.2d 1332, 1338 (1983), the corporation did not ever hold a formal directors or shareholders meeting, did not have a minute book, and never provided evidence that minutes were even kept. Even still, the Nevada Supreme Court held that "Although the evidence does show that the corporation was undercapitalized and that there was little existence separate and apart from Martin and Glen Rowland, we conclude that the evidence was insufficient to support a finding that appellants were the alter ego of the Rowland Corporation." *Id.* at 318; 1338 (1983).

Similarly, here, Mr. Bloom testified that when it was operational, First 100 did have separate financial records, which were managed not by Mr. Bloom personally but by a controller, Michael Henriksen. AA0854. Emails were also introduced showing that financial statements and separate tax returns existed back when First 100 was operational. AA1104-1125. Further evidence indicated that Mr. Henriksen was the one who handled First 100's finances – not Mr. Bloom. AA1092-1093. Crucially, no evidence was presented showing that the financial setup of First 100 was only a sham and caused an injustice.

This is not a case where there is evidence of withdrawals of corporate funds for Mr. Bloom's personal use, nor would such evidence exist. And even if such evidence did exist, those actions would need to be the cause of TGC/Farkas Funding,

LLC's injury and must have sanctioned a fraud or promoted an injustice before the corporate veil can be pierced. *See Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 602, 747 P.2d 884, 887 (1987). ("The record does not reflect how failure to issue stock or keep proper corporate minutes sanctioned a fraud or promoted an injustice to Polaris. It also does not establish that an injustice necessarily resulted from the corporation's payment of Kaplan's personal debts. Kaplan testified the payments were in lieu of salary. We also note the district court did not specifically find that the corporations were undercapitalized."). Similarly, here, the district court did not specifically find that First 100 was undercapitalized, and no causal link was presented showing how First 100 going into "default" status with the Nevada Secretary of State and no longer continuing operations specifically sanctioned a fraud or promoted an injustice to TGC/Farkas Funding, LLC.

Accordingly, there is not substantial evidence in the record to support the district court's determination that Mr. Bloom is the alter ego of First 100. As such, there is no basis to hold Mr. Bloom personally, along with First 100, "jointly and severally responsible for the payment of all the reasonable fees and costs incurred by [TGC/Farkas Funding, LLC] since entry of the [order confirming the Arbitration Award] for the purpose of coercing compliance with that order in order to make them whole . . . ." AA1298.

### D. The District Court Erred in Finding Mr. Bloom in Contempt Under the Federal Common Law "Responsible Party" Rule

In addition to ruling that Mr. Bloom is the "alter ego" of First 100, the district court also held that the "responsible party" rule applies to contempt proceedings, and Mr. Bloom "could not delegate" the responsibility for performance of providing First 100's books and records, which makes him personally subject to contempt proceedings. AA1294. Respectfully, the common law cited in support of this "rule" is all from non-binding federal court cases which are not factually analogous to this case.

For example, in *Luv N' Care, Ltd. v. Laurain*, a subpoena was issued to a nonparty company, and the issuing party argued that the nonparty company's managing member should be held in contempt, because he allegedly communicated that he "possessed potentially responsive documents, but failed to review and produce them by the deadline." No. 218CV02224JADEJY, 2019 WL 4279028, at *2 (D. Nev. Sept. 10, 2019). The U.S. Magistrate Judge for the District of Nevada held that It is undisputed that the nonparty company's managing member "did not take any reasonable steps to comply with this Court's Order, and therefore, should be held jointly and severally liable with Blue Basin for contempt on this basis alone," as the evidence showed that he "looked for and found potentially responsive Blue Basin documents before the Court issued its Order, but did not turn them over for

review or seek a deadline extension." *Id.* at *5. The Court also cited to *United States v. Laurins*, 857 F.2d 529, 535 (9th Cir. 1988), in which the Ninth Circuit affirmed a managing director's conviction of obstruction of justice and aiding, abetting, and causing contempt of court, based on the fact that the managing director had "taken up the task of locating documents potentially responsive to the subpoena" and failed to do so.

Here, the facts are different, as Mr. Bloom explicitly testified that when First 100 wound up its operations in 2017, "Michael Henriksen, the [former First 100] financial controller . . . did take the . . . accounting computer to safeguard the information. And has that in his possession. The documents that they requested, would need to be reconstructed by Michael Henriksen." AA0941-942. Far from obstructing the district court's order confirming the Arbitration Award, Mr. Bloom testified that he conferred with Mr. Henriksen about compiling the business records, and Mr. Henriksen prepared an outline as to what would need to be collected and sought further clarification from TGC/Farkas Funding, LLC's counsel as to funding and the timeline for such production. AA0942; AA1092-1093.

Ultimately, TGC/Farkas Funding, LLC refused to make any payment despite the fact that no court order says TGC/Farkas Funding, LLC is absolved from having to pay for the production of books and records pursuant to First 100's Operating Agreement. AA0032-33. Mr. Bloom testified that First 100 "never denied

[TGC/Farkas Funding, LLC] access" to the books and records documents from the time of the arbitration award and forward, it simply clarified that the company does not have bank accounts, much less any capital to pay the third-party (Mr. Henriksen) to compile the records. AA0943. There were no records being withheld whatsoever, especially not by Mr. Bloom who has no access to such records anyway. *Id.*

Further, the federal court "responsible party" rule cannot be taken in a vacuum, it must be read in conjunction with NRS 86.371, which states that "[u]nless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually liable for the debts or liabilities of the company."

It is particularly inappropriate to disregard NRS 86.371, while at the same time relying on federal common law which does not apply because the evidence shows that the books and records are not in Mr. Bloom's possession, and Mr. Bloom made an effort to comply with the district court's order by conferring with First 100's former Controller regarding the records and seeking his assistance. As such, the district court's findings related to Mr. Bloom being the "responsible party" and personally subjecting himself to contempt sanctions were made in error.

## III. THE DISTRICT COURT ERRED IN DENYING THE MOTION TO ENFORCE SETTLEMENT FOLLOWING THE EVIDENTIARY HEARING

For a motion to enforce a settlement agreement to be granted without an evidentiary hearing, it must abide by District Court Rule 16, which states:

> Stipulations to be in writing or to be entered in the court minutes. No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by his attorney.

*See also*, *Resnick v. Valente,* 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981). Further, the settlement agreement's material terms must be certain. *May v. Anderson,* 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). *See also*, *Grisham v. Grisham,* 128 Nev. 679, 685, 289 P.3d 230, 234 (2012). ("When parties to pending litigation enter into a settlement, they enter into a contract.").

Public policy strongly favors the enforcement of settlement agreements upon motion by a party. *See Tracy-Collins Bank & Tr. Co. v. Travelstead*, 592 P.2d 605, 609 (Utah 1979) ("Quite obviously, so simple and speedy a remedy serves well the policy favoring compromise."). This general rule is in accordance with Nevada's stated public policy of favoring settlement. *See Muije v. North Las Vegas Cab Co., Inc.,* 106 Nev. 664, 667, 799 P.2d 559, 561 (1990) ("Early settlement saves time and money for the court system, the parties, and the taxpayers."); *see also Malfabon v.*

*Garcia,* 111 Nev. 793, 797, 898 P.2d 107, 109 (1995) ("A longstanding principle of our courts has been to encourage settlements.").

Further, "[b]ecause a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law," which consist of an offer and acceptance, meeting of the minds, and consideration. *May*, 121 Nev. at 670.

A party claiming apparent authority of an agent as a basis for contract formation must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable. *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).

In its FFCL, the district court determined that Matthew Farkas did not have actual or apparent authority to bind TGC/Farkas Funding, LLC under the Settlement Agreement. AA1289. Specifically, the district court referenced the order confirming the Arbitration Award in support of the conclusion that as a matter of law, Mr. Farkas did not have apparent authority to bind TGC/Farkas Funding, LLC without Adam Flatto's consent, and the failure to obtain Mr. Flatto's consent to the Settlement Agreement is "undisputed" according to the district court. AA1267. The Arbitration Award referenced that First 100 was on affirmative notice that Mr. Farkas did not have authority to bind TGC/Farkas Funding, LLC without Mr. Flatto's consent pursuant to a letter issued to First 100's counsel on July 13, 2017.

AA0008; AA1068-1084. That letter unequivocally states that "Matthew Farkas is not the manager of TGC/Farkas Funding, LLC," and he therefore does not have authority to bind TGC/Farkas Funding, LLC. AA1068.

However, in a supplemental declaration dated August 13, 2020 and attached to the arbitration briefing, Adam Flatto changed his tune, this time declaring that "Matthew Farkas was, and still is, the 'Administrative Member' of [TGC/Farkas Funding, LLC], as that term is defined in the Operating Agreement." AA1064. The TGC/Farkas Funding, LLC Operating Agreement defines the Administrative Member as a "manager" of the company who shall be "responsible for making all business and managerial decisions for the Company." AA1002. Further, pursuant to the TGC/Farkas Funding, LLC Operating Agreement, the Administrative Member can in fact bind the company after consulting with and obtaining the consent of the other members. AA1064.

Thus, while First 100 did not appeal the order confirming the Arbitration Award, it objectively understood Mr. Flatto's August 13, 2020 declaration to mean that going forward, Mr. Farkas was in fact an Administrative Member of TGC/Farkas Funding, LLC, and would be able to bind that company as long as he complied with his obligations under the TGC/Farkas Funding, LLC Operating Agreement.

Notably, although the August 13, 2020 Flatto declaration was introduced

during the evidentiary hearing and confirmed by Adam Flatto to be a genuine document (AA0793), the district court did not acknowledge it in its FFCL. The August 13, 2020 declaration is crucial to establishing Mr. Farkas' apparent authority to settle the matter on behalf of TGC/Farkas Funding, LLC, as Mr. Bloom testified that based on that declaration from the principal (which was never withdrawn or amended), along with Mr. Farkas' representations as the agent that the settlement agreement was what Adam Flatto wanted, First 100 objectively accepted both of those representations in believing that Mr. Farkas had authority to act for TGC/Farkas Funding, LLC. AA09064. As Mr. Bloom testified, "Up to and through the signing of the settlement agreement . . . Matthew [Farkas] represented he had authority . . . As of the time the settlement agreement was signed, we understood Matthew [Farkas] to be the manager [of TGC/Farkas Funding, LLC, and Matthew [Farkas] continued to represent he was the manager, both in conversations and in a series of documents. AA0931-932.

Here, there were no inferences against the existence of apparent authority. See *Ellis v. Nelson,* 68 Nev. 410, 419, 233 P.2d 1072, 1076 (1951) (noting that where inferences against the existence of apparent authority are as equally reasonable as those supporting it, a party may not rely on apparent authority). While the district court cited to Matthew Farkas' testimony that once he left employment with First 100, he "effectively stepped out of a management role with [TGC/Farkas Funding,

LLC and left everything to Flatto and counsel," that is expressly disputed by Adam Flatto's August 2020 declaration insisting that Mr. Farkas was still the Administrative Member of TGC/Farkas Funding, LLC. AA1270.

The district court also cited to a September 17, 2020 written consent that Mr. Farkas delivered to an amended operating agreement governing TGC/Farkas Funding, LLC, which provided that TGC 100 managed by Flatto had "full, exclusive, and complete discretion, power and authority" . . . "to manage, control, administer and operate the business and affairs of [TGC/Farkas Funding, LLC]." AA1271. However, it is undisputed that at no point before the Settlement Agreement was executed did either Mr. Flatto or Mr. Farkas provide that amendment to Jay Bloom or anyone else at First 100. Indeed, it was not until later in January 2020 (after the Settlement Agreement was signed) that Mr. Bloom saw that amendment for the first time. AA0933.

Additionally, at no point did Adam Flatto amend his August 13, 2020 declaration to inform of the September 2020 amendment. There was simply no evidence after Mr. Flatto's August 2020 declaration creating an inference that Mr. Farkas no longer had the powers to bind TGC/Farkas Funding, LLC in his capacity as Administrative Manager of that company. The text messages between Mr. Bloom and Mr. Farkas during the time the Settlement Agreement was being executed also substantiate that Mr. Bloom was not aware of the September 2020 amendment.

AA1094-1099.

Accordingly, the district court erred in determining that Mr. Farkas did not have apparent authority to settle the case on behalf of TGC/Farkas Funding, LLC. First 100 and Mr. Bloom subjectively believed that Mr. Farkas still had authority to act for the principal, as corroborated by both Mr. Flatto's August 2020 declaration and the Settlement Agreement itself, in which Mr. Farkas represented that he had "full power and authority to enter into this Agreement." AA0168. Further, that subjective belief, which came from representations from both Mr. Flatto and Mr. Farkas, was reasonable. Numerous emails from over the course of the parties' relationship establish that it was Mr. Farkas acting as the point-person for TGC/Farkas Funding, LLC with respect to First 100 matters. AA1100-1101; AA1102-1103; AA1104-1125.

There was also adequate consideration for the Settlement Agreement. The Settlement Agreement specifically states that $1,000,000 will be paid to TGC/Farkas Funding, LLC, plus 6% interest. AA0167-169. Such payment will be made upon the sale of the Ngan Judgment. *Id.* The district court found that the consideration as inadequate because it does not go "beyond what [TGC/Farkas Funding, LLC] could ostensibly already be entitled to recover from First 100 following a sale of the Ngan Judgment." AA1279. But contrary to the district court's findings, First 100's Operating Agreement does not TGC/Farkas Funding, LLC to pro rata distributions.

Members of First 100 are not entitled to a specific percentage of revenues; they are potentially entitled to profits or distributions of the company. AA0022.

Finally, there were findings from the district court related to the "lack of good faith" in Mr. Bloom's dealings with Mr. Farkas. AA1278. But the following facts are undisputed:

- Mr. Farkas also executed the Settlement Agreement on his own at a UPS store, not in the presence of Mr. Bloom, and that nobody was threatening him to sign the Settlement Agreement. AA0859;
- Mr. Bloom did not tell Mr. Farkas not to read the Settlement Agreement. AA0859;
- Mr. Farkas waited 45 minutes to execute the Settlement Agreement, during which time he admittedly could have contacted Adam Flatto of TGC/Farkas Funding, LLC and consulted with him before signing the Settlement Agreement – he just chose not to. AA0861; and
- Mr. Farkas could have crossed out terms in the Settlement Agreement if he so desired, he again just chose not to. AA0861.

The district court also found that Mr. Farkas' failure to read the Settlement Agreement was evidence of a "lack of good faith" in dealings, but Mr. Farkas admitted "[i]t's my fault" that he did not read the Settlement Agreement before signing it. AA0860. No evidence was submitted indicating that Mr. Bloom knew

that Mr. Farkas had chosen not to read the Settlement Agreement before executing it. No evidence was submitted indicating that Mr. Bloom prevented Mr. Farkas from consulting with Adam Flatto regarding the Settlement Agreement. Mr. Farkas' failure to make any edits to the Settlement Agreement in and of itself is not a sign that the negotiations were conducted in bad faith. The evidentiary hearing revealed that MR. Farkas is well aware of his rights to make edits to documents before signing them, as evidenced by his decision to cross off language in a January 2021 declaration and make handwritten changes before signing it. AA0861-862.

Accordingly, the district court's failure to make any findings whatsoever with respect to the role that the August 2020 Flatto declaration had in creating apparent authority for Matthew Farkas to act as the Administrative Member of TGC/Farkas Funding, LLC, along with the balance of the evidence indicating that apparent authority existed and the Settlement Agreement was negotiated in good faith with adequate consideration, all support a finding of error by the district court with respect to the motion to enforce the Settlement Agreement.

## CONCLUSION

Based on the foregoing, this Court should find that the district court erred in (1) holding Jay Bloom to be the alter ego of First 100; (2) holding Jay Bloom to be jointly and severally liable for the six-figure attorneys' fees and costs award issued to TGC/Farkas Funding, LLC as a contempt sanction when he was never a party to

the case who was subjected to the order confirming the Arbitration Award; and (3) denying the motion to enforce the Settlement Agreement. This Court should reverse the district court's FFCL accordingly.

DATED this 15th day of September, 2021.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 28.2

I hereby certify that I have read this opening brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Rules of Appellate Procedure, and in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because it does not exceed 14,000 words, as this brief contains 9,023 words.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of September, 2021.

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## CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – VI** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

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